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High-Skill Mobility: Addressing the Challenges of a  
Knowledge-Based Economy at times of Crisis

Irina Isaakyan and Anna Triandafyllidou



European University Institute  
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## **Executive Summary**

In the milieu of the current economic crisis, the most difficult challenge for high-skill migrants is their entry to and progression within the job markets of their host societies.

Offering them the best opportunities for earning, career development and high quality of life; the OECD region remains the major zone of high-skill migration (HSM). There is a policy dilemma, however. On the one hand, the OECD countries need skilled migrants. On the other hand, the economic austerity caused by the global crisis demands that states introduce visa restrictions, which create shortages in specific sectors of the labour market and delay the after-crisis recovery. Moreover, immigration rules differ across nation-states and fluctuate over time. So are recruitment practices while migrating skilled workers desperately need employment security.

In the light of all this, it seems reasonable to ask: **What would be the optimal entry to the EU labour-markets for high-skilled third-country nationals at time of crisis?**

Examining the visa regimes for highly skilled migrants in four leading OECD countries, we propose several improvements in the current Blue Card scheme that would help attract and/or keep global talent in Europe meeting better the needs of the European labour market. We propose strengthening the link between higher education and access to the labour market at the EU level: graduates of PhD programmes in the EU should be entitled to stay in the EU with a 5 year permit provided they find a job within the 12 months following their graduation. This would enable their better insertion in the labour market and transfer to the EU long-term resident permit under the current 2003 directive and legislation. This reform would further boost the attractiveness of the higher education sector in EU countries, indeed an important “industry” in itself for European economies. It would also ensure that the prospective high skill workers have language fluency in the country’s language where they seek employment and are acquainted with administrative regulations and the overall culture of that country as they have lived in for one or more years as students.

## **Keywords**

High-skill migration, Europe, USA, Canada, Blue Card, OECD





## High-skill migration: a lever for growth

High skill migration (HSM) is a source of innovation and therefore an important policy concern in Europe and beyond, especially at time of financial crisis when innovation is crucial for kick starting growth. Globalizing and competing western economies are in high demand of new human capital. Their own societies are rapidly ageing. The majority of developed countries have already started to experience high-skill workforce shortages, which will be more acute in the future. Europe is particularly in danger of suffering in terms of decreased competitiveness and productivity over time. According to the demographic forecast of the European Commission, the number of old people (age 65+) living in European countries will double in the next 50 years, comprising 30% of the EU population in 2060.<sup>1</sup>

In this light, most OECD countries are already designing their workforce rejuvenation policies, with accent being placed on high-skill mobility or importation of “brains” and high- skill cadres. In this milieu; international students, scholars, engineers and healthcare professionals are viewed as important human resources for western economies. Particularly for Europe, they are considered the chief contributors to its competitive advantage.

The need for foreign talent importation has become especially acute in the most recent conditions of the deteriorating global economic crisis, the major way out of which is development of new technologies.<sup>2</sup> Needless to say the latter depend largely on foreign talent. On the other hand, the crisis has made the domestic unemployment situation worse than ever before. In this controversial context of the tensions between the need for attracting global talent to boost innovation and growth and the need for securing jobs for the country’s own nationals, high-skill mobility policies become extremely difficult to implement, although still remaining among the prerequisites for anticipated economic recovery.

Generally speaking, high-skill migration presupposes a cross-border movement of such high-skill specialists as academics, STEM (Science, Technology, Engineering and Mathematics) and IT (Information Technology) personnel, engineers, healthcare professionals (nurses and doctors), and also doctoral students and post-doctoral fellows (often referred to as “young researchers”).

The Bologna process for reform in European higher education recognizes the increasing competition for “young” foreign talent between the OECD countries.<sup>3</sup> Before the onset of the crisis, OECD countries had been enthusiastically seeking to attract specialized foreign PhD students and to facilitate their access to the national labour-market. The UNESCO (2011) database points to the steady growth of foreign students in the OECD region – particularly, from 0.9 million in 1999 to over 3 million in 2009.<sup>4</sup>

The current high-skill migration is also associated with the international movement of post-doctoral fellows and STEM professionals. Thus according to UNESCO’s report, more than 7 million researchers and engineers work in the EU-25, and 6.8% of them (about 473,000) are “mobile – that is,

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<sup>1</sup> Ghosh, B. (2013). *The Global Economic Crisis and Future of Migration*. Basingstoke: Palgrave Macmillan. / Eurostat. (2011). *Population Projections*. URL: [http://epp.eurostat.ec.europa.eu/statistics\\_explained/index.php/Population\\_projections](http://epp.eurostat.ec.europa.eu/statistics_explained/index.php/Population_projections).

<sup>2</sup> Florida, R. (2005). *The Flight of the Creative Class*. New York: Harper Collins Publishers.

<sup>3</sup> Commission of European Communities. (2012). *The Bucharest Communiqué*. URL: [http://www.minedu.fi/OPM/Koulutus/artikkelit/bologna/liitteet/Bucharest\\_Communique.pdf](http://www.minedu.fi/OPM/Koulutus/artikkelit/bologna/liitteet/Bucharest_Communique.pdf).

<sup>4</sup> UNESCO. (2011). *Global Flows of Tertiary-Level Students*. URL: <http://www.uis.unesco.org/Education/Pages/international-student-flow-viz.aspx>.

working in a country of which they are not citizens”. As for the United States, 26% of its current STEM workers were born overseas.

But do we really know what it means to be a high-skill migrant? Should it be qualifications-based, employer-driven or a combination of both?

### **Who is a high skill migrant (HSM)?**

All existing definitions of the “high-skill migrant” are extremely ambiguous: broadly categorizing high-skill migrants as “people with tertiary (college or university) education and beyond, the definitions fail to provide guidance for their entry. That is why high-skill immigration/integration policies are inconsistent across OECD countries and the HSM data are often missing. There is a Catch-22: revised HSM definitions inevitably add to data loss and policy inconsistency, which – in their turn - significantly impede any further positive revision of the definitions and implementation of new policies.

High-skill migrants are in fact defined on the basis of their qualifications, which – in their turn – are (re)interpreted rather inconsistently throughout the OECD. Some countries basically define the “highly-skilled” by level of education while others by occupation. The latter practice emerges as an effort to design a more specific criterion for definition since it adds the requirement of a particular – “short-list” – job (mostly in the technical field) to the basic “tertiary-education” requirement. The relatively small elite, emerging insofar and covering persons with doctorates, researchers, high-level engineers is an outcome of the mysterious – yet highly popular - “the best and the brightest” rationale, dictated by the OECD knowledge economy.<sup>5</sup>

Because there are many immigrants who hold university degrees (including even those within elite occupations), the HSM category by education and occupation also comprises spouses, students, tourists and intra-company transferees. Therefore, this specification attempt only results in even more complexity. Moreover, its rhetoric further demands the recognition of credentials as a proof for being among the best and the brightest. For example, such immigrants could have completed a college education abroad but because of non-transferability of their credentials may be under-employed or “brain-wasted”. Thus the question is now not only *who* the high-skill migrant is but mostly *how* this status can be proven and what to do with this status after it is proven.

In practical terms, the absence of an internationally uniform HSM definition makes the attractiveness of the host country for highly skilled migrants dependent on how its migration policy re-conceptualizes the eligibility criteria for entrance. Nation-states refer to the immigrant’s level of education/occupation - supplemented with a few other eligibility criteria - to assess his/her entrance capacity. In an effort to respond to the definitional problems and to clarify the eligibility-for-entry requirements, countries employ two basic strategies through which all HS immigration policies are designed: (a) the “employer-driven” strategy; and (b) the open, or “points-based”, strategy.<sup>6</sup>

Most HSM in OECD countries (including Japan and the entire EU) is primarily employer-driven. An employer secures a job for a high-skilled immigrant before he/she is allowed to enter the country. This is an effort to specify the HSM definition and policy through the strategy of job placement: migrants are recognized as “highly skilled” only after they find adequate jobs (in addition to

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<sup>5</sup> Chaloff, J. and G. Lemaître (2009). *Managing Highly-Skilled Labour Migration: A Comparative Analysis of Migration Policies and Challenges in OECD Countries*. URL: <http://dx.doi.org/10.1787/225505346577>.

<sup>6</sup> IOM. (2008). *World Migration 2008: Managing Labour Mobility in the Evolving Global Economy*. URL: [http://publications.iom.int/bookstore/free/WMR\\_1.pdf](http://publications.iom.int/bookstore/free/WMR_1.pdf).

OECD. (2012). *Connecting with Emigrants: A Global Profile of Diasporas*. URL: <http://www.iadb.org/intal/italcdi/PE/2012/11326.pdf>.

professional qualifications and/or educational credentials). This employer-driven strategy reduces overall the number of HSM entries.<sup>7</sup>

In addition to this strategy, some OECD countries [e.g.: the UK, Canada, Australia, New Zealand and Denmark] implement the strategy of *qualitative reconceptualization* of what it should mean to be high-skilled – or the point-based system. The points-based system is to assess the human capital of the migrant. Unfortunately, this assessment is very schematic and also reduced to a certain degree of quantification. It is very difficult to measure human capital by numbers, through which the eligibility assessment is codified.

Finally, both immigration policies fail to create adequate conditions specifically for the labour-market entrance of “*young*” – post-doctoral – professionals, who are said to be at the heart of innovation and migration careers because of the potential related to their age and who are statistically over-represented in the majority of accepting OECD countries.

### **The global crisis and the public opinion**

If policy-makers have difficulties interpreting HSM definitions, the latter become even more challenging for the general public, especially in times of the economic austerity, which increases unemployment and creates feelings of insecurity as well as fuels xenophobic attitudes. Thus migrants are often perceived to be “stealing jobs” and high skill is being frequently confused in the public eye, with low skill migration. While high-skilled immigrants are much better accepted than low-skilled immigrants, their general rejection is still rapidly progressing throughout the EU.<sup>8</sup>

A case in point is the UK, which is gradually changing its status from the international talent magnet to a closed labour market, in which immigration policy is under the direct influence from the public opinion. According to the Migration Observatory Survey, 62% of British people associate high-skill migrants with asylum seekers (although the latter are the smallest migrant group in the country, comprising only 4%).<sup>9</sup> The survey results also show that 30% of Brits speak in favour of significantly reducing HS immigration and object to the presence of foreign students in the UK, while the British government is intent on satisfying the request of the public.<sup>10</sup>

Even in the “promised land” of the United States, the H1B visa programme for the entrance of high-skilled migrants is represented in mass media and perceived by the general tertiary-educated public as ‘a public abuse’, ‘fraud’ and ‘American middle class destruction’. Mass media describe the new bill as ‘an abuse of HSM policy’, ‘a policy hijack’ and ‘outsourcing cover’.

30-50% of all new IT jobs go to foreigners arriving in the US, while there are many US engineers beyond their 40s who are either unemployed or under-employed. Mass media point to the phenomenon of outsourcing and the growing public repulsion. Thus the top ten companies applying H1B visas in the first three months of fiscal 2013 were all offshore outsourcing companies. Protesting against the outsourcing in the IT field (where the majority of H1B visas go), the Institute of Electrical and Electronics Engineering strongly objects to the future expansion of the H1B bill. In response to this, two US senators admitted in 2012 that the H1B program was indeed ‘rife with fraud’ and

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<sup>7</sup> See Chaloff and Lemaitre (2009).

<sup>8</sup> Kahanec, M. and K. Zimmermann. (2011). *High-Skill Immigration Policy in Europe*. URL: [http://www.diw.de/documents/publikationen/73/diw\\_01.c.366717.de/dp1096.pdf](http://www.diw.de/documents/publikationen/73/diw_01.c.366717.de/dp1096.pdf). / Kofman, E. (2012). ‘Gender and skilled migration in Europe’, *Cuadernos de Relaciones Laborales* 30(1): 63-89.

<sup>9</sup> The Migration Observatory. (2012). *Citizenship Survey*. URL: <http://migrationobservatory.ox.ac.uk/data-and-resources/data-sources-and-limitations/citizenship-survey>.

<sup>10</sup> Soames, N. and F. Field. (2013). ‘Britain can’t afford this level of immigration’, *The Telegraph*. URL: <http://www.telegraph.co.uk/news/uknews/immigration/9959813/Britain-cant-afford-this-level-of-immigration.html>.

proposed the cutting of the suggested 2013 H1B-cap, which however did not impact on the processing of the current bill (unlike in the UK case).<sup>11</sup>

Although the majority of HSM receiving countries somehow reconsider their immigration laws and impose certain restrictions on the arrival of high-skilled immigrants, policy-makers' reactions to such public worries and consequently emerging high-skill immigration policies differ significantly across OECD countries.

## High Skill Immigration Policy developments

Below is a brief analysis of HSM policies in four different OECD countries, which are four of the world economies and among the most important high skill migrant destinations globally. These four countries offer different angles to look at immigration policy decisions while seeking an improvement to the current high skill migration management in the EU. Two of them are EU Member States (Germany and the UK), which compete with each other as brain recipients over the global and intra-EU dominance, show different attitudes to Europeanization (as embodied in the Blue Card project) and different alliances between the immigration legislature and public xenophobia. The other two (the US and Canada) are located outside the EU and are considered the major rivals to the EU in terms of attracting foreign talent. In relation to HSM, all (except Canada) are mostly employer-driven, while Canada is combining both employer-driven and skills-based strategies for HSM entrance.

### USA

In the US, the major program for high-skilled workers is H1B visa, which was introduced in the Immigration Act of 1990. The US government views H1B as a tool to enhance knowledge economy, with emphasis on new fields. President Obama has made immigration reform a priority of his second term and any comprehensive effort would necessarily involve more H1B visas for highly skilled workers especially in the STEM fields.

The overall H1B system is employer-based, with short-list occupations, application quotas and additional support to American university graduates. The H1B issue has long been associated with Silicon Valley and tech companies have been pressing for an increase in the number of such visas. Obama has recently decided to add manufacturing to the H1B shortage occupation list and raise its status in the national economy insofar.

Unlike the UK, the H1B cap is not being raised every year and a maximum of 65,000 H-1B visas can be awarded for the fiscal year 2014 beginning October 1, 2013. In addition, the USCIS can also reward 20,000 H-1B visas for those having masters or higher degree from US academic institutions. This limit on H-1B visas has been in place for more than twenty years.

However, the dynamics of the application process demands new policy adjustments and reconsideration of H1B provisions. The agreed-upon compromise in the Senate has been to expand the H1B category to 140,000, from 85,000 — a quota that is often reached in a matter of weeks or months every year. The new 2013 H1B project – known as the “Fairness for High-Skilled Immigrants Act” – thus almost doubles the number of H-1B visas for high-skilled foreign workers, with a possibility of further raising the cap.<sup>12</sup>

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<sup>11</sup> Johnson, F. (2013). *Big Step Forward on High-Skilled Immigration Bill*. URL: <http://www.nationaljournal.com/thenextamerica/immigration/big-step-forward-on-high-skilled-immigration-bill-20120712>. / Zh-Ye, Y. (2013). ‘Immigration Reform 2013’, *Politics*. URL: <http://www.policymic.com/articles/34857/immigration-reform-2013-it-s-not-fair-to-legal-immigrants-or-americans>.

<sup>12</sup> Caldwell, A. (2013). ‘High-skill visas running out’, *Miami Herald*. URL:

To solve the problems with the study-work transition for overseas “young” professionals, the bill introduces the “dual intent” for foreign students at U.S. institutions: they would be allowed to apply for green cards while on their student visas. Certain types of the high-skill migrant would be exempt from the limit on green cards, including outstanding professors and researchers.<sup>13</sup>

There is, however, a public and policy concern that the merit-based imposition on the green card will destroy family- and diversity immigration. In May 2013, Senator Charles Schumer announced the percentage of visas awarded based on familial ties would go down from 75% to 50%; which, as policy analysts believe, will be detrimental for the American civil society.<sup>14</sup>

While ignoring the negative claims from the general public, the Senate bill would still impose some restriction to the H1B procedures, following the example of some EU countries such as the UK. The Bill will require US employers to first advertise the job to qualified Americans for 90 days before and after the companies apply for work visas.

### ***United Kingdom***

The UK is an interesting example of an OECD country that over less than ten years has converted from an enthusiastic world talent magnet to an extremely restrictive host of HSM.<sup>15</sup> Over the 10 years between 1999 and 2009, net migration to the UK was more than 2 million, an average of 183,000 per year, an outcome of the Labour government’s decision to steer economic growth as well as of the EU 2004 enlargement. In 2007 the UK had the highest in the EU share of foreign students in engineering (27% from the overall engineering student body in the country).

In order to open doors for prospective high-skill migrants, the British government introduced a multi-tier points-based immigration system in 2008. The year 2008 became groundbreaking for the UK since the country’s policy toward HSM had suddenly turned from being employer-driven to being more flexible, combining the features of both the employer-based and points-based recruitment of migrants. The groundbreaking innovation was Tier 1, which directly related to high-skill migrants and showed respect to their accumulated human capital (although Tier 2, the employer-arranged work permit, was still in force). As a result, many skilled third-country nationals were able to enter the UK without arranged employment.

The second groundbreaking year for HSM to the UK was 2010, when the number of high-skill migrants had become much higher than anticipated (255,000) and when the new government consequently closed the doors to HSM from outside of the EU by imposing a very low cap on the number of permits for non-EU workers. As a result, the net high-skill immigration in 2012 was 163,000.

The new target of the Conservative Party is to further reduce the net migration to “tens of thousands” by 2014. The reductions have been accomplished and are to be accomplished further

(Contd.) \_\_\_\_\_

<http://www.miamiherald.com/2013/04/02/3319940/high-skilled-visas-running-out.html>. / Ruiz, N. and J. Wilson. (2013). *A Balancing Act for H-1B Visas*. URL: <http://www.brookings.edu/research/articles/2013/04/18-h1b-visa-immigration-ruiz-wilson>.

<sup>13</sup> Chokshi, N. (2013). ‘The New Immigration Plan’, *National Journal*. URL: <http://www.nationaljournal.com/congress/the-new-em-new-em-immigr...lan-coming-tuesday-is-aimed-at-high-skilled-immigrants-20130128>.

<sup>14</sup> See, for example: Akande, Z. (2013). ‘Immigration Reform 2013: Is It Unfair to Low-Skilled Workers and Latinos?’ URL: <http://www.policymic.com/articles/39937/immigration-reform-2013-is-it-unfair-to-low-skilled-workers-and-latinos>.

<sup>15</sup> For the review of the UK Immigration Law, see: Martin, P. (2012). *Attracting Highly Skilled Migrants: US Experience and Lessons for the EU*. URL: <http://www.india-eu-migration.eu/media/CARIM-India%20RR2012-01.pdf>. See also: Weisbrock, A. and M. Hercog. (2010). *The Legal Framework for Highly skilled Migration to the EU*. URL: [http://www.merit.unu.edu/publications/mgsog\\_wppdf/2010/wp2010-001.pdf](http://www.merit.unu.edu/publications/mgsog_wppdf/2010/wp2010-001.pdf). See also Soames and Field (2013).

through - among other strategies - a series of new measures leading to less high skill immigration into the country. Thus HSM is seen as an instrument for monitoring the overall migration streams whereas both the government and the society often fail to see the difference between high-skill and low-skill migrants.

Labour migration is de facto associated with HSM and its controls include: (1) complete closure of Tier 1 (or impeded immigrant entry of “young” professionals); (2) introduction of continuously raised caps on HSM from outside the EU; and (3) continuous revision of the shortage-occupation list. The latter two principles significantly impair Tier 2. Moreover, the student migration policy has been affected by the abolition of the Post-Study Work visa and by the restriction of additional requirements for Tier 2.

A new policy initiative, which is being discussed in the Parliament, is to possibly restrict (at least temporarily, before the crisis is over) the intra-EU migration to the UK, thus by over-nationalizing the British labour-market within the widening-participation rationale. As Soames and Field further note, through tightening the HSM entry in 2014, the government hopes to regain respect of the general public and to make the latter ‘confident in the UK migration system’. Thus the long-term status for the UK as both the world and the EU talent magnet is being greatly challenged.

### ***Germany***

The UK’s main intra-EU competitor, Germany approaches HSM as the solar means to fix skill shortages caused by a Declining working-age population. That is why since 2005, Germany is making a strong effort to stimulate high-skill immigration. In spite of societal and bureaucratic tensions around low-skill migration, highly skilled professionals get permanent residency much faster than before.<sup>16</sup>

The current legal regime for highly-skilled migrants is employer-driven and was articulated in the 2005 Residence Act. According to its basic rules, there must be a specific job offer from a German employer. However, a prior approval of the Federal Labour Agency (equivalent to the US/UK labour-market test) is not necessary for granting a settlement permit to the high-skill migrant. Unlike the US or UK, Germany does not impose any limit on high-skilled foreigners under age 45.

Although the German high-skill immigration system is one of the most flexible in the world (with no quotas and with exemptions from the labour-market test), very few German employers recruit from overseas: thus only 629 scientists and high-skill professionals from outside the EU came to Germany for employment in 2005-2009.

Another inconsistency between the law and the reality is a conflict between the perspective of the government and that of employers on overseas students. Thus foreign students who graduate from German universities are allowed to stay in Germany for one additional year and, if they find employment, to receive the work permit without excessive bureaucracy. As a result, the number of third-country students has doubled over the last ten years. However, many foreign students still decided not to stay in Germany.

The complex milieu of the Euro-zone makes it difficult to say for sure whether the main contributor to such theory-practice gaps is the public opinion, the role of the language (which is less popular and less attractive than English), or their combination.

### ***Canada***

In response to the crisis and to the immigrant application backlog, Canada modified - or severely restricted, to be more precise - its Federal Skilled Worker Program (FSWP) for HSM on 4 May 2013.

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<sup>16</sup> For the HSM legal regime in Germany, see Martin (2012). See also Weisbrock and Hercog (2010).

In general, the FSWP combines basic features of points-based and employer-based systems, which can be found in many OECD countries.<sup>17</sup>

The renovated FSWP, however, has four distinct features, which make it both high-skill immigrant-friendly and -hostile. First, it places emphasis on a much younger age of the immigrant and on his/her economic integration within a specific segment of modernizing Canadian economy. The scheme is thus more related to the modernization of the state economy rather than to socio-cultural integration as it stresses the connection between the immigrant and the technological base rather than between the immigrant and the civil society. The rejuvenation of the scheme makes the entry more difficult if compared with other national systems, which do not distinguish between the ages 35 and 45, for example.

At the same time, there are a couple of very positive elements within this scheme, which have been always desired by high-skill immigrants. Thus the second feature of the FSWP is that it links HSM to permanent residence and makes this transition easier for those who are already in the country. According to this scheme, qualified skilled workers are automatically granted permanent residence.

Third, FSWP shows maximum respect to the Canadian work/study experience, thus making the progression from the student status to the high-skill worker status automatic. High-skilled migrants who either study or work in Canada are identified as the “Canadian experience class” and given the privilege of permanent residence. The program thus seeks to achieve maximum benefit from that cohort of young people who are educated in Canada and familiar with Canadian life and values.

Fourth, Canadian employers are given very direct imperatives by the Canadian government about whom to hire (exclusively Canadian nationals or permanent residents). This makes the FSWP Janus-faced as it is on one hand privileging those who are already there, making transitions for Canada educated foreigners and for some specific groups of high skill migrants easier, but on the other hand, restricting high skill migration overall for the professions that are not in the “short list”.

### ***The EU Blue Card Directive***

In an effort to revamp the image of the EU as that of a closed-door “fortress” and to improve its competitive advantage, the European Council adopted the Blue Card Directive in May 2009.<sup>18</sup> The Blue Card is a EU-wide work permit allowing high-skill non-EU citizens to work and live in any country within the EU, except Denmark, Ireland and the UK (which decided not to join the proposal).

The main feature of the Blue Card is that qualified migrants from outside the EU have the right to work and reside in an EU country for a period 1-4 years, after which the person may apply for a new BC in the same or another state. During the first 18 months of admission, the high-skill migrant is restricted to work in the country that issued the Blue Card.

For the initial issue of the Blue Card, the person must have an advanced degree, the minimum of a five-year professional experience in a high-skill area, and a valid job offer with at least a 1-year contract. Alternatively, the person may already be employed in the Member State on a job contract that is valid for at least 1 year at the moment of application. The Blue Card entrance salary must be at least 1.5 higher than the average salary in the given Member State.

Although the Blue Card scheme supports intra-EU mobility and family reunification more than any other immigration initiative, there are a number of challenges that impede a successful implementation of this project. Scholars admit that the Blue Card is a ‘horizontal initiative’ as the EU Parliament has

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<sup>17</sup> CIC. (2013). *FSWP*. URL: <http://www.cic.gc.ca/english/immigrate/skilled/index.asp>.

<sup>18</sup> See Council Directive 2009/50/EC, available at: <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2009:155:0017:0029:en:PDF>.

no coercive power over Member States.<sup>19</sup> Therefore, the Blue Card does not replace existing national immigration regime. Moreover, it is directly dependent on them.

Thus the immigrant's admission to and progression within the scheme is determined by individual Member States, which often apply the same procedures as those related to national work permits. In reality, the Blue Card salary threshold varies greatly across Member States from 1.5 to almost 3 times higher than the average salary, which is much higher than the HSM salary requirement in the US (from which the Blue Card scheme has been modeled).

The European Parliament makes it explicit in its Directive that the Blue Card is "not a right" as Member States are recommended to give the employment priority to European nationals first of all. In this milieu, national labour-markets continue to live their own lives: the mechanism for improving the labour-market efficiency gives preferences to the new 2004 and 2007 state workers over the third-country nationals.

In addition, such bureaucratic procedures as control over the qualifications presented and over the immigration quotas are maintained by individual Member States. Although there are no caps imposed by the EU Parliament on the Blue Card, the Member States are given the absolute freedom to assign as many Blue Cards as demanded by their national contexts as well as the absolute freedom to create national Blue Card quotas at any time. At the moment, not many Member States have such caps. However, the situation may change in the future.

The entrance to the Blue Card scheme is not the only problematic issue related to its de-centralized administration. Even if theoretically the Blue Card holder is entitled for permanent residence following the first five years, this decision is made again by the last Member State in which s/he works. In addition, the Blue Card's maximum period of 4 years is less than the minimum permanent residence requirement of 5 years. That is why many Blue Card holders will find it impossible to receive permanent residence immediately after the Blue Card expiry date. Given the unpredictability of the current labour-market situation, their migratory cycle will be interrupted and they will have to leave the EU.

### **Critical Assessment and Policy recommendations: Improving High Skill Migration Schemes in the EU**

As we can see from the most recent immigration legislature changes in the mentioned four countries, the US immigration policy is in opposition to public opinion, compared to Canada and the UK – and more oriented towards the development of a knowledge-based economy. The UK is the worst scenario of direct compliance with the public opinion and direct opposition to knowledge economy. Canada is located somewhere in-between as it restricts the entrance to many HSM categories but shows respect to growing domestic foreign talent or to Canadian-educated PhDs. In this sense, its position is closer to the European "Blue Card" project than those of many EU countries.

Germany is a separate - very interesting - case as its government and immigration law are growing increasingly oriented towards satisfying the needs of a knowledge-based economy. However, the German HSM recruitment practices continue to live their own life, even in spite of the 2005 changes. This shows how policy implementation can significantly shape the content of a given law. It also shows that while policies may be forward looking, social reality may be slower to adjust or indeed it may point to the fact that German labour market needs in the high skill sector are not yet particularly acute and hence the perceived need for HSM recruitment is lower than policy makers would have it.

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<sup>19</sup> See Martin (2012), and Weisbrock and Hercog (2010). See also: Mosneaga, S. (2012). 'Building a more attractive Europe: The Blue Card experience', in L. Klein and M. Tamcke (Eds.) *Europeans In-Between: Identities in a (Trans) Cultural Space*. Groningen, Netherlands: University Library Groningen. Pp.167-187.



As for the Blue Card, it is at the moment an optimistic theoretical perspective rather than accessible reality. There are in fact many bureaucratic elements within this scheme that make it no much different from regular national work permits. There is not enough transparency and appropriate infrastructure for the legal regime around the Blue Card in the EU. The Blue Card scheme's implementation takes place at national labour markets and is at the discretion of national legislatures, institutions and bureaucrats. Different member states have different needs of high skill migrants and even when facing such needs may show a more (like Sweden) or less (like Germany) extrovert attitude for filling these needs. In addition the continuing uneasiness of the public opinion related to the crisis which fuels xenophobic discourses and an overall negative attitude towards immigrants makes a proactive implementation of high-skill migration policies in general and of the Blue Card scheme in particular rather unlikely in the current context.

### ***Streamlining the Transition to the Labour Market for HSMs***

Keeping or attracting the best and brightest worldwide with a view of pushing innovation and growth in the EU, involves making the transition of high skill migrants from study to work smooth. We thus propose strengthening the link between higher education and access to the labour market at the EU level: graduates of Master and PhD programmes in the EU should be entitled to stay in the EU with a 5 year permit provided they find a job within the 12 months following their graduation. Streamlining the process for obtaining a 5 year high skill worker permit for graduates of European Universities would enable their better insertion in the labour market especially in sectors where the several member states like Germany, the Netherlands or the UK face shortages like IT and STEM.

After this 5 year permit, these high skill migrants would be able to apply for an EU long term resident permit under the current 2003 directive (EU Council Directive 2003/109/EC of 25 November 2003, concerning the status of third-country nationals who are long-term residents). This reform would further boost the attractiveness of the higher education sector in EU countries, indeed an important "industry" in itself for European economies. It would also ensure that the prospective high skill workers have language fluency in the country's language where they seek employment and are acquainted with administrative regulations and the overall culture of that country as they have lived in for one or more years as students.

This scheme would complement the existing Blue Card Directive provisions. In addition the EU needs to monitor the implementation of the Blue Card directive in the Member States. It is important if after the first five years of its implementation (after it has been transposed to member state legislation, notably by 2016) the European Commission considers whether it is necessary to scrap the initial 18 month period when the high skill migrant cannot move to a different member state, and whether it should be given for an initial period of 5 years on first instance.

If the EU's economic recovery requires it competes effectively with North America over the international talent, why should not it learn from the North American (particularly, Canadian) experience in its reaction to HSM flows and public opinions. Foreign national advance the EU economy. Therefore, instead of protecting the local society from them, Member States need to facilitate high-skill migrants' study and work transitions.