

The Blue Card: EU's Race for Talent

by

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Abstract

In recent years Brussels has recognized that certain regions and sectors in the EU are in need of migrants in order to deal with economic and demographic needs. All Member States of the European Union are affected by the flow of international migration, and have therefore realized that a new approach to manage migration is necessary. The so called 'global war on talent' has also intensified over the past years, and as an effort to become an attractive player in this 'war' the European Commission has put forth a proposal for a directive on the conditions of entry and residence of third-country nationals for the purposes of highly qualified employment. This directive is more commonly known as the European Union Blue Card and it does not aim to replace the 27 immigration systems of the Member States; instead it offers an additional channel of entry.

This paper examines the Blue Card scheme as well as compares it with the US H1B and the Green Card in order to see if the Blue Card is able to improve EU's position in the competition for the 'best and the brightest'. It also reveals that the Blue Card is suffering from inherent design problems weakening its potential. These issues are compounded by the necessary investments in language skills and the risk of migrants being subjected to xenophobia. This paper concludes that not only does the Blue Card scheme need more added value for the EU to alter its competitive disadvantage, but it is also imperative that the EU changes its attitude towards immigration. In addition, EU is in need of all skill levels and the Blue Card may be able to prepare the ground for further policy change in other areas of migration.

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List of Abbreviations

ALDE	Alliance of Liberals and Democrats for Europe in the European Parliament
DOL	Department of Labour (US)
EC	European Commission
EP	European Parliament
EPP	European People's Party in the European Parliament
EU	European Union
EU27	The current number of Member States in the EU
Eurostat	The Statistical Office of the European Union
F.B.I.	Federal Bureau of Investigation
FDI	Foreign Direct Investments
GDP	Gross Domestic Product
INS	Immigration and Naturalization Service (US)
IIE	Institute of International Education
IT	Information Technology
JHA	Justice and Home Affairs
MEP	Member of European Parliament
PES	Socialist Group in the European Parliament
OECD	Organisation for Economic Co-operation and Development
OPT	Optional Practical Training
TCN	Third Country National

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Migration – “a transnational revolution that is reshaping societies and politics around the globe”¹

Chapter 1 – Introduction

The demographic ageing of Europe calls for the attraction of more economic immigrants in order to compensate for the current negative demographic trend. Also, a skilled and adaptable labour force could be increasingly crucial in order to achieve higher levels of productivity and innovation in line with the objectives of the Lisbon Strategy.² Despite the immediate financial crisis, the current situation and the prospects of European Union (EU) labour markets can still roughly be described as a “need” scenario. Member States across the Union are experiencing substantial labour and skill shortages in certain sectors of the economy, which cannot be filled with the national labour force. This trend concerns the full range of qualifications. Estimations by the Statistical Office of the EU (Eurostat) 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.” As a result, this will have major implications on the number of employed people in the EU27, 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.”³ The decline in the total population is expected by 2025 and in the working age population by 2011. Member States, such as Germany, Hungary, Italy and Latvia, are already experiencing a decline in

¹ Stephen Castles and Mark J. Miller, *The Age of Migration: International Population Movements in the Modern World* (London: Macmillan Press Ltd, 1998), 5.

² Joanna Apap, June 2008, *An Analysis of the Proposal for an EU Blue Card for Highly Skilled Migrants: the Proposal for a Council Directive on the Conditions of Entry and Residence of Third-country Nationals for the Purpose of Highly Qualified Employment, 2007* (Brussels: European Parliament Directorate-General Internal Policies, 2008), 6.

³ Belgium, European Commission, *Communication from the Commission: Policy Plan on Legal Migration*, 21 December 2005, 4.

the working age population. These demographic trends will affect Member States differently; in some it will be more noticeable, in others it will be less. In any case they are trends that should be addressed in a coordinated and effective way.⁴

When the European Council first adopted the Lisbon Strategy in 2000 the goal was to make the EU “the most dynamic and competitive knowledge-based economy in the world capable of sustainable economic growth with more and better jobs and greater social cohesion, and respect for the environment by 2010.”⁵ However, a mid-term review in the spring of 2005 concluded that little progress had been made over the first five years and recommended refocusing the agenda on growth and employment. The report also emphasized the need for real commitment by the Member States to the reforms required.⁶ Nonetheless, both the first phase of the Lisbon Agenda and the 2005 re-launch spell out that, when reflecting on the current trends, Europe will have to rely on more immigrants to balance supply and demand in labour markets, and more generally to fuel economic growth.⁷

Inevitably, Europe's negative demographic trends have resulted in businesses throughout the Member States having increasing difficulty filling job vacancies, and in particular those job vacancies requiring highly skilled workers. The EU lags behind all other immigration countries, such as the United States and Canada. In the US 3.2 percent of the total labour force is made up of non-national highly skilled workers and 7.3 percent

⁴ European Commission, *Policy Plan on Legal Migration*, 4-5.

⁵ “Growth and Jobs: Relaunch of the Lisbon Strategy”, Euractiv.com, 25 July 2008 <http://www.euractiv.com/en/innovation/growth-jobs-relaunch-lisbon-strategy/article-131891> (2 February 2009).

⁶ “Growth and Jobs: Relaunch of the Lisbon Strategy”, Euroactiv.com, 25 July 2008 <http://www.euractiv.com/en/innovation/growth-jobs-relaunch-lisbon-strategy/article-131891> (2 February 2009).

⁷ European Commission, *Policy Plan on Legal Migration*, 4-5.

in Canada, whereas in the EU only 1.72 percent of the total labour force is made up of third-country highly skilled workers. These numbers highlight the struggle the EU is having attracting, and in certain cases valorising, immigrant workers. Regardless of the current recession, the EU still needs to compensate for its ageing and shrinking population, and it will find itself more and more in need of highly qualified workers.⁸

The former European Commissioner for Justice and Home Affairs, Franco Frattini, believes that circular migration is the solution to Europe's shrinking and ageing workforces.⁹ According to Dovelyn Rannweig Agunias and Kathleen Newland, circular migration in contemporary discourse is, at least conceptually, "based on a continuing, long-term, and fluid relationship among countries that occupy what is now increasingly recognized as a single economic space."¹⁰ The term circular migration has been around for decades, and it is used to refer to many different patterns. For the most part it has been associated with temporary worker programs and for this reason many sceptics wonder whether "circular migration" as being used in contemporary discourse, is just another way to describe yet another guest worker program while avoiding the baggage normally associated with these kinds of programs.¹¹ Frattini believes that circular migration can be good for the EU, if carefully constructed, it could fill specific gaps in the labour markets as well as benefit the country of origin and the migrant in the way in which individuals would send money home or return with new skills.¹² However, Europe needs skills of all

⁸ Belgium, European Commission, *Memo on Attractive Conditions for the Admission and Residence of Highly Qualified Immigrants*, 23 October 2007, 1.

⁹ Franco Frattini, "Shaping Migration Patterns" (speech presented in the European Parliament, Brussels, Belgium, September 20, 2007).

¹⁰ Dovelyn Rannweig Agunias and Kathleen Newland, "Circular Migration and Development: Trends, Policy Routes, and Ways Forward" *Migration Policy Institute Policy Brief* (April 2007): 2.

¹¹ Agunias and Newland, "Circular Migration and Development: Trends, Policy Routes, and Ways Forward," 2.

¹² Frattini, "Shaping Migration Patterns".

levels for the long term, which poses the question of how circular will this migration really be. Circular migration has been tried before and unless schemes are tightly regulated and the exit of workers is enforced by law, employers presumably have an interest in keeping the supposedly temporary workers in place. Employers would much prefer not to have to train new people repeatedly, and workers would want to keep their jobs or move on to better ones. Thus, “the old joke that there is nothing so permanent as a temporary migrant has more than a grain of truth in it.”¹³

Following the 1999 Tampere European Council, the European Commission (EC) has attempted to establish a comprehensive common migration policy in order to respond to the challenges and opportunities linked to migration. An integral part of this common migration policy is labour migration. Currently, highly skilled workers have to face 27 different admission systems and lengthy procedures, but in an effort to remedy these issues the EC adopted a proposal for a directive establishing the conditions for entry and residence of third-country nationals (TCNs) for the purposes of highly qualified employment (more commonly known as the Blue Card) on the 23rd of October 2007. The European Union Blue Card does not aim to replace the 27 immigration systems of the Member States; instead it offers an additional channel of entry. Its goal is to offer third-country highly skilled workers more attractive entry and residence conditions to come to Europe.¹⁴ Furthermore, this temporary work scheme does not only aim to “provide Member States and EU companies with additional ‘tools’ to recruit, retain and better allocate (and re-allocate) the workers they need,”¹⁵ but it also ensures that the

¹³ “Circulate or Integrate?” *Economist*, 3 January 2008, 14.

¹⁴ Apap, *An Analysis of the Proposal for an EU Blue Card for Highly Skilled Migrants*, 6, 11.

¹⁵ European Commission, *Memo on Attractive Conditions for the Admission and Residence of Highly Qualified Immigrants*, 23 October 2007, 1.

countries of origin and the migrants themselves will benefit. In other words, the scheme will bring about the proverbial ‘win-win-win’ results.¹⁶

The main principle driving modern migration is that workers tend to move to countries where they can receive the greatest compensation for their skills. The US is perceived as a traditional country of immigration and has managed to become successful in attracting the ‘best and the brightest’. The EU on the other hand has few engineers, doctors and technicians banging on their door. Thus, the Blue Card is a tool, produced by the Commission and modelled after the US ‘Green Card’, meant to improve EU’s position in the competition for the ‘best and the brightest’ and fill Member States’ labour and skill shortages in order to reach the objectives of the Lisbon Strategy. However, does the Blue Card and the EU as a whole offer enough favourable conditions to attract more highly skilled migrants to take jobs in the EU? This paper examines the Blue Card scheme as well as compares it with the US H1B and the Green Card. It finds that the Blue Card offers at best a mixed bag, but that there are also other challenges that the Blue Card and the EU are facing, which make the Blue Card a less effective tool and the EU a less appealing place to attract highly skilled workers. The Blue Card’s potential is weakened by inherent design problems, including the policy of circular migration, the Member States’ right to set quotas and the ability of Member States to run their national schemes for highly skilled migrants parallel to the Blue Card scheme. However, the Blue Card is not only weakened by its poor design, but the divergence on immigration issues between Member States are also a hindrance to any proper solution to Europe’s aging and shrinking population. Add in the necessary investments in language skills and risks of being subjected to xenophobia, and the Blue Card becomes a contested instrument and

¹⁶ Apap, *An Analysis of the Proposal for an EU Blue Card for Highly Skilled Migrants*, 12.

the EU a less attractive destination for highly skilled workers. This paper concludes that not only does the Blue Card scheme need more added value for the EU to alter its competitive disadvantage, but it is also imperative that the EU changes its attitude towards immigration. In addition, EU is in need of all skill levels and the Blue Card may be able to prepare the ground for further policy change in other areas of migration.

1.1 Structure and Methodology

To prepare the ground for the analysis, chapter two explores different migration theories. Research on migration is intrinsically interdisciplinary, which means that all disciplines look at different aspects of population mobility and in order to get a full understanding of migration it requires a study of all of them. The different methods used by various disciplines all have their place, but a detailed study of all of them is not possible for this paper. However, it will give a general overview of the more recent approaches as well as the older ones from which they stem. The neo-classical economic equilibrium theory, the historical-structuralist approach, migration systems theory and rational choice theory have been chosen as they reveal the need to study the migratory process as a whole. The neo-classical economic equilibrium theory has much in common with neo-classical economics. The theory is more or less individualistic and a-historical and it emphasizes the cost-benefit approach that lies behind the individual's decision to migrate. The historical-structuralist approach is an alternative explanation of international migration and it has intellectual roots in Marxist political economy. The migration systems theory sums up the complex sets of factors and interactions that lead to international migration and influence its course. Rational choice theory has partly been influenced by the neo-classical economic approach and it is appropriate to use in

combination with the migration systems theory when looking at certain aspects of the migration of highly skilled labour.

The third chapter gives an overview of the US H1B visa and Green Card schemes as well as the EU Blue Card. The fourth chapter compares the US and EU's highly skilled worker arrangements in order to see which scheme offers the most favourable conditions. For this purpose one will look at admissions mechanisms (numerical caps, labour market access, education/professional experience criteria) and work rights (employer portability, spouse's work rights, validity period, permanency rights). In addition to this immediate comparison, chapter five will discuss the inherent design problems that the Blue Card suffers from as well as the intervening environmental variables that make the EU a less attractive place for highly skilled workers. The sixth and final chapter concludes the paper and considers the road ahead.

The methodology used in this paper is rooted in comparative politics. The reason why I chose a comparative approach is because it allows for comparison and analysis of a small number of cases. In this case, it involves the EU Blue Card and the US H1B and Green Card schemes. I have compared the different foreign worker programs' admissions mechanisms and work rights in order to see if the Blue Card is able to give the EU a competitive advantage in the global competition for talent. I have also looked at the inherent design problems of the Blue Card and at intervening environmental variables that could affect the scheme's potential in attracting highly skilled workers to the EU. The data collected for this paper was through an extensive document review and email dialogues with Members of the European Parliament and experts on EU immigration. The document review included European Parliament internal documents, EU Strategy

Papers and Communications, concept papers, programme documents, reports and research papers from various sources.

Chapter 2 – Migration Theories

In the past years international migration has reached an all-time high. More than 200 million people are living outside their home country, and nearly one in ten residents of advanced industrialized states is an immigrant. Castles and Miller have proclaimed that migration is “a transnational revolution that is reshaping societies and politics around the globe,”¹⁷ and Europe is overrepresented as a host within this growing transnational pattern. Europe hosts fifteen million migrants, which is roughly eight percent of world migrants in an area with six percent of the world population.¹⁸

International migration is most often not a simple individual action, instead migration and settlement is usually a long process that will continue to play a role for the rest of the migrant’s life as well as affect following generations. Migration is a “collective action, arising out of social change and affecting the whole society in both sending and receiving areas.”¹⁹ A migrant’s intention at the time of leaving the home country is often a poor predictor of actual future behaviour, because the experience of migration and living in another country usually lead to modification of the initial plan. Also, no government intends to build ethnically diverse societies through immigration, although labour recruitment policies often lead to the creation of ethnic minorities that tend to have extensive consequences for social relations, public policies, national identity and international relations.²⁰

¹⁷ Castles and Miller, *The Age of Migration*, 5.

¹⁸ Craig A. Parsons and Timothy M. Smeeding et al., eds. *Immigration and the Transformation of Europe* (Cambridge: Cambridge University Press, 2006), 5-7.

¹⁹ Castles and Miller, *The Age of Migration*, 19.

²⁰ Castles and Miller, *The Age of Migration*, 19.

As the introduction stated, all disciplines look at different aspects of population mobility, thus when asking the question – what are the determinants and consequences of international migration – the answer is dependent on the discipline. However, sometimes there can be agreements across disciplines and for that reason it is important to take an interdisciplinary approach when writing about migration. The next sections will give a brief overview of more recent approaches as well as the older ones from which they have evolved.²¹

The neo-classical economic equilibrium approach got its start through the earliest systematic theory on migration by the nineteenth century geographer Ravenstein, who formulated statistical laws of migration.²² He conceptualized migration as “a relocation of human beings across space, within or between countries, and strove to achieve an elegant formal model that would account for such movements.”²³ The theories within this approach were merely general statements unrelated to any actual migratory movement and these ‘general theories’ stress the tendencies of people to move from densely to sparsely populated areas, or from low-to high-income areas or relate the movement of people to fluctuations in the business cycle. These approaches are mostly known as ‘push-pull’ theories as they assume that the causes of migration are a combination of ‘push factors’, urging people to leave their home country, and ‘pull factors’, drawing them to certain host countries. ‘Push factors’ comprise of demographic growth, low standard of living, low economic growth and political oppression, while

²¹ Castles and Miller, *The Age of Migration*, 20.

²² Castles and Miller, *The Age of Migration*, 19.

²³ Aristide R. Zolberg, “The Next Waves: Migration Theory for a Changing World,” *International Migration Review* 23 (Autumn 1989): 403.

‘pull factors’ include demand for labour, availability of land, good economic growth opportunities and political freedom and stability.²⁴

The neo-classical economic equilibrium approach is more or less individualistic and a-historical as it stresses the individual decision to migrate based on a rational comparison of the relative costs and benefits of remaining in the home country or moving to a variety of different destinations. Government restrictions on emigration or immigration are for the most part treated as distortions of the rational market, which should be removed. Hence, the approach shares many similarities with neo-classical economics, which is explained further in Borjas’ model of an immigration market.²⁵

Neo-classical economic theory assumes that individuals maximize utility: individuals “search” for the country of residence that maximizes their well-being...The search is constrained by the individual’s financial resources, by the immigration regulations imposed by competing host countries and by the emigration regulations of the source country. In the immigration market the various pieces of information are exchanged and the various options are compared. In a sense, competing host countries make “migration offers” from which individuals compare and choose. The information gathered in this marketplace leads many individuals to conclude that it is “profitable” to remain in their birthplace...Conversely, other individuals conclude that they are better off in some other country. The immigration market nonrandomly sorts these individuals across host countries.²⁶

Borjas also claims “ this approach leads to a clear – and empirically testable – categorisation of the types of immigrant flows that arise in a world where individuals search for the ‘best’ country.”²⁷ Castles and Miller argue that Borjas’ claim leads one to assume that the most disadvantaged people would move from poor to richer areas and

²⁴ Castles and Miller, *The Age of Migration*, 20.

²⁵ Castles and Miller, *The Age of Migration*, 20-21.

²⁶ George J. Borjas, “Economic Theory and International Migration,” *International Migration Review* 23 (1989): 460-461.

²⁷ Borjas, “Economic Theory and International Migration,” 461.

that the sheer existence of economic differences between various areas would be enough to generate migrant flows. The long-term results would be that such flows are expected to help equalize wages and conditions in underdeveloped and developed areas, leading towards economic equilibrium.²⁸ However, this is not generally the case and these so-called ‘push and pull’ theories have been criticised by various migration scholars for being too simplistic and incapable of explaining actual movements or predicting future ones. Studies show it is usually not the poorest people from the least-developed areas that move to the richest. Instead, it is the migrants of intermediate social status in areas where economic and social change is taking place that tend to move. Moreover, the ‘push-pull’ approach cannot explain why a specific group of migrants goes to one country rather than another and migration cannot merely be explained by income differences between two countries. Instead factors such as chances of secure employment, availability of capital for entrepreneurs, and the need to manage risk over longer periods of time also play a role in the decision to migrate.²⁹

Castles and Miller also argue that Borjas’ idea of individual migrants making free choices that will “maximise their well-being” as well as lead to an “equilibrium in the marketplace” is far from historical reality.³⁰ Instead it appears to be better to use A.R. Zolberg’s analysis of labour migration who believes that the difference between old and new literature on international migration is the conceptual shift. Rather than viewing international migration as the “aggregate movements of individuals in response to differential opportunities”, Zolberg proposes labour migration should be seen “as a movement of workers propelled by the dynamics of the transnational capitalist economy,

²⁸ Castles and Miller, *The Age of Migration*, 21.

²⁹ Castles and Miller, *The Age of Migration*, 21-22.

³⁰ Castles and Miller, *The Age of Migration*, 22.

which simultaneously determines both the ‘push’ and the ‘pull’.”³¹ This implies that migrations are collective phenomenon, which Castle and Miller believe should be examined as sub-systems of an increasingly global economic and political system.³²

In the 1970s an alternative explanation of international migration was provided, named the historical-structuralist approach. It has its intellectual origins in Marxist political economy and emphasizes the unequal distribution of economic and political power in the world economy. Migration is more or less perceived as a way of mobilising cheap labour for capital and it exploits the resources of poor countries. The scholars of the historical-structuralist approach criticise the neo-classical model and also find the assumption of free choice for individuals to be unrealistic. In fact, the combination of inequalities in resources and power between different countries and entry policies of potential receiving countries put major restrictions on migrants’ choices.³³

In the past, the ‘push-pull’ approaches have had a tendency to put more focus on voluntary migrations of individuals, such as the mass emigration from Europe to the US during the 19th century, while historical-structuralists have looked more at mass recruitment of labour by capital, such as for the factories in Germany. After 1945 the reason for availability of labour was a result of war and regional inequalities within Europe as well as the legacy of colonialism, and according to the world systems theories, labour migration was one of the ways in which domination was created between the core economies of capitalism and its underdeveloped periphery. However, the historical-structural approach has also been criticised by many migration scholars who question the logic of capital and the interests of Western states. If it was so dominant,

³¹ Zolberg, “The Next Waves: Migration Theory for a Changing World,” 406-407.

³² Castles and Miller, *The Age of Migration*, 22.

³³ Castles and Miller, *The Age of Migration*, 22-23.

how could numerous breakdowns of migration policies be explained, such as the unexpected shift from labour migration to permanent settlement in certain countries?³⁴

Critics argue that both the neo-classical perspective and the historical-structural approach are too one-sided to be able to sufficiently analyze the great complexity of contemporary migrations. To sum up, the neo-classical perspective overlooks the historical causes of movements and gives little weight to the role of the state, while the historical-structural approach often see the interests of capital as all-determining and pays little attention to the motivations and actions of the individuals and groups involved.³⁵ Out of the critique of the two outlined theories a new approach evolved, the migration systems theory, which has become increasingly influential in comparative research. Migrations systems theory stresses international relations, political economy, collective action and institutional factors. A migration system is made up of two or more countries that exchange migrants with each other. It has a tendency to analyze regional migration systems, but far-off regions may be interlinked as well. This approach focuses on examining both ends of the migration flow and studies all the connections between the places concerned, and these connections can be categorised as “state-to-state relations and comparisons, mass culture connections and family and social networks.”³⁶

Migration systems theory proposes that migratory movements usually occur from already existing links between the country of origin and the host country, based on colonisation, political influence, trade, investment or cultural ties. The approach also implies that any migratory movement can be seen as the outcome of the interacting

³⁴ Castles and Miller, *The Age of Migration*, 23.

³⁵ Castles and Miller, *The Age of Migration*, 23.

³⁶ Castles and Miller, *The Age of Migration*, 23-24.

macro-and micro-structures. Macro-structures refer to large-scale institutional factors and micro-structures entail the networks, practices and beliefs of the migrants themselves.³⁷

Migration networks offer the basis of the processes of settlement and community formation in the immigration area. It is in the immigration area where migrant groups build their own social and economic infrastructure. This development is then linked to family reunion; as the length of stay increases the original migrants begin to bring their families to the host country. When this happens, the migrants start seeing a more stable future in the new country. This process is in particular linked to the situation of the migrants' children. Once they are enrolled in school in the new country, learn the language, create new friendships and develop bicultural or transcultural identities, it becomes more and more difficult for the parents to return to the country of origin. Castles and Miller rightly argue that macro-and micro-structures are connected at all levels with each other and together they can be examined as components of an overarching migratory process. Moreover, this concept of migratory process sums up the complex sets of factors and interactions that lead to international migration and influence its course. There is never a single reason that is enough to explain why people decide to move from their home country to settle in another.³⁸

Although each migratory flow has its specific historical reason, it is still possible to generalise why migratory movements develop and to discover certain internal dynamics to the process. It is safe to argue that most migrations start with young, economically active people. These types of migrants are 'target-earners' who want to earn and save enough in a higher-wage economy in order to improve their living

³⁷ Castles and Miller, *The Age of Migration*, 24.

³⁸ Castles and Miller, *The Age of Migration*, 26-27.

conditions in the country of origin. After some time spent in the host country, some of these migrants return home while some extend their stay or even return home to then re-emigrate. Reasons for these actions may be because of relative success: they find living and working conditions in the host country better than in the country of origin. However, it might also be because of relative failure: migrants find it impossible to save enough to achieve their goals, necessitating a longer stay. Whatever the migrant's original intentions were, as time and life continues in the host country it is almost always an inevitability that the migrant's settlement takes on a more permanent character. Castles and Miller use W.R Böhning's four-stage model where these patterns can be summarised.³⁹

1. Temporary labour migrants of young workers, remittance of earnings and continued orientation to the homeland.
2. Prolonging of stay and the development of social networks based on kinship or common area of origin and the need for mutual help in the new environment.
3. Family reunion, growing consciousness of long-term settlement, increasing orientation towards the receiving country, and the emergence of ethnic communities with their own institutions (associations, shops, cafes, agencies, professions).
4. Permanent settlement which, depending on the actions of the government and the population of the receiving country, leads either to secure legal status and eventual citizenship, or to political exclusion, socioeconomic marginalisation and the formation of permanent ethnic minorities.⁴⁰

The migration systems theory is a useful method when studying migration flows as it takes a vast array of factors into consideration. Although Böhning's four-stage model is less appropriate to temporary migrations of highly skilled workers, it still has analytical value for this type of migrants, because highly skilled migration does often

³⁹ Castles and Miller, *The Age of Migration*, 28-29.

⁴⁰ Castles and Miller, *The Age of Migration*, 28.

lead to family reunion and community formation.⁴¹ In addition, even if the neo-classical economic approach has been criticised for being too simplistic it has strongly influenced the rational choice theory. In combination with the migration systems theory, rational choice is an appropriate approach to use when looking at some of the aspects of highly skilled migration. For example, rational choice is useful when trying to explain certain determinants of why or where these types of workers migrate, while the migration systems theory is more useful when explaining why these migrants' settlement takes on a more permanent character. Parts of the theoretical concepts and predictions of rational choice theory are similar to the previously discussed economic model, but it also draws from behavioural decision theory in social psychology. According to rational choice theory "individuals are seen as resourceful actors who select from sets of alternatives, while constraints and opportunity structures impose restrictions on their choice."⁴² Migration is considered as a rational action, which maximizes the individual's net benefits. The cost-benefit approach that lies behind this migration decision can include both monetary and non-monetary costs and benefits.⁴³ In other words, the decision to migrate is not solely based on expectations regarding the earning opportunities in the destination of choice, but also expectations of, for example, living standard and personal development.⁴⁴ In the same way as individuals make their migration decision by considering the benefits of the various alternatives and choosing the option that fits them the best given the financial and legal constraints that regulate the international migration process, host countries legislate immigration policies in order for them to attract the type

⁴¹ Castles and Miller, *The Age of Migration*, 29.

⁴² Sonja Haug, "Migration Networks and Migration Decision-Making," *Journal of Ethnic and Migration Studies* 34 (May 2008): 586.

⁴³ Haug, "Migration Networks and Migration Decision-Making," 587.

⁴⁴ Insan Tunali, "Rationality of Migration," *International Economic Review* 41 (November 2000): 893.

of immigrants they want. Host countries compete for human capital through their immigration policies and set their regulations based on their needs.⁴⁵ Barry R. Chiswick says, in this sense, highly skilled migrants tend to be favourably self-selected on the basis of skills, health and other characteristics. Highly skilled migrants tend to be more ambitious, aggressive, entrepreneurial and healthier than similar individuals who choose to stay in their country of origin.⁴⁶ With that being said, the definition and expectations of a highly skilled migrant will become clearer in the following sections, which explores more in detail the mobility of highly skilled labour.

Highly skilled migrants represent an increasingly large part of the world's migration flows and although the total number of this type of migrants is unknown it is estimated that there are 1.5 million professionals from developing countries in the industrial countries alone. Not a lot of countries allow highly skilled migrants to enter on a permanent basis, but many of the receiving countries want them on a temporary basis in order to meet skills shortages and to ensure that economic growth is not impeded.⁴⁷ Highly skilled workers are typically described as having a university degree or extensive/equivalent experience in a given field. The Organisation for Economic Co-operation and Development (OECD) include specialists, independent executives and senior managers, specialized technicians or tradespersons, investors, businesspersons, "key workers" and sub-contract workers under the highly skilled umbrella. Individuals

⁴⁵ Borjas, "Economic Theory and International Migration," 460.

⁴⁶ Barry R. Chiswick, "Are Immigrants Favourably Self-Selected? An Economic Analysis," in *Migration Theory: Talking Across Disciplines*, eds. Caroline B. Brettell and James F. Hollifield (New York: Routledge, 2008), 64-65.

⁴⁷ Robyn Iredale, "The Migration of Professionals: Theories and Typologies," *International Migration* 39 (2001): 8.

under this umbrella often seek to maximize return on their investment in education and training by moving in search of the highest paid and/or most rewarding employment.⁴⁸

National policies and bilateral and multilateral agreements are becoming increasingly important when it comes to facilitating the flow of highly skilled labour, since they can act as “lubricators” to speed up desired industry-motivated movements. One national policy being used by many countries is the internationalisation of higher education, in particular in the US, UK, Australia and Canada. This has led to an increase in numbers of foreign students studying in these countries, an increase in numbers of foreign students studying at home for qualifications offered by higher education institutions located in developed countries and an increase in institutional collaboration between universities in developing and developed countries. The internationalisation of higher education is enabling a more global framework for professions, which in turn generally implies a convergence towards international standards and procedures and a divergence from nationally defined standards and national forms of regulation.⁴⁹

Every highly skilled migrant’s situation is unique, thus, trying to discuss the specific motivational factors of a migration decision becomes difficult. Robyn Iredale points to the “unique situation that pertains in each professional arena and the need to differentiate by profession when examining skilled migration.”⁵⁰ The scientific labour markets have, for example, been described as being more internationalised, as smaller and as having relatively higher mobility than other labour markets. There are also different motivators between different scientific disciplines, for example, it is more likely that natural scientists emigrate than social scientists because their knowledge “is more

⁴⁸ Iredale, “The Migration of Professionals: Theories and Typologies,” 9.

⁴⁹ Iredale, “The Migration of Professionals: Theories and Typologies,” 9-10.

⁵⁰ Iredale, “The Migration of Professionals: Theories and Typologies,” 15.

readily convertible.”⁵¹ Furthermore, there are also differences in motivational factors between migrants in the academic sector, transnational companies and in the private sector in general. Migrants in the academic sector might, for example, consider different countries’ quality of research facilities or centres of excellence. However, on this note one can still find motivational factors that apply more generally to all highly skilled migrants and that can be included in their so called cost-benefit equation. These factors include, but are not limited to, aspects of employment (i.e. career advancement opportunities, wage differentials), broader economic and quality of life determinants (i.e. living conditions), opportunities for personal development associated with travel and culture exchange, knowledge of host country’s language and the host country’s attitude towards immigrants.⁵² In addition to these factors there are other, more essential, ones that will play a role in the highly skilled worker’s decision to migrate. Apart from the migrant worker’s willingness to seek employment abroad, underlying factors of such a decision are dependent on the host country’s migration policies such as admissions mechanisms (numerical caps, labour market access, education/professional experience criteria) and work rights (employer portability, spouse’s work rights, validity period, permanency rights).

In light of this, when comparing visa regimes a highly skilled worker will choose his or her destination based on the state’s ability to offer the best compensation for their skills and impose the least restriction on their choice, as well as its ability to offer the most comfort.⁵³ Both the US and the EU are generally able to offer similar career

⁵¹ Louise Ackers, “Moving People and Knowledge: Scientific Mobility in the European Union,” *International Migration* 43 (2005): 102.

⁵² Ackers, “Moving People and Knowledge: Scientific Mobility in the European Union,” 103.

⁵³ Haug, “Migration Networks and Migration Decision-Making,” 586-587.

advancement opportunities and standard of living and therefore this aspect of the cost-benefit equation is less likely to affect a highly skilled migrant's decision when choosing between the two locations. However, the so-called key factors, the host country's admissions mechanisms and work rights, are going to affect a highly skilled worker's decision when choosing a destination for employment. The chapters ahead are not only going to compare the US and EU's visa regimes for highly skilled migrants, but also explore other determinants that make the EU a less attractive and less rational choice for highly skilled workers.

Chapter 3 – Highly Skilled Labour to the US and EU

The continued liberalisation of world trade is also leading to a liberalisation of the free movement of persons. There are certain aspects of the global economy that are particularly relevant to the liberalisation of skilled migration such as the rising importance of trade in services, transnationalisation of production, and the increase of multinational enterprises and technological change.⁵⁴ According to the European Commission the service sector is the “harbinger of a fundamental restructuring of the world economy.”⁵⁵ The European service sector accounts for almost 70 percent of EU’s Gross Domestic Product (GDP) and approximately 60 percent of Foreign Direct Investments (FDI) of the major trading nations.⁵⁶ Although Europe is suffering from an ageing population and increasingly in need of talented workers, there are few high skilled engineers, technicians and doctors banging on the door. Why is it that the best educated seem keener to go elsewhere as opposed to the EU? Most highly skilled migrants prefer destinations such as the US to the EU, due to factors such as the fragmentation of EU labour markets. Can the Blue Card, modelled after the US Green Card system, attract more highly skilled immigrants to take jobs in the EU? The next sections are going to give an overview of the US and EU’s visa regimes for the highly skilled and in particular their admission mechanisms and work rights.

⁵⁴ Sandra Lavanex, “The Competition State and Multilateral Liberalization of Highly Skilled Migration,” in *The Human Face of Global Mobility: International Highly Skilled Migration in Europe, North America and the Asia-Pacific*, eds. Michael Peter Smith and Adrian Favell (New Jersey: Transaction Publishers, 2006), 31-33.

⁵⁵ Lavanex, “The Competition State and Multilateral Liberalization of Highly Skilled Migration,” 32.

⁵⁶ Lavanex, “The Competition State and Multilateral Liberalization of Highly Skilled Migration,” 31-33.

3.1 Highly Skilled Labour to the US – the H1B visa and Green Card

The United States is a nation of immigration and Americans share a common experience: “they or their forebears left another country to begin anew in the United States.”⁵⁷ Historically the government hardly regulated number of immigrants or their skills. However, that changed with legislation in the 1920s that introduced restrictions based on national origin. Following this legislation was a post-World War II policy liberalisation, which was in turn followed by the early framework of today’s admission policies. Temporary work categories are becoming increasingly important as the vehicle for admission of foreign workers, in particular professionals, executives, and managers. Also, the increase in the number of foreign professionals admitted for temporary stays mirrors global economic trends.⁵⁸ However, the US temporary migration system is closely linked with the permanent system because many of the temporary workers stay and gain permanent status.⁵⁹

The H1B visa is an employer-sponsored visa for ‘specialty occupation’ workers. The H1B visa is the official and primary US work visa available to people from all over the world. The US Government introduced the H1B visa to offer and enable highly skilled international professionals and international students, from all over the world, the opportunity to live and work in the US. The H1B is the most popular and sought after US work visa and US Immigration requires ‘every’ foreign national to obtain a visa in order to legally work in America. To be able to obtain an H1B visa the foreign worker must first find an H1B sponsorship job with a US sponsoring company (employer). The next

⁵⁷ Susan Martin and B. Lindsay Lowell, “Competing for Skills: U.S. Immigration Policy since 1990,” *Law and Business Review of the Americas* 11 (Summer 2005): 387.

⁵⁸ Martin and Lowell, “Competing for Skills: U.S. Immigration Policy since 1990,” 387, 393.

⁵⁹ B. Lindsay Lowell, “Skilled Temporary and Permanent Immigrants in the United States,” *Population Research and Policy Review* 20 (April 2001): 33.

step is for the H1B employer to file an H1B visa application with the US Immigration Bureau because an individual cannot sponsor or apply for one's own H1B visa.⁶⁰

The H1 visa was first created under the Immigration and Nationality Act of 1952 and during its first two decades of life it never ran over 15 000 visas per year despite the absence of any numerical cap. During the 1980's the numbers grew from 21 000 per year to 49 000 per year, and up to the early 1990s the H1 classification was fairly broad. However, in the early 1990s the Immigration and Naturalization Service (INS) tightened up the H1 classification by articulating standards of qualification as professional or a person of prominence. The Immigration Act of 1990 then required prospective employers to file labour condition applications for the H1B with the US Department of Labour (DOL) as to wages and working conditions. A numerical cap of admissions was also established, and, as a result, admission of H1B non-immigrants were limited to 65 000 per year. However, there is no cap on H1B workers employed by colleges, universities, or non-profit and government research organisations. Unfortunately, there are no exact figures showing how many research H1B holders are being admitted outside the cap.⁶¹ The imposed cap was intended to reduce the rising demand for foreign workers thus trying to protect the domestic worker as well as encourage internal market adjustments that would favour US economy's long-term competitive interests.⁶²

A student can either enter the US as a foreign student (F1 visa), an exchange visitor visa (J visa) or a vocational student (M visa). The former two visas only allow limited work authorization; the latter visa prohibits any employment except for practical

⁶⁰ "H1B Visa Program" <http://www.h1base.com> (8 October 2008).

⁶¹ B. Lindsay Lowell, "The Demand and New Legislation for Skilled Temporary Workers (H-1BS) in the United States," *People and Place* 8 (December 2000): 29-30.

⁶² Martin and Lowell, "Competing for Skills: U.S. Immigration Policy since 1990," 398.

training after completion of studies. Upon graduation, the F1 student can either do an Optional Practical Training (OPT) or apply for an H1B visa. An F1 student is eligible for twelve months of OPT, which allows the student the opportunity to apply the theoretical knowledge that s/he obtained during their academic program to practical work experience. Any employment opportunity must be directly related to his or her major field of study in order to qualify as OPT. To apply for an H1B the student needs to find an employer willing to sponsor him/her for an H1B. These types of H1B cases can be expedited upon a fee paid by the applicant. Furthermore, many of the top US universities and colleges help their international students to quickly and easily target and apply to sponsor companies in order to be granted a H1B.⁶³ In 2007 there were 787 756 foreign students entering the US.⁶⁴

The H1B visa is a sub-category of the temporary worker H category, which covers professional and other highly skilled persons. Although the H1B classification has been tightened up in many areas, the legislation still allows the entry of H1B workers who may have the intent to immigrate permanently at some point in the future. The requirement of temporary intent was thus removed, which differentiates the H1B from other non-immigrant visas and implicitly encourages a transition to permanent residency.⁶⁵ This is one of the main advantages of the H1B visa, being a 'dual intent' visa means that the holder can apply for a Green Card (Legal Permanent Residency). This aspect of the visa makes it more desirable since it will not deny the visa to an immigrant

⁶³ "H1B Visa Program" <http://www.h1base.com> (8 October 2008).

⁶⁴ United States. Department of Homeland Security. *Yearbook of Immigration Statistics: 2007, 2008*, 65.

⁶⁵ Lowell, "The Demand and New Legislation for Skilled Temporary Workers (H-1BS) in the United States," 29-30.

that has intentions of becoming a permanent resident.⁶⁶ By 1990 over half of the employers of H1B holders reported that the job was intended to continue permanently, and according to Lindsay Lowell at least half and probably many more of H1B workers intend to stay and become permanent Green Card residents.⁶⁷

The reasons why US employers want to hire foreign national workers on H1B visas are similar to the ones of the EU. Highly skilled migrants help to maintain their global competitive advantage and contribute significantly to the US economy in numerous ways. In order to qualify for an H1B visa the foreign worker must work in a ‘specialty occupation’, which can for example be within IT, computing, marketing, banking, PR, engineering etc.⁶⁸ Although the demand for H1B workers in the US has decreased slightly in recent years the need is still there, and has mostly been fuelled by the information technology (IT) revolution in the late 1990s. Hence, the H1Bs are important for the supply of IT workers and the core of the IT workforce consists of computer scientists, programmers and engineers.⁶⁹

The initial period that a foreign worker can have an H1B visa is typically three years, but that period can be extended for a combined total of six years. After that time the holder must remain outside the USA for one year before another H1B petition can be approved. During the period that the H1B visa is in effect it entitles the H1B worker’s spouse and children (under the age of 21) to live in the US, but family members are not allowed to work as long as they are on an H4 visa. However, family members are allowed

⁶⁶ “H1B Visa Program” <http://www.h1base.com> (8 October 2008).

⁶⁷ Lowell, “The Demand and New Legislation for Skilled Temporary Workers (H-1BS) in the United States,” 29-30.

⁶⁸ “H1B Visa Program” <http://www.h1base.com> (8 October 2008).

⁶⁹ Lowell, “The Demand and New Legislation for Skilled Temporary Workers (H-1BS) in the United States,” 30, 34.

to work if they obtain their own H1B visa. Furthermore, the employer also needs to verify that the H1B visa holder is being paid the prevailing wage for the work performed, and that the employment of a highly qualified worker is not impairing the conditions for US citizens to find a job.⁷⁰ Another important feature of the H1B visa is that it is ‘fully portable’, which means that the worker is allowed to switch employers as soon as a new employer files a petition with the INS. Also, the H1B worker is allowed to stay beyond six years if their Green Card applications have been in the processing stage for at least a year.⁷¹ The numerical cap of 65 000 that is set for H1B visas issued each year does not include or affect current H1B holders transferring their visas to a new employer/sponsor nor does it include 'new' applications for an H1B that is with non profit organizations, government research organizations and institutions of higher education.⁷²

To be able to qualify for an H1B visa the foreign worker needs a minimum of 12 points and to meet these criteria the applicant needs:

- A Bachelor's degree or higher degree (or foreign equivalent) in the specialty field or;
- At least 12 years progressive work experience in the specialty field or;
- A license to practice in the chosen occupation (if such a license is required to practice) or;
- A mix of further education (e.g. Diploma/Certificate) and work experience of total 12 years.⁷³

⁷⁰ “H1B Visa Program” <http://www.h1base.com> (8 October 2008).

⁷¹ Lowell, “The Demand and New Legislation for Skilled Temporary Workers (H-1BS) in the United States,” 30, 34.

⁷² “H1B Visa Program” <http://www.h1base.com> (8 October 2008).

⁷³ “H1B Visa Program” <http://www.h1base.com> (8 October 2008).

Once a worker has obtained its H1B status, s/he is allowed to work full or part-time and maintain their status. An H1B employee is also allowed to go on vacation, sick/maternity/paternity leave, or on strike without affecting his or her status. An H1B visa holder is also allowed to travel outside and re-enter the US during the validity period of the visa.⁷⁴ In the year of 2001 384 191 H1B workers were admitted into the US and in 2007 that number increased to 461 730.⁷⁵

In light of this, one might ask how temporary are these ‘temporary’ workers? Many of these workers stay several years in the US on a temporary visa, and a substantial amount of them stay on and adjust their status to become legal permanent residents.⁷⁶ In 2007 a total of 1 052 415 obtained permanent resident status and a total of 621 047 people adjusted their status to receive permanent residency.⁷⁷ Temporary speciality workers (H category) and intra-company transferees (L category) are, according to the law, allowed to enter the US with the intent of staying and many companies employ them with permanency in mind. Therefore, there are higher adjustment rates among the H and L categories than for example exchange visitors (J category), because the exchange visa requires that the migrant return home for two years before applying for permanent admission.⁷⁸

Permanent resident admissions are granted to several different classes of immigrants, but the two biggest ones are family-based (FB) and employment-based (EB). Both are generated through the sponsorship of an immediate family member or employer. The family-based category is the one that dominates the flow of immigrants that come to

⁷⁴ “H1B Visa Program” <http://www.h1base.com> (8 October 2008).

⁷⁵ Department of Homeland Security, *Yearbook of Immigration Statistics: 2007*, 2008, 63, 65.

⁷⁶ Lowell, “Skilled Temporary and Permanent Immigrants in the United States,” 47.

⁷⁷ Department of Homeland Security, *Yearbook of Immigration Statistics: 2007*, 2008. 18.

⁷⁸ Lowell, “Skilled Temporary and Permanent Immigrants in the United States,” 49.

the US, and any family-based immigrant is allowed to work in the country.⁷⁹ Within the EB category there were 162 176 that obtained permanent residency in 2007 (number includes both ‘adjustment of status’ and ‘new arrivals’)⁸⁰ and within this category there are four preferences:⁸¹

- EB-1 Priority workers: foreign nationals of extraordinary ability in the sciences, arts, education, business or athletics; foreign nationals that are outstanding professors or researchers; foreign nationals that are managers and executives subject to international transfer to the United States.
- EB-2 Professionals with advanced degrees: foreign nationals of exceptional ability in the sciences, arts or business; foreign nationals that are advanced degree professionals; or qualified alien physicians who will practice medicine in an area of the U.S. which is underserved.
- EB-3 Skilled workers/professionals: foreign national professionals with bachelor's degrees (not qualifying for a higher preference category), foreign national skilled workers (minimum two years training and experience), and foreign national unskilled workers.
- EB-4 Special immigrants: foreign national religious workers, employees and former employees of the U.S. Government abroad.⁸²

The Immigration and Nationality Act of 1990 put a cap on allocated employment-based visas to 140 000 per fiscal year, however, this limit is hardly set in

⁷⁹ Lowell, “Skilled Temporary and Permanent Immigrants in the United States,” 41-42.

⁸⁰ Department of Homeland Security, *Yearbook of Immigration Statistics: 2007*, 2008. 18.

⁸¹ Lowell, “Skilled Temporary and Permanent Immigrants in the United States,” 41-42.

⁸² “Immigration through Employment”, *U.S. Citizenship and Immigration Services*, <http://www.uscis.gov/> (14 October 2008).

stone because the annual 140 000 can be topped up with any unused family-sponsored visas in the previous fiscal year.⁸³ The permanent resident card is currently issued with a 10 year validity, the holder's status as a permanent resident does not expire with the 10 year validity only the card expires, but the holder must renew it before it expires. The permanent residency allows the holder to live, work and travel in the US. Permanent resident holders can become US citizens after five years. The permanent resident can also petition for his or her spouse and children to come to the US through 'Immigration through a Family Member'. However, if the applicant already had a spouse and children when becoming a permanent resident the family members may be eligible for permanent residency through the initial holder without filing separate petitions. This is dependent upon how the applicant qualified for permanent residency.⁸⁴

It has become obvious that many of the temporary workers are not so temporary and that temporary admissions are growing in numbers, which in turn contribute to an increase in the permanent admissions. Temporary workers are also seen as playing a positive role in the US economy, these workers expand employment opportunities and help the US stay competitive.

3.2 Highly Skilled Labour to the EU - the EU Blue Card

Despite restrictive national immigration policies throughout the EU a large number of legal and illegal migrants as well as asylum seekers have continued to come to the EU. Moreover, human trafficking and smuggling networks have also increased across Europe. This has resulted in dedicating significant resources to fight illegal migration and

⁸³ Jacob Funk Kirkegaard, *The Accelerating Decline in America's High-Skilled Workforce: Implications for Immigration Policy* (Washington: Peter G. Peterson Institute for International Economics, 2007), 34.

⁸⁴ "Lawful Permanent Residence ("Green Card")", *U.S. Citizenship and Immigration Services*, <http://www.uscis.gov/greencard> (14 October 2008).

especially to target human traffickers and smugglers. EU has also recognized that certain regions and sectors within the Union are in need of migrants in order to deal with economic and demographic needs. All Member States of the EU are affected by the flow of international migration, and have thus realized that a new approach to manage migration is necessary.⁸⁵ This section will therefore give a short background to EU's plan to develop a common migration policy as well as the development of the proposal for an EU Blue Card.

In October 1999 the European Council held a special meeting in Tampere on the creation of an area of freedom, security and justice in the European Union. To make this a reality the European Council agreed on a number of policy orientations and priorities - one being a common EU asylum and migration policy. Thus, during the Council meetings the EU recognized that it needs a comprehensive approach to migration addressing political, human rights and development issues in countries of origin and transit.⁸⁶ In July 2001 the Commission put forward a proposal for a directive on the conditions of admission and stay of third-country workers. However, the negotiations did not lead to an adoption of legislation due to Member States' conflicting ideas on the issue.⁸⁷

Nevertheless, the approach agreed upon in Tampere in 1999 was confirmed in 2004 with the adoption of the Hague Programme, which sets the objectives of strengthening the areas of freedom, security and justice in the EU for the period of

⁸⁵ "Towards a common European Union Immigration Policy", *European Commission*, September 2007 http://ec.europa.eu/justice_home/fsj/immigration/fsj_immigration_intro_en.htm (28 October 2008).

⁸⁶ "Tampere European Council 15 and 16 October 1999 Presidency Conclusions", *European Parliament*, http://www.europarl.europa.eu/summits/tam_en.htm#a (28 October 2008).

⁸⁷ "Towards a common European Union Immigration Policy", *European Commission*, September 2007 http://ec.europa.eu/justice_home/fsj/immigration/fsj_immigration_intro_en.htm (28 October 2008).

2005-2010. In 2005 the European Commission launched a five-year Action Plan for Freedom, Justice and Security, with detailed proposals for EU action on terrorism, migration management, visa policies, asylum, privacy and security, the fight against organised crime and criminal justice. This is a major policy initiative and a cornerstone of the Commission's Strategic Objectives for 2010, which is built around prosperity, solidarity and security. The Action Plan takes the priorities of Freedom, Justice and Security set out in the Hague Programme, which was endorsed by the European Council in November 2004, and turns them into concrete actions, including a timetable for their adoption and implementation. The Action Plan identifies ten key areas for priority action, and one of those areas is migration management.⁸⁸ The Commission believes that there needs to be more transparent and harmonised rules and criteria at the EU level for admitting legal migrants. However, such decisions to admit third-country nationals in one Member State would impact other Member States. The need for a European strategic initiative is buttressed by the fact that without it, migration flows are more likely to be able to circumvent national rules and legislation. As the result of lack of common criteria for the admission of legal migrants, the number of TCNs crossing the EU borders illegally or without any guarantee of having a job will increase. The Hague Programme points out that the Union must develop a balanced approach to migration management, which implies the establishment of a common immigration policy. This common immigration policy would cover admission procedures and criteria to legally enter into EU territory. It would also ensure a secure legal status and a better-defined set of specific rights to TCNs that are temporarily working or staying legally in the EU for other

⁸⁸ "The Hague Programme – Ten Priorities for the next five years", *European Commission*, http://ec.europa.eu/justice_home/news/information_dossiers/the_hague_priorities/index_en.htm (28 October 2008).

reasons. Parallel to this policy, a policy against illegal migration would also have to be carried out.⁸⁹

The process of developing a balanced approach on migration management also sparked an in-depth public discussion on the most appropriate form of Community rules for admitting economic migrants and on the added value of adopting such a common framework.⁹⁰ This resulted in the Commission's *Green Paper on an EU approach to Managing Economic Migration*, which was presented in 2005. It aims "to launch a process of in-depth discussion, involving the EU institutions, Member States and civil society, on the most appropriate form of Community rules for admitting economic migrants and on the added value of adopting such a common framework."⁹¹ While acknowledging that decisions on admission of economic migrants are the onus of the Member State governments, the Commission encourages more "transparent and more harmonised common rules and criteria at EU level for admitting economic migrants."⁹²

Thus, the Commission felt that it was high time to review immigration policies for the longer terms, in particular an economic migration strategy. This discussion led to the adoption of a *Policy Plan on Legal Migration* for the period of 2007-2009. It lists the actions and legislations that the Commission intends to take in order to pursue a consistent development of the EU legal migration policy.⁹³ The Policy Plan envisages the adoption of five legislative proposals: a general Framework Directive and four specific

⁸⁹ Belgium, European Commission, *The Hague Programme and its Priorities – Migration Management*, 10 May 2005.

⁹⁰ European Commission, *The Hague Programme and its Priorities – Migration Management*, 10 May 2005.

⁹¹ Belgium, European Commission, *Green Paper on an EU Approach to Managing Economic Migration*, 11 January 2005, 3.

⁹² European Commission, *Green Paper on an EU Approach to Managing Economic Migration*, 11 January 2005, 4.

⁹³ "Towards a common European Union Immigration Policy", *European Commission*, September 2007 http://ec.europa.eu/justice_home/fsj/immigration/fsj_immigration_intro_en.htm

directives on labour immigration. The attempt with this package of legislative measures is to lay down simplified admission procedures and conditions for specific categories of migrants (highly skilled workers, seasonal workers, remunerated trainees and intra-corporate transferees) and to secure the legal status of third-country workers already residing in Member States.⁹⁴ The Policy Plan is an important document because it “defines a road-map for the remaining period of the Hague Programme (2006-2009) and lists the actions and legislative initiatives that the Commission intends to take, so as to pursue the coherent development of EU legal migration policy.”⁹⁵ Hence, the proposal for a Council directive on the conditions of entry and residence of third-country nationals for the purpose of highly qualified employment (EU Blue Card), which the EC published in October of 2007, is part of the Policy Plan’s actions and legislative initiatives. It was amended by the European Parliament in early November 2008 and on November 20th the Parliament voted on the proposal and it was backed despite divisions between the different political groups.⁹⁶

The central principle of this proposal is the enhanced freedom to access labour markets that comes with Blue Card status for TCNs. The proposal is presented together with the proposal for a ‘Framework Directive’, which is in accordance with the December 2005 *Policy Plan on Legal Migration*. The proposal aims to improve the EU’s ability to attract and where necessary retain third-country highly skilled workers. The increase of legal labour migrants will enhance the competitiveness of the EU economy

⁹⁴ European Commission, *Memo on Attractive Conditions for the Admission and Residence of Highly Qualified Immigrants*, 23 October 2007, 2.

⁹⁵ European Commission, *Policy Plan on Legal Migration*, 21 December 2005, 3.

⁹⁶ “An EU ‘Blue Card’ for High-Skilled Immigrants?”, Euractiv.com, 21 October 2008, <http://www.euractiv.com/en/social/europe/eu-blue-card-high-skilled-immigrants/article-170986> (2 November 2008).

and complement the set of measures that the EU is putting in place to achieve the goals of the Lisbon Strategy. By facilitating and harmonising the admission of highly skilled migrants at EU level, the Commission believes that the proposal will respond effectively to the fluctuating demands for highly skilled immigrant labour and that it will be more successful in counterbalancing present and future skill shortages.⁹⁷

Furthermore, the Blue Card proposal aims to create a common fast track and flexible admission procedure as well as favourable residence conditions for third-country nationals. Parallel to the Blue Card proposal the Commission also presents a directive on a single application procedure for a single permit for TCNs to reside and work within the EU. The EU as a whole is not considered attractive by highly skilled workers in comparison to countries such as the US, much due to the fact that at present highly qualified migrants have to face 27 different admission systems and do not have the possibility of easily moving between Member States. Also, lengthy and cumbersome procedures make these migrants opt for non-EU countries. Currently, only ten Member States have specific schemes for admitting highly qualified workers and all these schemes differ. Nevertheless, where specific schemes do exist, they are exclusively national and do not allow any facilitation for a highly qualified worker wanting or needing to move to another Member State for employment. This segments the EU labour market and does not

⁹⁷ Belgium, European Commission, *Proposal for a Council Directive on the Conditions of Entry and Residence of Third-Country Nationals for the Purposes of Highly Qualified Employment*, 23 October 2007, 2.

allow for efficient (re-) allocation of the necessary workforce.⁹⁸ Moreover, the application procedure for the EU Blue Card is expected to take less than three months.⁹⁹

The Commission also aims to fulfil the objectives of the proposal so that it does not undermine the ability of developing countries to deliver basic social services, hence the proposals' measures to promote circular migration. In short, the objectives are to develop a coherent approach and common immigration policy concerning third-country highly skilled workers, to increase the numbers of third-country highly skilled workers immigrating to the EU on a needs-based approach and to promote highly skilled workers social and economic integration by granting them and their family favourable conditions of residence, without prejudice to EU nationals.¹⁰⁰

The TCNs who are issued a Blue Card are allowed to work and live in the EU and it will grant them and their families a number of rights, including favourable conditions for family reunification. In order to be eligible for an EU Blue Card the applicant needs to be a third-country national and possess higher education qualifications. This means that the applicant needs to hold a degree, diploma or other certificate that has taken at least three years and is issued by an educational establishment recognised as a higher education institution by the State in which it is situated, or has at least five years of equivalent professional experience, including at least two years in a senior position.¹⁰¹

⁹⁸ European Commission, *Proposal for a Council Directive on the Conditions of Entry and Residence of Third-Country Nationals for the Purposes of Highly Qualified Employment*, 23 October 2007, 2-4.

⁹⁹ Lucie Cerna, "Towards an EU Blue Card? The Proposed Delegation of National High-Skilled Immigration Policies to the EU-level" (paper presented at the ISA Annual Conference, San Francisco, USA, March 26-29, 2008) 2.

¹⁰⁰ Apap, *An Analysis of the Proposal for an EU Blue Card for Highly Skilled Migrants*, 6-9.

¹⁰¹ European Commission, *Proposal for a Council Directive on the Conditions of Entry and Residence of Third-Country Nationals for the Purposes of Highly Qualified Employment*, 23 October 2007, 18-21.

The holder also needs to:

- Present a valid work contract or a binding job offer of at least one year in the Member State concerned.
- The gross monthly wage specified in the work contract or binding job offer cannot be inferior to the set national level and shall be at least 1.7 times of the gross monthly or annual average wages in the Member State concerned;
- Present a valid travel document;
- Present valid sickness insurance for both the applicant and his/her family members for the period of the work contract.¹⁰²

A person fulfilling the requirements and having been issued an EU Blue Card is entitled to stay in the Member State for an initial period of three years, but the permit can be renewed for a further two years. However, if the work contract covers a period of less than three years, the EU Blue Card will be issued for the duration of the work contract with an additional six months. During the work period the Blue Card holder is entitled to enter, re-enter and stay in the territory of the Member State issuing the permit. The cardholder is also allowed to move freely within the EU.¹⁰³ Moreover, to better utilize the highly qualified resources from third-countries it is important to foster the mobility of workers between occupations (job mobility) and across borders (geographical mobility). Thus, the worker is allowed to switch employers within the Member State, because

¹⁰² European Commission, *Proposal for a Council Directive on the Conditions of Entry and Residence of Third-Country Nationals for the Purposes of Highly Qualified Employment*, 23 October 2007, 21.

¹⁰³ European Commission, *Proposal for a Council Directive on the Conditions of Entry and Residence of Third-Country Nationals for the Purposes of Highly Qualified Employment*, 23 October 2007, 22-23.

according to the Commission this type of mobility is a primary mechanism for improving labour market efficiency, preventing skill shortages and offsetting regional imbalances.¹⁰⁴

If the cardholder becomes unemployed it does not mean that the EU Blue Card gets revoked unless the period of unemployment exceeds six consecutive months. During the temporary unemployment the cardholder is allowed to seek and take up employment under the conditions that are set up by the Member State of residence. The cardholder will also be able to enjoy equal treatment with nationals when it comes to matters such as working conditions, educational training, certain types of social security, and social assistance as defined by national law, and payment of acquired pension when moving to a third country.¹⁰⁵

Furthermore, the cardholder is allowed to bring his or her family members immediately, and the duration of the validity of their residence permits is the same as the residence permit issued to the Blue Card holder. After two years of legal residence in the first Member State the cardholder and his/her family are allowed to move to another Member State for the purpose of highly qualified employment. The cardholder also has the possibility of gaining long-term resident status after five years of legal and continuous residence within the EU as a Blue Card holder. Since the Blue Card proposal aims to encourage the geographic mobility of highly skilled workers the proposal derogates from the Council directive 2003/109/EC on long-term residency by not “penalizing mobile workers and allowing them to cumulate periods of residence in two or at maximum three Member States in order to fulfil the main condition for obtaining the EC long-term

¹⁰⁴ European Commission, *Proposal for a Council Directive on the Conditions of Entry and Residence of Third-Country Nationals for the Purposes of Highly Qualified Employment*, 23 October 2007, 2.

¹⁰⁵ European Commission, *Proposal for a Council Directive on the Conditions of Entry and Residence of Third-Country Nationals for the Purposes of Highly Qualified Employment*, 23 October 2007, 26.

residence status.”¹⁰⁶ The Council directive on long-term resident status otherwise states that in order to fulfil the conditions for long-term resident status the TCN have to have resided in the Member State where the application is filed for five years.¹⁰⁷ Member States are relatively free to decide on the conditions governing status changes for their migrants from third countries, however, the area of permanent residence is perhaps one of the few areas where an EU-level rule governs over the national. Then again, Member States still set their own naturalisation rules.¹⁰⁸

The first draft of the Blue Card proposal did not cover TCNs already staying in the EU on a temporary basis, however, the amendments made in November last year changed that. Now the directive shall also apply to TCNs already legally resident under other schemes and who wish to apply for an EU Blue Card. The justification for the amendment is to promote, for example, students having completed their higher education within the EU and who may want to stay for the purpose of highly qualified employment.¹⁰⁹

The Tampere Council called for the development of a common EU migration policy, and it also suggested that the legal status of TCNs who are already long-term residents in the EU should be granted mobility rights akin to those of EU nationals. This resulted in the directive 2003/109/EC mentioned in the previous section. However, this directive will not come into full effect until 2014. The reason for this is that no

¹⁰⁶ European Commission, *Proposal for a Council Directive on the Conditions of Entry and Residence of Third-Country Nationals for the Purposes of Highly Qualified Employment*, 23 October 2007, 6,11.

¹⁰⁷ “Council Directive 2003/109/EC of November 2003 concerning the Status of Third-Country Nationals who are Long-Term Residents”, *EUR-Lex* <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:32003L0109:en:NOT> (13 November 2008).

¹⁰⁸ Jakob von Weizsäcker, “Divisions of labour: rethinking Europe’s migration policy,” *Bruegel Blueprint Series* 6 (2008): 21.

¹⁰⁹ Belgium, European Commission, *Legislative Resolution on the Proposal for a Council Directive on the Conditions of Entry and Residence of Third-Country Nationals for the Purposes of Highly Qualified Employment*, 20 November 2008.

third-country worker should be given greater rights of mobility than an EU citizen and currently the worker mobility of the citizens from new member states is restricted until 2014. Thus, third-country nationals with long-term resident status will not be able to enjoy transferability of their status when they move from one EU state until 2014. Furthermore, even after 2014 TCNs with long-term resident status may experience restrictions on their mobility from Member States on the grounds of labour market imbalances. According to Jakob von Weizsäcker it is likely that there will be a number of open questions in this area that will have to be resolved in the courts over the next decade or so.¹¹⁰

When the European Parliament voted on the Commission's proposal for a European Blue Card system in November last year, it was backed by a majority of 388 to 56 despite the division between political groups. This was much due to a pact between the Parliament's 'big two' - the Socialist Group (PES) and the centre-right European People's Party (EPP). However, there were also a large number of abstentions (124) led by the European Liberals and Greens, which highlights that considerable divisions persist. Some Members of the European Parliament (MEP) argue that the divisions on this topic exist partly because the Parliament's amendments transformed the Commission's original proposal in a number of ways. The Dutch Liberal MEP Jeanine Hennis Plasschaert from the Alliance of Liberals and Democrats for Europe (ALDE) argues that the Commission's proposal is already very modest and that it is further watered down by the EPP-PES pact, which she claims is overly influenced by the "very

¹¹⁰ Weizsäcker, "Divisions of labour: rethinking Europe's migration policy," 22-23.

muddled and emotional immigration debate going on in Europe today.”¹¹¹ Although the Parliament’s vote was only consultative it is still a major step towards the creation of a European Blue Card system. Immigration is a tremendously sensitive issue in Europe and as the flow of migrants to many EU Member States continues to increase, some Member States still remain openly hostile towards giving up part of their national sovereignty to a common European system.¹¹²

¹¹¹ “Divided Parliament approves EU Blue Card System”, Euractiv.com, 21 November 2008, <http://www.euractiv.com/en/social/europe/divided-parliament-approves-eu-blue-card-system/article-177380> (15 January 2009).

¹¹² “Divided Parliament approves EU Blue Card System”, Euractiv.com, 21 November 2008, <http://www.euractiv.com/en/social/europe/divided-parliament-approves-eu-blue-card-system/article-177380> (15 January 2009).

Chapter 4 – The ‘Global Talent War’: Letting Some of Them In

In the quest for talent, high-income countries recognize that they need to grant skilled migrants substantial rights in order to attract significant numbers. The Blue Card is the EU’s attempt to enter this ‘talent war’ and compete for migrants with traditional countries of immigration such as the US. As previously stated, both the EU and the US have similar motivational factors, for example, they offer comparable employment and career advancement opportunities as well as standard of living, but the openness of their schemes differ slightly. According to the rational choice method, highly skilled workers are going to select their destination based on who they believe can fulfil their expectations the most while imposing the least restrictions¹¹³ Therefore, the next section will give a detailed comparison of the Blue Card and the US H1B and Green Card’s admission mechanisms (numerical caps, labour market access, education/professional experience criteria) and work rights (employer portability, spouse’s work rights, validity period, permanency rights).

A highly skilled worker is usually described as having a university degree or extensive/equivalent experience in a given field. Thus, in order to be issued either a Blue Card, H1B or Green Card (EB) the applicant needs to hold at least a Bachelor’s degree or foreign equivalent and/or professional experience in the given field. However, the US arrangements require the applicant to have longer professional work experience in the speciality field if s/he does not have a university degree. The professional work experience requirement for the H1B is 12 years as oppose to the Blue Card, which only requires the applicant to have 5 years of professional work experience in the speciality

¹¹³ Haug, “Migration Networks and Migration Decision-Making,” 586.

field. However, two of the five years need to have been in a senior position. The EU Blue Card also requires the applicant to present a valid work contract or a binding job offer of at least one year within the Member State concerned. The gross monthly wage specified in the work contract or binding job offer shall be at least 1.7 times of the gross monthly or annual average wages in the Member State concerned, which can be quite difficult to obtain.

Weizsäcker argues “the larger the labour market to which an immigration permit offers access, and the more permanent this access is, the more attractive the destination is for high-skill migrants.”¹¹⁴ The ability to access the entire EU labour market and the ability for the foreign worker to adjust his or her status is, as a Blue Card holder, weak in comparison to the US. The US arrangements grant access to the entire US labour market as opposed to the Blue Card, which is not able to offer immediate access to the EU labour market as a whole. Instead the worker needs to stay in the Member States where s/he initially obtains a job for two years before s/he can move to another. If the worker wants to transfer to another Member State before the initial period is over, it appears to be a cumbersome process. The Blue Card’s lack of effective portability risks undermining the objective of this proposal as portability could offer significant added value to the EU scheme in comparison to any national scheme.¹¹⁵

Regardless of what the initial intended time period is in the new country, a highly skilled migrant would arguably still like the option of being able to stay in the new country on a more permanent basis. For this reason it is important to look at what permanency rights the different schemes have to offer. The Blue Card does not encourage

¹¹⁴ Jakob von Weizsäcker, “Strait is the Gate – Europe’s Immigration Priorities,” *Bruegel Policy Brief* 5 (July 2008): 3.

¹¹⁵ Weizsäcker, “Strait is the Gate – Europe’s Immigration Priorities,” 3-4.

a transition to permanent residency and the holder cannot apply for permanent residency until after five years spent in the EU. The H1B visa does not give you permanent residency, but it does encourage transition to permanent residency, which the holder is eligible to apply for after five years. The Green Card gives the holder permanent residency and after five years s/he can apply for citizenship. Although integration of prospected highly skilled migrants is emphasized in the Blue Card scheme, the directive does not encourage these highly skilled workers to make the transition to permanent residency.¹¹⁶

Another motivational factor for highly skilled workers is whether or not they are allowed to bring their family to the host country. The H1B visa, the Green Card and the Blue Card all allow the holder to bring their immediate family with them, but the Blue Card is the only permit that allows family members to work. For the Green Card, the holder's family members may also be eligible for permanent residency, depending on how the applicant qualified for their Green Card. For the H1B the holder's family members need to apply for their own work permits.¹¹⁷

The actual application process can be either a deterrent or an incentive for a highly skilled worker. The Commission's visions are that the Blue Card application process should be expected to take less than three months, which could affect the highly skilled worker's migration decision significantly. The H1B and the Green Card application processes on the other hand have been plagued with backlogs, cumbersome

¹¹⁶ "An EU 'Blue Card' for High-Skilled Immigrants?", Euractiv.com, 21 October 2008, <http://www.euractiv.com/en/social/europe/eu-blue-card-high-skilled-immigrants/article-170986> (15 January 2009).

¹¹⁷ "An EU 'Blue Card' for High-Skilled Immigrants?", Euractiv.com, 21 October 2008, <http://www.euractiv.com/en/social/europe/eu-blue-card-high-skilled-immigrants/article-170986> (15 January 2009).

processes and insufficient quotas. However, in 2008 US immigration authorities tried to find ways to reduce the huge backlog of visa applications. They have therefore eased requirements for background checks by the Federal Bureau of Investigation (F.B.I.) of immigrants seeking to become permanent US residents. If an immigrant's application for a residence visa has been in the system for more than six months and the only missing piece is a name check by the F.B.I., immigration officers will now be allowed to approve the application. This policy is supposed to speed up the processing for tens of thousands of immigrants that have been waiting for years for their Green Card because their names have a match in the F.B.I records, although they do not have a criminal record. The F.B.I. files include a huge range of names, including those people mentioned in criminal investigations even if they had no role in the actual crime. The previous policy was stalling the adjustment of status for hundreds of thousands of people who pose no security threat to the country.¹¹⁸

In the immediate comparison between the Blue Card and the US arrangements it appears as if the Blue Card presents the prospective highly skilled migrant at best a mixed bag, because the conditions offered are not going to drastically alter the EU's competitive disadvantage. The matrix below gives a clear outline of the US and EU's visa regimes, and also allows for scoring each regime based upon their openness and restrictiveness. It is an effective tool to compare each visa regime and to show what they have to offer. Scores from 1 to 3 are assigned to each of the categories. 3 points equal highly open, 2 points equal moderately restrictive, and 1 point equals highly restrictive. In the end the individual points for each category are summed and presented as a percentage of the highest possible score (21 points), with 100 percent representing a

¹¹⁸ Julia Preston, "Rules Eased to Expedite Green Card Applications" *New York Times*, 12 February 2008.

highly open visa regime. The percentage reveals that the difference in openness is reasonably nominal. However, the present design of the Blue Card still needs to offer better benefits than, for example, the US, for prospective migrants to feel that a decision to migrate to the EU will be the more beneficial decision.

Table 4.1 Admission Mechanisms and Work Rights EU vs. US

Work Rights	EU Blue Card	H1B	Green Card
Permanency Rights	Doesn't grant PR, but holder can apply after 5 years	Doesn't grant PR, but has 'dual intent'. Encourages transition to PR	Grants holder PR. Holder can become citizen after 5 years
	2	2	3
Validity	Initial period 3 years – holder able to renew it for at another 2 years	Initial period 3 years – holder able to renew it for another 3 years	Valid for 10 years – renewable
	1	2	3
Spouse's Rights	Allows holder's family to work, live and travel in the EU	Holder's family allowed to come, but cannot work unless they obtain their own H1B	Holder's family may be eligible for PR as well depending on how the applicant qualified for their PR.
	3	2	2
Employer Portability	Only within the first MS the first 2 years	Fully portable	Fully portable
	2	3	3
Admission Mechanisms	EU Blue Card	H1B	Green Card
Numerical Caps	No cap, but MS are allowed to set quotas	65 000/ year excl. employees of college/university, non-profit or government research organisations	140 000/ year
	2	2	2
Labour Market Access	- After 2 years of legal residence in the first MS the holder is allowed to move to another MS for the purpose of HSE. - Need to present a one-year EU job contract with at least 1.7 times the average gross annual salary of employees in the EU	Complete access to US labour market	Complete access to US labour market
	2	3	3
Education/Professional Experience Criteria	Bachelor's degree or foreign equivalent and/or 5 years of professional experience in the speciality field	Bachelor's degree or foreign equivalent and/or 12 years of professional experience in the speciality field.	Bachelor's degree or foreign equivalent and/or 12 years of professional experience in the speciality field
	3	2	2
Scores	15/21	16/21	18/21
Level of openness	71%	76%	86%

Table compiled by author

Chapter 5 – The Added Value of the Blue Card (?)

5.1 EU Blue Card: Inherently Flawed?

The immediate comparison between the Blue Card and the US arrangements and the matrix show that the conditions offered are not going to drastically alter the EU's competitive disadvantage. However, there are other inherent problems to the design of the Blue Card that further weakens it. This next section will discuss these inherent problems, which include the policy of circular migration, the Member States' right to set quotas and the ability of Member States to run their national schemes for highly skilled migrants parallel to the Blue Card scheme. In addition, when determining why these particular aspects could discourage a prospective highly skilled worker to come to Europe it is helpful to use both the rational choice theory as well as the migration systems approach.

Insufficient quotas have plagued the US arrangement, hindering thousands of highly skilled migrants who wish to come to the US for work. However, although the Blue Card has no set numerical cap it does allow the Member States to set their own quotas. Choosing a directive as the instrument of implementation gives the Member States a high degree of flexibility. Thus, the proposal will leave enough room for the Member States to adapt the Blue Card scheme to their national labour market needs and it will not impinge on Member States' responsibility to determine the numbers of economic immigrants coming to the EU in search for a job.¹¹⁹ Before making a decision on an application, the Member States are able to examine their labour market situation and apply their own national as well as Community procedures regarding the requirements for

¹¹⁹ European Commission, *Proposal for a Council Directive on the Conditions of Entry and Residence of Third-Country Nationals for the Purposes of Highly Qualified Employment*, 23 October 2007, 7-8.

filling a vacancy.¹²⁰ Under the Blue Card proposal the Member States are left to determine the scale on which TCNs are admitted, and are able to set quotas for the amount of highly skilled workers they allow onto their territory. This means that if a Member State decides that their market does not need any third-country highly skilled workers they can set their quota to zero, which basically makes the quota option an alternative to the opt-out.¹²¹ In light of this, the Blue Card does not intend to replace the 27 immigration systems of Member States; instead the scheme offers an additional channel of entry through a new common process while allowing for different national systems to co-exist. Besides the national quotas, the proposal contains a number of other safeguards, for example, the Blue Card applicant needs to secure at least a one-year work contract before even reaching the fast-track process. Thus, this calls the scheme's added value into question. Allowing the Member States to set quotas just adds another layer of protectionism to the EU labour market, and does not make the Blue Card more attractive to highly skilled workers.¹²²

Not all Member States share the same enthusiasm that the Commission has for the Blue Card proposal, which will make it difficult to even get the proposal passed in the Council. Countries who are not so enthusiastic include Germany, Austria, the Netherlands and the UK. Opposition towards the Blue Card scheme is in part due to fears of losing sovereignty on immigration matters. Member States, such as the Netherlands, do not want the EU to decide whom they should and should not let in. The Austrian

¹²⁰ European Commission, *Proposal for a Council Directive on the Conditions of Entry and Residence of Third-Country Nationals for the Purposes of Highly Qualified Employment*, 23 October 2007, 23.

¹²¹ European Commission, *Proposal for a Council Directive on the Conditions of Entry and Residence of Third-Country Nationals for the Purposes of Highly Qualified Employment*, 23 October 2007, 10.

¹²² Apap, *An Analysis of the Proposal for an EU Blue Card for Highly Skilled Migrants*, 11.

government has even condemned the scheme as a “centralisation too far.”¹²³ The former German employment minister Franz Müntefering has attacked the Blue Card proposal in earnest by saying that employment ministers must be involved. He argued, “this is no matter to be casually decided by home affairs ministers - and also not by the commissioner in charge of home affairs. This is not a matter for the Commission at all. It must be the responsibility of national parliaments and governments.”¹²⁴ Germany first and foremost wants to protect their national high skilled workers, but they are also pointing to high unemployment rates. The UK and the Netherlands believe that they already have in place a successful policy for dealing with highly skilled workers.¹²⁵ The UK, Ireland and Denmark are all of the sentiment that they want their immigration policies left to their own jurisdiction and they already have the option of opting out, which they are expected to do.¹²⁶ The strong sentiments among the Member States against the Blue Card do not bode well for the Commission’s future plans of working towards a common immigration policy. More importantly, letting the Member States run their own, more restrictive, national schemes parallel to the Blue Card scheme is not going to make it easier to attract highly skilled labour to Europe. Hence running the risk of not reaching the objectives of the Lisbon Strategy.

Germany and the Netherlands are two Member States that have in the past year started liberalising their immigration policies for highly skilled migrants. This past

¹²³ Cerna, “Towards an EU Blue Card? The Proposed Delegation of National High-Skilled Immigration Policies to the EU-Level,” 14-15.

¹²⁴ “An EU ‘Blue Card’ for High-Skilled Immigrants?”, Euractiv.com, 21 October 2008, <http://www.euractiv.com/en/social/europe/eu-blue-card-high-skilled-immigrants/article-170986> (15 January 2009).

¹²⁵ Cerna, “Towards an EU Blue Card? The Proposed Delegation of National High-Skilled Immigration Policies to the EU-Level,” 14.

¹²⁶ Kelly McCabe, “What Effect will the Proposed EU Blue Card have?” *Manufacturing.Net*, 16 November 2007 <http://www.manufacturing.net> (22 October 2008).

summer the German government announced that they plan to ease immigration restrictions for educated foreigners hoping to attract more foreign skilled labour. Germany's Immigration Act establishes the principle that the employment and self-employment of foreigners are to be oriented on Germany's economic needs, taking into account the labour market situation and the need to reduce unemployment. However, currently there is a ban on recruiting foreign labour, which is in effect for unskilled and less-skilled workers. Skilled workers will be granted work permits only in exceptional cases.¹²⁷ Germany is one of the world's largest exporters of goods, in particular complex machinery and equipment, thus they are especially in need of engineers and other skilled workers. Although easing immigration restrictions they are still not planning to open up their borders completely. Despite Germany's need for highly skilled labour, in particular engineers, they, along with Austria, are expected to apply restrictive quotas. In addition, Germany does still not allow in labour migrants from the new EU states in Eastern Europe. Instead, the government wants to extend its ban on these foreign workers by two years to 2011.¹²⁸

The Dutch are of the opinion that they already have a moderately open policy towards highly skilled immigrants and do not want to let the EU become too involved in their immigration matters.¹²⁹ This past summer the Dutch government agreed to a legislative proposal on a modernisation of their standard admission policy, which is designed to make the Netherlands more attractive to international business as well as to

¹²⁷ "Labour Migration", *Federal Ministry of the Interior*, February 2008, http://www.zuwanderung.de/cln_115/nn_1070222/EN/Home/Functions/Subtopic/Arbeitsmigration.html (9 February 2009).

¹²⁸ "Germany hopes to Attract More Skilled Workers", *Spiegel Online*, 7 August 2008, <http://www.spiegel.de/international/germany/0,1518,564560,00.html> (9 February 2009).

¹²⁹ Cerna, "Towards an EU Blue Card? The Proposed Delegation of National High-Skilled Immigration Policies to the EU-Level," 12,14.

highly skilled migrants. It is in principle a selective policy, which means that it will welcome immigrants needed to strengthen the Dutch economy, culture and science but is restrictive to other types of migrants. In light of this, it will not become any easier to migrate to the Netherlands, except for the types of immigrants that the Dutch Cabinet find desirable. The policy will be either generous or restrictive depending on the society's needs.¹³⁰

Although the new migration policy states that it will make it easier for highly skilled migrants to come to the Netherlands, it does not mean that the Dutch government will actually let that many in. In recent years the Netherlands has become more and more hostile towards immigrants. According to polls, the Dutch public opinion has changed from being supportive of multiculturalism to now being in favour of more assimilation and integration of immigrants. It has been argued that the murder of the Dutch filmmaker Theo van Gogh by a Dutch-Moroccan Islamic extremist triggered many politicians and commentators to warn that Dutch values are under threat. In light of this, one would expect that the Dutch population would not be overly accepting of too many migrants of any type entering the country. All in all, it appears as if both Germany and the Netherlands' talk of liberalisation may just be empty promises.¹³¹

It is quite clear that letting the Member States run more restrictive schemes parallel to the Blue Card defeats its purpose, but immigration is one of the most contested issues in Europe, which inevitably makes the Blue Card a contested tool. Hence the reason why a directive has been chosen as the appropriate instrument for implementing

¹³⁰ "Dutch Cabinet endorses new Admission Policy", *Ministry of Justice*, 27 June 2008, <http://english.justitie.nl/currenttopics/pressreleases/archives-2008/dutch-cabinet-endorses-new-admission-policy.aspx?cp=35&cs=1578> (9 February 2009).

¹³¹ Jeremy Bransten, "EU: Netherlands leading Trend to more Stringent Immigration Rules", *Radio Free Europe*, 5 April 2006, <http://www.rferl.org/content/article/1067418.html> (9 February 2009).

the Blue Card scheme; it sets binding minimum standards, but gives Member States flexibility in respect to labour market needs and legal framework.¹³² However, EU governance in migration matters has been strengthened greatly in recent years. The Amsterdam Treaty moved several key Justice and Home Affairs (JHA) policy areas, including asylum and immigration policy and judicial cooperation on civil matters, to the First Pillar and are therefore governed by the Community method.¹³³ Most of the matters in the field of JHA are decided by Council unanimity with consultation of the European Parliament. Some matters however (visas issues and judicial cooperation in civil matters) are decided by qualified majority, in consultation or in co-decision with the European Parliament, depending on the matter.¹³⁴ The possibilities offered by the Amsterdam Treaty resulted in the special meeting in Tampere, where the idea for a proposal for a directive on the conditions and stay of third-country workers was first discussed.¹³⁵ Euro-sceptics would argue that the transfer of migration-related areas to the First Pillar represents one step closer to supranational statehood, but important to point out is that the majority of the Member States has endorsed this transfer by ratifying the Amsterdam Treaty. This transfer could mean that the Union would produce more credible and efficient outcomes than it would through intergovernmental co-operation. However, this structural shift still shares many of the intergovernmental features of the old JHA framework, such as opt-out clauses, consultative role of the EP, Council unanimity, and certain matters still do not fall under the exclusive competence of the Community, such

¹³² European Commission, *Proposal for a Council Directive on the Conditions of Entry and Residence of Third-Country Nationals for the Purposes of Highly Qualified Employment*, 23 October 2007, 7-8.

¹³³ “The EU and Fundamental Rights – the Wider Context”, *European Commission*, http://ec.europa.eu/justice_home/unit/charte/en/rights.html (15 January 2009).

¹³⁴ “Justice and Home Affairs Council”, *Council of the European Union*, <http://www.consilium.europa.eu/showPage.aspx?id=249&lang=en> (15 January 2009).

¹³⁵ “The EU and Fundamental Rights – the Wider Context”, *European Commission*, http://ec.europa.eu/justice_home/unit/charte/en/rights.html (15 January 2009).

as the Blue Card (subsidiarity principle). The transfer has also not been accompanied by a change in Member States' normative conception of immigration. The 'other' is still seen as a threat to the nation's security, welfare and culture and Member States still have strong ideas of who is a European and who is not. Unfortunately, this frame of mind continues to shape the content of policy outcomes. Arguably, states losing their autonomous action in immigration matters does not suggest that they become unable to control migration flows. The transfer of migration related areas to the First Pillar could hypothetically mean that states are able to carve out a new role for themselves, which could expand and become more influential than previously.¹³⁶ At the end of the day, "the transfer of immigration and asylum policy to the Community pillar would only be a sign of state decline if it were shown that competence over these areas is in itself a determinant of statehood."¹³⁷

The Blue Card proposal aims to fulfil its objectives in a way that it does not undermine the ability of developing countries to deliver basic social services and to fulfil the Millennium Development Goals. Therefore, the proposal will include measures to promote circular migration.¹³⁸ However, the policy of circular migration within the Blue Card scheme is arguably a smokescreen to hide from EU residents that the labour immigration will more likely be permanent than temporary, and that the brain drain from source countries will be real. As stressed in previous chapters Europe has an aging population and low birth rates, which makes migrants a crucial part of the EU's

¹³⁶ Theodora Kostakopoulou, "The 'Protective Union': Change and Continuity in Migration Law and Policy in Post-Amsterdam Europe," *Journal of Common Market Studies* 38 (September 2000): 498-511.

¹³⁷ Kostakopoulou, "The 'Protective Union': Change and Continuity in Migration Law and Policy in Post-Amsterdam Europe," 511.

¹³⁸ European Commission, *Proposal for a Council Directive on the Conditions of Entry and Residence of Third-Country Nationals for the Purposes of Highly Qualified Employment*, 23 October 2007, 2.

competitiveness strategy. For Europe to become the “most competitive and dynamic knowledge-based economy in the world,”¹³⁹ it is going to need many high skilled workers as well as lower skilled. Although recognizing the demand for labour the Commission’s *Policy Plan on Legal Migration* fails to address the long-term problems of the EU labour markets and the future need of *all* skill levels¹⁴⁰, because “not enough young natives have the right skills or motivation, so the rich must hope that outsiders will keep coming.”¹⁴¹ And luckily they will. There are huge pools of eager workers to jump on the next plane, train, or boat to work abroad. As mentioned, the incentives for a migrant to uproot himself and move to the more developed world are many. Those who move from poor to rich country can expect to see their income triple, and as long as such differentials persist the draw to migrate will continue. Thus, not only is Europe in need of labour across the full skill spectrum, the continent also needs these skills for the long term, which makes one question how circular does the Blue Card really intend its immigration to be?¹⁴²

The bitter truth is that those in demand abroad are the toughest ones to keep at home; it is almost impossible to block the exit for the highly skilled if the temptation is big enough. Countries, such as Jamaica, Trinidad and Senegal, have lost almost three quarters of all of their graduates to the developed world.¹⁴³ Creating financial incentives for migrants to leave at the end of their contract period might be a plausible solution, but then co-operation between the governments of the host and the sending countries must be essential. This would mean that migrants would be policed more tightly with the aid of

¹³⁹ “Lisbon Agenda”, *Euractiv.com*, 21 May 2007, <http://www.euractiv.com/en/future-eu/lisbon-agenda/article-117510> (16 February 2009).

¹⁴⁰ Stephen Castles, “Back to the Future? Can Europe meet its Labour Needs through Temporary Migration?” *International Migration Institute* 1 (2006): 25.

¹⁴¹ “Open Up” *Economist*, 3 January 2008, 4.

¹⁴² “Open Up” *Economist*, 3 January 2008, 3-5.

¹⁴³ “Open Up” *Economist*, 3 January 2008, 3-5.

new technology including ID cards, databases with biometric details, and systems like e-verify (US) that allows employers to check whether workers are authorized to be in the country.¹⁴⁴

The measures proposed in the Blue Card scheme to prevent brain drain are, for example, that Member States should not actively seek to attract highly qualified workers in sectors that are already subject, or expected to be subject, to a shortage of highly qualified workers in the third-country, especially in the health and education sector. Member States are also recommended to establish cooperation agreements with third countries in order to safeguard the Union's need as well as the development of the source countries.¹⁴⁵ However, these provisions do not amount to much. The obvious solution would be a more integrated EU migration policy where the Member States would be more tied to brain drain commitments and where no opt-outs would be available. According to Roderick Parkes at the German Institute for International and Security Affairs there is much room for nuance on this issue. From the point of view of the Interior Ministers that dominate the JHA Council, the brain drain/brain gain agenda primarily exists at a conceptual level instead at a practical one. Officials see few tried and tested tools for realising it, and they have for the most part proved to be highly conservative when it comes to testing new tools. In light of this, it would be too much to expect to see concrete brain drain mechanisms in the Blue Card. As the proposal spells out, the Member States are recommended to establish individual cooperation schemes with third countries, such as the mobility partnerships, that have been established with

¹⁴⁴ "Circulate or Integrate" *Economist*, 3 January 2008, 14.

¹⁴⁵ European Commission, *Legislative Resolution on the Proposal for a Council Directive on the Conditions of Entry and Residence of Third-Country Nationals for the Purposes of Highly Qualified Employment*, 20 November 2008.

Moldova and Senegal. However, the crux is that even some third-countries have failed to make brain drain issues a top priority. Parkes says, instead some countries have preferred to sell increased mobility for their citizens to the EU as a political success and have been receiving more immediate forms of material reward from the Union.¹⁴⁶

As already discussed, it is well known that it is difficult to reach agreements on migration measures at the EU level. The Blue Card has thus been a tool to try to re-launch the EU efforts on legal migration and take advantage of the Member States' common desire for highly qualified labour. According to Parkes, during the passage of the Blue Card many advocates of the brain drain agenda, for example in the Commission, were silenced by their political masters for fear that they would jeopardise its adoption. This sheds some light on the general attitude towards the realisation of a brain drain agenda. It is possible that this will change in the future and a more integrated decision-making process may be able to facilitate that. Qualified majority voting in the Council would theoretically make decisions easier to reach and co-decision for the Parliament would provide greater opposition to the Interior ministers in the JHA Council on the issues of brain drain.¹⁴⁷

The Blue Card scheme aims to realise a vast range of goals and is itself one of many migration policies being developed at the European level. The main goal with the EU migration policy as set out by the Tampere Council is neither to mitigate brain drain nor to act in partnership with third countries. Instead, the goal is to create a comprehensive common migration policy that combines social, economic, security, foreign and development goals. However, these goals are often contradictory as proven

¹⁴⁶ Roderick Parkes, *German Institute for International and Security Affairs*, e-mail message, 16 December 2008.

¹⁴⁷ Parkes, *German Institute for International and Security Affairs*, e-mail message, 16 December 2008.

with the policy of circular migration within the Blue Card scheme. Parkes rightly points out that it is not enough to criticise the lack of brain drain measures without first determining whether or not the brain drain agenda has been compromised in order to achieve a comprehensive policy. On the same note, it is also necessary to first check whether these brain drain priorities are in fact being realised with other tools. Furthermore, there are also conflicting interests within the brain drain/brain gain agenda. Some experts argue that certain categories and volumes of migrants should not be allowed into the EU due to the risk of exacerbating brain drain in particular source countries. Others claim that this kind of prevention of free movement would interfere with the brain gain agenda. States who are expected to set low quotas, such as Germany and Austria, are also likely to say that they will make as little use of the Blue Card scheme as possible and will therefore not need to introduce tough brain drain mechanisms. Both countries have been quick to state that they already have tough control over the flow of immigrants entering their countries, and the numbers of highly skilled workers coming to Germany under such schemes have undeniably been small. A more integrated EU policy where the numbers of highly qualified workers entering EU territory would be decided at EU level would definitely require greater brain drain mechanisms if this led to an increase in immigration. Then again, this set-up would not necessarily be more conducive to mitigating brain drain than the present situation.¹⁴⁸

It is also worth noting that there could be a potential contradiction between the strong emphasis put on both circular migration and the efforts to foster integration of TCNs in the Blue Card proposal. Are people expected to just pack up and leave once their contract is over? This means that these workers will most likely have less incentive

¹⁴⁸ Parkes, *German Institute for International and Security Affairs*, e-mail message, 16 December 2008.

to integrate with their hosts. What is the point to learn the country's language or adopt local habits and values for just a few months or a couple of years? Locals are also likely to see these workers as second-class residents and have the same sort of hostility as is often shown towards longer-term immigrants.¹⁴⁹ The weight put on circular migration within the Blue Card framework runs the risk of deterring those highly skilled migrants who may be looking for a permanent relocation. Rather than going to the EU they may choose to go to the US or elsewhere where conditions of circular migration are not as stringent.

Thus, the crux for policy makers and politicians when it comes to circular migration is the question of how to ensure that circular migration in fact stays circular. Despite its potential of being a 'win-win-win' solution, successful circular migration is hard to achieve on the ground. The result of trying to ensure rotation has often been through enforcing strict measures to prevent the migrants from staying permanently or by providing financial incentives to return.¹⁵⁰ In order for the EU to prove that their policy of circular migration can be a successful solution to their shrinking and aging population, they will have to face the failures of past guest worker programs. Although it is evident that the current approach differs significantly from other past programs, such as the German Gastarbeiter program, one cannot help to question its success rate.

The discussion above shows that institutional restrictions and political scepticism do not only weaken the design of the Blue Card scheme, but these factors can also deter highly skilled workers from considering the EU as a potential destination for employment. Following the rational choice theory, an individual chooses his or her

¹⁴⁹ "Circulate or Integrate?" *Economist*, 3 January 2008, 14.

¹⁵⁰ Agunias and Newland, "Circular Migration and Development: Trends, Policy Routes, and Ways Forward," 1.

destination in terms of what it has to offer. As pointed out in the discussion on circular migration, the stress imposed to ensure that this type of migration stays circular may discourage those highly skilled migrants who are looking for a more permanent settlement. In this sense, the Blue Card fails to meet their set expectations and the migrant may choose to go elsewhere where conditions of circular migration are not as strict. Continuing with the rational choice approach, the presence of a quota option clearly constrains the probability of a highly skilled worker being accepted for a visa, which also could result in the worker choosing a different destination that does not impose quotas. Furthermore, the migration systems approach implies that any migratory movement can be seen as the outcome of the interacting macro- and micro-structures. In this sense, macro-structure, such as institutional restrictions, could also then impede migratory movement from even happening. Thus, the Member States' ability to continue to run their national, more restrictive, immigration schemes parallel to the Blue Card will not make it easier for the highly skilled worker to know what conditions need to be satisfied in order to be admitted to a given Member State, which could inevitably affect the migration decision.

5.2 Language Barriers and Xenophobia

English may be the new lingua franca, but the EU is the host of 27 languages and as a labour migrant you would still need to know the language of the host country. However, if this does not deter a highly skilled worker from coming to the EU, it is possible that the rising scepticism and hostility towards immigrants will. A lack of language skills and racism are non-monetary determinants and although they are not regarded as key factors in a migration decision, they will still influence it as they widen

the migrant's perception of the host country in question. Thus, the presence of multiple languages and hostility towards immigrants in the EU can only work to its disadvantage. This will become clearer in the next sections, which explore the language barrier and the growing problem of xenophobia in European society that potential Blue Card holders might face.

For many potential Blue Card holders the language barrier is an area of concern. English is the new lingua franca, and most EU Member States are disadvantaged by language. Although English is lately becoming viewed as the preferred second language across the EU, as a worker you would still need to know the language of the host country.¹⁵¹ Masayo, a Japanese postgraduate student in Italy who speaks English says, "Europe's many languages can act as a barrier for the highly skilled, therefore she would 'not enthusiastically' consider the Blue Card but she wouldn't rule it out."¹⁵² There is little doubt that the world's English-speaking countries have a considerable advantage when it comes to drawing high-skilled workers. Thus, more pressure is put on the non-English-speaking countries to offer these immigrants at least as attractive, or better, conditions as the English-speaking countries in order to compensate for the language disadvantage.¹⁵³

However, increasing the foreign student population could possibly offset this language disadvantage. It has already been established that the US is considered a magnet for foreign talent and according to a report by the Institute of International Education (IIE), more than one-third of Nobel laureates from the United States are immigrants, and

¹⁵¹ Weizsäcker, "Divisions of Labour: Rethinking Europe's Migration Policy," 46.

¹⁵² "Possible Blue Card Migrants have their say", *European Parliament*, 14 November 2008, <http://www.europarl.europa.eu/sides/> (22 November 2008).

¹⁵³ Weizsäcker, "Strait is the Gate: Europe's Immigration Priorities," 2-3.

there are 62 patent applications for every 100 foreign PhD graduates in science and engineering programs. Furthermore, foreign students and their dependents contributed more than 13 billion dollars to the US economy in 2004-2005. Foreign students also enhance the cultural diversity and educational experience for US-born students and boost the reputation of US universities as world-class institutions for learning and research. In addition, even if the 2001 terrorist attacks made the enrolment numbers of foreign undergraduate students drop slightly for a couple of years, the decline slowed down by 2005-2006 and the numbers have ever since only increased. Nonetheless, the point is that many these highly educated foreign students stay on and seek employment in the US, thus if EU is able to attract more foreign students it too would be able to increase its competitive advantage. In the last few years the EU has made efforts to become more attractive to foreign students, for example, the UK and France use a combination of American-style programs taught in English and offer free or subsidized tuitions to attract foreign students. Also important, prior to the Blue Card proposal, the EU has tried to ease routes for permanent immigration after graduation in efforts to attract foreign students.¹⁵⁴ For example, the Council directive 2005/71/EC has brought a number of liberalisations for researchers and students. These liberalisations range from regulations promoting mobility to the introduction of special grounds on which a residence permit may be granted to researchers.¹⁵⁵ In this light, the EU has acknowledged the importance of non-EU foreign students and hopefully its Member States will continue to

¹⁵⁴ Jeanne Batalova, "The 'Brain Gain' Race begins with Foreign Students," *Migration Information Source*, January 2007, <http://www.migrationinformation.org/Feature/display.cfm?id=571> (30 March 2009).

¹⁵⁵ "The Immigration Act", *Federal Ministry of the Interior*, http://www.zuwanderung.de/cln_115/nn_1120026/EN/ImmigrationToday/TheImmigrationAct/theImmigrationAct_node.html?_nnn=true (14 January 2009).

internationalize their higher education in order to have similar success in this field as that of the US.

Racism and xenophobia is a serious problem in our society. In recent years Europeans have been “fretting about immigration” and this can be reflected in, for example, the rise of support for far-right parties around Europe. In Denmark voters have given the Danish People’s Party its fourth consecutive rise in voting share. In Switzerland, 29% of the votes were cast on the xenophobic Swiss People’s Party. In Norway one of the biggest parties is an anti-foreigner party, and in Belgium a fifth of the Flemish voters back the far-right Vlaams Belang.¹⁵⁶ Many Western Europeans have long since been turning their nationalism inwards against those who represent the outer world; to them the ‘other’ has become the non-nationals (immigrants) living in their own state, and in particular those of non-Western origin. Thus, the boundary between ‘us’ and ‘them’ no longer only runs between European member states. Instead a new boundary has been constructed against the foreign ethnic immigrant communities within Western Europe.¹⁵⁷

According to ALDE’s MEP Mrs Hennis-Plasschaert the current text is “simply off-putting to most highly-qualified workers considering legal immigration to the EU.”¹⁵⁸ Migration is indeed one of the most complex and sensitive issues for policy makers, and immigration has Europe in a pickle. When migrants have their say on immigration and the Blue Card scheme there are conflicting ideas. Todd Chakara from Zimbabwe has a PhD from Europe, but found South Africa to be more welcoming of his skills although he

¹⁵⁶ “The Trouble with Migrants: Europe is Fretting about too much Immigration when it needs even more,” *Economist*, 22 November 2007, 56-57.

¹⁵⁷ Martin Kohli, “The Battlegrounds of European Identity,” *European Societies* 2 (2000): 128.

¹⁵⁸ Jeanine Hennis-Plasschaert, *Member of the European Parliament*, e-mail message, 30 December 2008.

fits the Blue Card profile. He views the US Green Card and the Blue Card as bureaucratic hurdles rather than aid. He believes better publicized immigration regulations would be in order. If the Blue Card is introduced and for it to be successful, Chakara also believes it must be accompanied by a change in mentality in Europe. He says, “facing scepticism and suspicion of one’s intentions by immigration authorities keeps me away...the officer that has the desire to recruit professionals cannot be combined with the officer that has the desire to limit the number of immigrants.”¹⁵⁹

There is no shortage of research on Europe’s hostility towards immigration and a common theme is that a great deal of this hostility stems from cultural insecurity. Today there is a real awareness that Europe’s population is in decline and immigration may indicate a threat to those who believe that the cultures and traditions of perceived small communities are threatened.¹⁶⁰ However, the irony in all of this is of course that Europe is increasingly reliant on foreign labour. Not only is Europe suffering from an aging and shrinking population, EU nationals also lack the ability, or inclination, to do many jobs. The countries that are the most hostile to outsiders are the ones that are in the most need of them and “those calling most fiercely for foreigners to go home may come to regret what they wished for.”¹⁶¹

¹⁵⁹ “Possible Blue Card Migrants have their say”, *European Parliament*, 14 November 2008, <http://www.europarl.europa.eu/sides/> (22 November 2008).

¹⁶⁰ Stephen Gallagher, “The Atlantic Divide: the Politics of Immigration in the EU and Canada” (paper presented at the ECSA-C 6th Biennial Conference, Victoria, Canada, May 19-20, 2006), 14.

¹⁶¹ “The Trouble with Migrants: Europe is Fretting about too much Immigration when it needs even more,” *Economist*, 22 November 2007, 57.

Chapter 6 – Conclusion

In recent years Brussels has recognized that certain regions and sectors in the EU are in need of migrants in order to deal with economic and demographic needs. All Member States of the European Union are affected by the flow of international migration, and have therefore realized that a new approach to manage migration is necessary. The so called ‘global war on talent’ has also intensified over the past years, and as an effort to become an attractive player in this ‘war’ the European Commission put forth a proposal for a directive on the conditions of entry and residence of third-country nationals for the purposes of highly qualified employment as well as a proposal for a directive on a single application procedure. The EU Blue Card’s objectives are to streamline processes, centralise decision-making and offer one simple application procedure and flexibility for highly skilled immigrants. The EU Blue Card scheme is meant to improve EU’s position in the competition for the ‘best and the brightest’, thus, help the EU to become the “most competitive and dynamic knowledge-based economy in the world.”¹⁶²

The creation of an EU Blue Card is an important step in the right direction as it recognizes Europe’s need to participate more effectively in the global competition for the ‘best and the brightest’. The comparison between the US and the EU’s visa regimes in terms of admissions mechanisms and work rights shows that what the Blue Card has to offer prospective highly skilled workers is not going to drastically alter the EU’s competitive disadvantage. In addition, the US and the EU do not diverge significantly in terms of aspects of employment, living conditions and opportunities for personal

¹⁶² “Growth and Jobs: Relaunch of the Lisbon Strategy”, Euroactiv.com, 25 July 2008 <http://www.euractiv.com/en/innovation/growth-jobs-relaunch-lisbon-strategy/article-131891> (2 February 2009).

development. However, a more careful reading of the draft directive reveals inherent problems to the design of the Blue Card, which further weakens it. When adding intervening environmental variables, the Blue Card becomes a less effective tool and the EU as a whole a less appealing place to attract highly skilled workers.

Migration is indeed one of the most complex and sensitive issues for politicians and policy makers alike, and immigration has Europe in a pickle. This sheds light on the difficulty the Commission has in drafting proposals on migration related issues. The reason why the Blue Card has developed into a suboptimal tool is arguably a way for the Commission to circumvent the problem of Member States' scepticism towards transferring power on migration issues to the Community. The provisions, such as the quota option and the co-existence of national schemes parallel to the Blue Card, have been set up by the Commission in order to get the Member States' officials on board with the Blue Card, because certain matters in the JHA field still do not fall under the exclusive competence of the Community even though a transfer of power could mean that the Union would produce more credible and efficient outcomes than it would through intergovernmental co-operation. Thus, the Commission's ability to design an effective and attractive immigration scheme for highly skilled workers has been hampered by the sensitivity and divergence on immigration issues among Member States. Even if a directive leaves Member States with a certain amount of leeway as to the exact rules to be adopted, it can help prepare for future policy change. Directives and non-compulsory regulations do not force states to adapt, but they can prepare the ground for major policy change "by providing additional legitimacy to domestic reformers in search for justifications, by 'inseminating' possible solutions in the national debate, and by altering

the expectations about the future.”¹⁶³ Since the Commission sees the need for Europeanization in the field of migration, a proposal, such as the Blue Card, can after all allow for greater opportunity for debate on future policy change. The Commission has time and again declared that Europe needs more immigrants of all skill levels in order to achieve higher levels of productivity and innovation in line with the objectives of the Lisbon Strategy. The Blue Card, even in its present suboptimal form, can pave the way for an alignment of policies and preferences among the EU27. This is not only needed for reaching a common European solution to make the EU a strong player in the ‘global war for talent’, it is also essential if the EU wants to create a common migration policy as set out in Tampere.

¹⁶³ Eiko R. Thielemann, “The ‘Soft’ Europeanisation of Migration Policy: European Integration and Domestic Policy Change” (paper presented at the ECSA 7th Biennial International Conference, Madison, USA, May 31- June 2, 2001) 10.

Bibliography

- Ackers, Louise. "Moving People and Knowledge: Scientific Mobility in the European Union." *International Migration* 43 (2005): 100-131.
- Agunias, Dovelyn Rannweig, and Kathleen Newland. "Circular Migration and Development: Trends, Policy Routes, and Ways Forward." *Migration Policy Institute Policy Brief* (April 2007): 1-19.
- "An EU 'Blue Card' for High-Skilled Immigrants?" Euractiv.com. 21 October 2008, <http://www.euractiv.com/en/social/europe/eu-blue-card-high-skilled-immigrants/article-170986> (2 November 2008).
- Apap, Joanna. Belgium. European Parliament Directorate-General Internal Policies. *An Analysis of the Proposal for an EU Blue Card for Highly Skilled Migrants: the Proposal for a Council Directive on the Conditions of Entry and Residence of Third-country Nationals for the Purpose of Highly Qualified Employment, 2007* (Brussels, 2008).
- Batalova, Jeanne. "The 'Brain Gain' Race begins with Foreign Students," *Migration Information Source*, January 2007, <http://www.migrationinformation.org/Feature/display.cfm?id=571> (30 March 2009).
- Belgium. European Commission. *Communication from the Commission: Policy Plan on Legal Migration, 2005*.
- Belgium. European Commission. *Memo on Attractive Conditions for the Admission and Residence of Highly Qualified Immigrants, 2007*.
- Belgium, European Commission, *The Hague Programme and its Priorities – Migration Management, 2005*.
- Belgium, European Commission, *Green Paper on an EU Approach to Managing Economic Migration, 2005*.
- Belgium, European Commission, *Proposal for a Council Directive on the Conditions of Entry and Residence of Third-Country Nationals for the Purposes of Highly Qualified Employment, 2007*.
- Belgium, European Commission, *Legislative Resolution on the Proposal for a Council Directive on the Conditions of Entry and Residence of Third-Country Nationals for the Purposes of Highly Qualified Employment, 20 November 2008*.
- Borjas, George J. "Economic Theory and International Migration." *International Migration Review* 23 (1989): 457-485.
- Bransten, Jeremy. "EU: Netherlands leading Trend to more Stringent Immigration Rules", *Radio Free Europe*, 5 April 2006, <http://www.rferl.org/content/article/1067418.html> (9 February 2009).

- Castles, Stephen, and Mark J. Miller. *The Age of Migration: International Population Movements in the Modern World*. London: Macmillan Press Ltd, 1998.
- Castles, Stephen. "Back to the Future? Can Europe meet its Labour Needs through Temporary Migration?" *International Migration Institute* 1 (2006): 2-38.
- Chiswick, Barry R. "Are Immigrants Favourably Self-Selected? An Economic Analysis." In *Migration Theory: Talking Across Disciplines*, edited by Caroline B. Brettell and James F. Hollifield. New York: Routledge, 2008, 63-82.
- Cerna, Lucie. "Towards an EU Blue Card? The Proposed Delegation of National High-Skilled Immigration Policies to the EU-level." Paper presented at the ISA Annual Conference, San Francisco, USA, March 26-29, 2008.
- "Circulate or Integrate?" *Economist*, 3 January 2008.
- "Council Directive 2003/109/EC of November 2003 concerning the Status of Third-Country Nationals who are Long-Term Residents," *EUR-Lex*, <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:32003L0109:en:NOT> (13 November 2008).
- "Divided Parliament approves EU Blue Card System." Euractiv.com. 21 November 2008, <http://www.euractiv.com/en/social/europe/divided-parliament-approves-eu-blue-card-system/article-177380> (15 January 2009).
- "Dutch Cabinet endorses new Admission Policy," *Ministry of Justice*, 27 June 2008, <http://english.justitie.nl/currenttopics/pressreleases/archives-2008/dutch-cabinet-endorses-new-admission-policy.aspx?cp=35&cs=1578> (9 February 2009).
- Frattoni, Franco. "Shaping Migration Patterns." Speech presented in the European Parliament, Brussels, Belgium, 20 September 20, 2007.
- Funk Kirkegaard, Jacob. *The Accelerating Decline in America's High-Skilled Workforce: Implications for Immigration Policy*. Washington: Peter G. Peterson Institute for International Economics, 2007.
- Gallagher, Stephen. "The Atlantic Divide: the Politics of Immigration in the EU and Canada." Paper presented at the ECSA-C 6th Biennial Conference, Victoria, Canada, May 19-20, 2006.
- "Germany hopes to Attract More Skilled Workers," *Spiegel Online*, 7 August 2008, <http://www.spiegel.de/international/germany/0,1518,564560,00.html> (9 February 2009).
- "Growth and Jobs: Relaunch of the Lisbon Strategy", Euractiv.com. 25 July 2008, <http://www.euractiv.com/en/innovation/growth-jobs-relaunch-lisbon-strategy/article-131891> (2 February 2009).
- Haug, Sonja. "Migration Networks and Migration Decision-Making." *Journal of Ethnic and Migration Studies* 34 (May 2008): 585-605.

Hennis-Plasschaert, Jeanine. *Member of the European Parliament*, e-mail message, 30 December 2008.

“H1B Visa Program” <http://www.h1base.com> (8 October 2008).

“Immigration through Employment,” *U.S. Citizenship and Immigration Services*.
<http://www.uscis.gov/> (14 October 2008).

Iredale, Robyn. “The Migration of Professionals: Theories and Typologies.” *International Migration* 39 (2001): 8-26.

“Justice and Home Affairs Council”, *Council of the European Union*.
<http://www.consilium.europa.eu/showPage.aspx?id=249&lang=en> (15 January 2009).

Kohli, Martin. “The Battlegrounds of European Identity.” *European Societies* 2 (2000): 113-137.

Kostakopoulou, Theodora. “The ‘Protective Union’: Change and Continuity in Migration Law and Policy in Post-Amsterdam Europe.” *Journal of Common Market Studies* 38 (September 2000): 497-518.

“Labour Migration”, *Federal Ministry of the Interior*, February 2008,
http://www.zuwanderung.de/cIn_115/mn_1070222/EN/Home/Functions/Subtopic/Arbeitsmigration.html (9 February 2009).

Lavanex, Sandra. “The Competition State and Multilateral Liberalization of Highly Skilled Migration.” In *The Human Face of Global Mobility: International Highly Skilled Migration in Europe, North America and the Asia-Pacific*, edited by Michael Peter Smith and Adrian Favell. New Jersey: Transaction Publishers, 2006, 29-52.

“Lawful Permanent Residence (“Green Card”),” *U.S. Citizenship and Immigration Services*,
<http://www.uscis.gov/greencard> (14 October 2008).

“Lisbon Agenda”, *Euractiv.com*, 21 May 2007,
<http://www.euractiv.com/en/future-eu/lisbon-agenda/article-117510>
(16 February 2009).

Lowell, Lindsay, B. “Skilled Temporary and Permanent Immigrants in the United States.” *Population Research and Policy Review* 20 (April 2001): 33-58.

Lowell, Lindsay, B. “The Demand and New Legislation for Skilled Temporary Workers (H-1BS) in the United States.” *People and Place* 8 (December 2000): 29-35.

Martin, Susan and B. Lindsay Lowell. “Competing for Skills: U.S. Immigration Policy since 1990.” *Law and Business Review of the Americas* 11 (Summer 2005): 387-407.

McCabe, Kelly, “What Effect will the Proposed EU Blue Card have?” *Manufacturing.Net*, 16 November 2007, <http://www.manufacturing.net> (22 October 2008).

“Open Up” *Economist*, 3 January 2008.

- Parkes, Roderick. *German Institute for International and Security Affairs*, e-mail message, 16 December 2008.
- Parsons, Craig A., and Timothy M. Smeeding et al., eds. *Immigration and the Transformation of Europe*. Cambridge: Cambridge University Press, 2006.
- “Possible Blue Card Migrants have their say”, *European Parliament*, 14 November 2008, <http://www.europarl.europa.eu/sides/> (22 November 2008).
- “Tampere European Council 15 and 16 October 1999 Presidency Conclusions,” *European Parliament*, http://www.europarl.europa.eu/summits/tam_en.htm#a (28 October 2008).
- “The Immigration Act”, *Federal Ministry of the Interior*, http://www.zuwanderung.de/cIn_115/nm_1120026/EN/ImmigrationToday/TheImmigrationAct/theImmigrationAct_node.html?_nnn=true (14 January 2009).
- “The Trouble with Migrants: Europe is Fretting about too much Immigration when it needs even more,” *Economist*, 22 November 2007.
- Thielemann, Eiko R. “The ‘Soft’ Europeanisation of Migration Policy: European Integration and Domestic Policy Change.” Paper presented at the ECSA 7th Biennial International Conference, Madison, USA, May 31- June 2, 2001.
- “The EU and Fundamental Rights – the Wider Context”, *European Commission*, http://ec.europa.eu/justice_home/unit/charte/en/rights.html (15 January 2009).
- “Towards a common European Union Immigration Policy,” *European Commission*. September 2007, http://ec.europa.eu/justice_home/fsj/immigration/fsj_immigration_intro_en.htm (28 October 2008).
- “The Hague Programme – Ten Priorities for the next five years,” *European Commission*, http://ec.europa.eu/justice_home/news/information_dossiers/the_hague_priorities/index_en.htm (28 October 2008).
- Tunali, Insan. “Rationality of Migration.” *International Economic Review* 41 (November 2000): 893-920.
- United States. Department of Homeland Security. *Yearbook of Immigration Statistics: 2007, 2008*.
- Von Weizsäcker, Jakob. “Divisions of labour: rethinking Europe’s migration policy.” *Bruegel Blueprint Series* 6 (2008): 1-62.
- Von Weizsäcker, Jakob. “Strait is the Gate – Europe’s Immigration Priorities.” *Bruegel Policy Brief* 5 (July 2008): 1-8.
- Zolberg, Aristide R. “The Next Waves: Migration Theory for a Changing World.” *International Migration Review* 23 (Autumn 1989): 403-430.