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## *Reforming the EU Blue Card as a Labour Migration Policy Tool?*

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### *Abstract*

One of the four priorities of the European Commission in its preparation for the European Agenda on Migration was to open up “new legal migration channels, including the revision of the ‘Blue Card’ Directive”. This comes after only three years of full implementation of this EU immigration policy instrument (and not even that for some Member States). Meanwhile, in its 2014 Communication on the implementation of the Blue Card Directive, the European Commission had decided not to propose any amendment. However, it should not be forgotten that the Blue Card Directive was not designed primarily for the labour market needs of the EU. Rather, it was run to enhance European competitiveness by attracting highly-qualified third-country nationals, and this under quite restrictive conditions of salary and qualifications. As a result there have been only low numbers of beneficiaries to date: 19,000 in 2012 and 2013 for the whole EU. To develop the Blue Card Directive into a true highly-skilled labour-migration management tool able to respond to current and future labour market needs in Europe, would mean changes in scope, conditions and implementation modalities by Member States.

### *Key Words:*

European Agenda on Migration, EU immigration policy, Labour migration, Highly-Skilled Migration

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POLICY  
BRIEF



“The Lisbon European Council, held in March 2000, set an ambitious objective for the European Union of “becoming the most competitive and dynamic knowledge-based economy in the world, capable of sustainable economic growth with more and better jobs and greater social cohesion by 2010”. In this framework, it took almost ten years for European institutions to adopt the Blue Card Directive in 2009<sup>1</sup>. The Directive was intended to foster the admission and mobility of highly-qualified third-country nationals in order to make the Community more attractive and to sustain its competitiveness and economic growth. The adoption of the Directive by the European Council was followed by its transposition by the EU Member States into their national legislation, due to be completed by 19 June, 2011. The long period required for its elaboration and the ongoing revision undertaken after only three years of full implementation is evidence of the political sensitiveness of EU initiatives in the field of migration. It is also proof of the difficulties of establishing an EU-wide labour migration scheme in an institutional context where legal migration competences still lie to a large extent with Member States. The limited use of the Directive, meanwhile, was revealed by the first review of its implementation carried out by the European Commission in May 2014<sup>2</sup>. The mandate given to the new Commissioner for Migra-

tion, Home Affairs and Citizenship for “promoting a new European policy on regular migration to help the EU address skill shortages inter alia by reviewing the ‘Blue Card’ legislation” and the adoption of the European Agenda on Migration, provide a unique opportunity to reassess the current EU toolkit in the field of legal migration. They also allow for comprehensive reform of the Blue Card and other instruments. However, it should not be forgotten that, in origin, the Blue Card was primarily designed to enhance EU’s competitiveness (see, for instance, points 3-4 of the Preamble of the Directive), and only subsidiarily to meet EU labour market needs (point 5)<sup>3</sup>.

Therefore, to turn it into an effective labour migration tool, Blue Card reform should focus on and target the specific highly-qualified labour needs of the EU labour markets. A recent European Commission report<sup>4</sup> identifies the top 20 “bottleneck occupations” where vacancies were hard to fill in each of the Member States and across the European Union. This report shows that only ten of the top bottleneck occupations at EU level were actually “highly-skilled” occupations (see Table 1)<sup>5</sup>.

On the other hand, data on the highly-qualified labour market in Europe also points to the very different situation in different Member States:

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1 Council Directive 2009/50/EC of 25 May 2009 on the conditions of entry and residence of third-country nationals for the purposes of highly qualified employment, <http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:32009L0050>.

2 Communication from the Commission COM(2014)287 final on the implementation of the Directive 2009/50/EC of 25 May 2009 on the conditions of entry and residence of third-country nationals for the purposes of highly qualified employment, [www.europarl.europa.eu/meetdocs/2014\\_2019/documents/com/com\\_com%202014%290287\\_/com\\_com%202014%290287\\_en.pdf](http://www.europarl.europa.eu/meetdocs/2014_2019/documents/com/com_com%202014%290287_/com_com%202014%290287_en.pdf).



Table 1. Top bottleneck vacancies in the EU labour market (ISCO 4-digit level)

Rank	ISCO code and description	Number of countries reporting bottleneck vacancy
1	5120 Cooks	17
2	7223 Metal working machine tool setters and operators	9
3	5223 Shop sales assistants	6
4	2221 Nursing professionals	10
5	8332 Heavy truck and lorry drivers	8
6	7212 Welders and flamecutters	10
7	2144 Mechanical engineers	9
8	2512 Software developers	9
9	2212 Specialist medical practitioners	10
10	7115 Carpenters and joiners	11
11	3322 Commercial sales representatives	6
12	2151 Electrical engineers	8
13	5131 Waiters	7
14	2142 Civil engineers	6
15	2511 Systems analysts	7
16	2341 Primary school teachers	6
17	7126 Plumbers and pipe fitters	8
18	2411 Accountants	7
19	7411 Building and related electricians	6
20	5321 Health care assistants	3

Note: The highly-qualified occupations are highlighted in blue.

Source: European Commission (2014), Mapping and Analysing Bottleneck Vacancies in EU Labour Markets. Overview Report final

whereas graduate unemployment exceeds 8% in Southern Member States such as Greece, Cyprus, Croatia, Portugal and Italy, it is almost frictional in most North European countries and others beside: in Malta, Germany, Czech Republic, Hungary, the United Kingdom, Luxembourg, Netherlands, Lithuania and Austria it is under 4% (see Figure 1). This means that Blue Card reform needs to take into account the potential intra-EU mobility of EU nationals with the qualifications required by the

bottleneck occupations in other Member States' labour markets, in accordance with the principle of European preference. At the same time, the discrepancy between member states justifies the existence of different national highly-qualified labour migration schemes to cater for those different labour market needs.

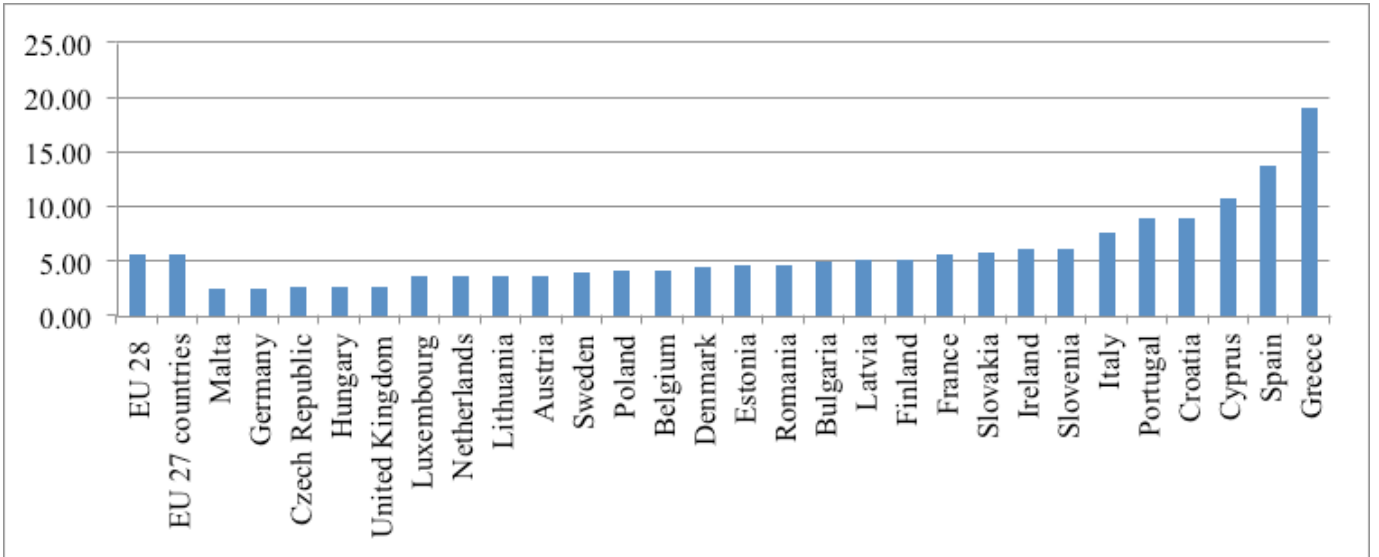
3 Whether a scheme such as the Blue Card is apt to achieve this objective or not is subject to discussion, in part because its very generic definition of “highly-qualified”. In principle, it would be more effective if clearly targeted to the science, technology, engineering and mathematics (STEM) graduates, as is the case, for example, with the US H1B visa, or other specific professional profiles required in the EU labour market (see Alessandra Venturini, Fabio Montobbio and Claudio Fassio (2012), Are migrants spurring innovation?, MPC Research Report 2012/11, Migration Policy Centre, European University Institute, <http://www.migrationpolicycentre.eu/docs/MPC%202012%20EN%2011.pdf>).

4 European Commission (2014), Mapping and Analysing Bottleneck Vacancies in EU Labour Markets. Overview Report final,

5 Ibid. pp. 33-34.



Figure 1. Unemployment among workers with tertiary education in EU Member States



Source: Eurostat, Unemployment statistics, 2014

*Features and Implementation of the Blue Card*

The general principles established for the implementation of the Blue Card in the Directive itself (point 7 of the Preamble) are as follows:

- a “fast-track admission procedure”; this translates into Member States being obliged to adopt a decision on Blue Card applications as soon as possible and at the latest within 90 days (some Member States have established shorter periods); however, the overwork of immigration services caused by the recent increase in asylum applications is causing some delays in Blue Card processing;
- granting beneficiaries of the Blue Card “equal social and economic” rights as nationals of the host Member State; however, as far as access to the labour market is concerned this only applies after the first two years of legal employment in the Member State that granted the Blue Card; during these two years, even changes in employer within the same country

are subject to written authorisation in writing of the authorities of the granting Member State.

- taking into account “the priorities, labour market needs and reception capacities of the Member States” and respecting the principle of Community preference.

The conditions for the admission and mobility of third-country nationals (TCN) and their family members for the purpose of highly qualified employment in the EU established in the Blue Card Directive can be summarized as follows.

The applicant for a Blue Card (i.e., the prospective migrant employee) has to present:

- a valid work contract or a binding job offer for highly-qualified employment with a duration of *at least one year* offering gross *annual salary* which is not inferior to an established threshold (according to the Directive, a minimum 1.5 of average gross



annual salary in the relevant Member State); this makes the Blue Card a demand driven instrument, based and dependent on the job offers of employers;

- a *proof of relevant higher professional qualifications* in the occupation or sector specified in the work contract or in the binding job offer; this is generally an upper university degree (see point 9 of the Preamble of the Directive).
- a valid travel document (but this is a mere formality, since Member States are supposed to grant a visa after a positive decision on the Blue Card applications).

The Directive defines a set of rights and privileges granted to Blue Card holders (and some limitations). However, practical implementation by Member States has effectively contributed to reducing the actual scope of those rights, and hence of the Blue Card's added value to holders:

- **The period of validity** of the Blue Card is to be determined by Member States but the limits are one to four years. If the contract duration is shorter, the Blue Card will be valid for the duration of the contract plus three months, giving the beneficiary time to look for another job. Unemployment is only a cause for withdrawing the Blue Card if it lasts for more than three months or if it occurs more than once during its period of validity. However, the majority of Member States also retain the possibility of withdrawing (or not renewing) the EU Blue Card if the individual does not have sufficient financial resources to maintain themselves and the members of their family.

- **Access to the labour market in other Member States.** As any legal resident in the EU, Blue Card holders are entitled to free circulation and to stay in any EU Member State for up to three months. But in order to be able to work legally in another Member State, the holder has to wait for the first 18 months of residence in the Member State which first granted the Blue Card and present another application for a Blue Card in the new Member State, subject to the same legal procedure as any other Blue Card given in that State (article 18 of the Directive)<sup>6</sup>. This limitation is fundamental in assessing the Blue Card scheme, since free access to the EU labour market is the key element in having a EU-wide legal migration instrument, and as it is regulated it actually means that a third country national wanting to work in several countries (even in the framework of a multi-country project, for instance) has to apply for as many blue cards as countries. In fact, obtaining a Blue Card does not automatically entitle him or her to access other Member States labour markets. In this sense, this provision deprives the Blue Card of most of its added value in relation to national admission schemes for highly-qualified third-country nationals.

- **Family reunification.** One of the distinct advantages of the Blue Card is that it stipulates the possibility of family unification for the relatives of Blue Card holders. The Directive states that the residence permits for family members shall be granted, whenever the conditions for family reunification are fulfilled, within six months from the date on which the application was lodged. However, during 2012 only 1,107 permits for family members of Blue Card holders were granted, and in 2013 in Germany, out



of the 14,197 Blue Cards granted, only 1,421 spouses and 899 children joined the beneficiaries<sup>7</sup>. This limited number might be explained by the relatively young age of Blue Card applicants (75% of them were under 35 in Germany). But there is increasing anecdotal evidence for bureaucratic obstacles and long procedures. These have prevented the effective exercise of this right by Blue Card holders.

In its Communication on the implementation of the Blue Card Directive, the Commission reviewed transposition by Member States, which is virtually complete. But data on numbers of Blue Cards granted indicate that this scheme is far from having established itself as a legal migration instrument at the EU-level. Indeed, the official statistics provided by Eurostat and relayed by the European Commission in its Communication<sup>8</sup> indicate that the number of the Blue Cards issued has been limited so far: during 2012 and 2013 the total number did not reach 19,000, out of which more than 14,000 were issued by Germany (89%), which had no effective alternative national scheme for highly-qualified migrants. Just over 300 renewed during those years (see Figure 2).

However, these low figures have to be interpreted in the light of the limited number of work permits granted through national schemes for highly-qualified employment as well. These have remained in force and have coexisted with the Blue Card Directive in seventeen Member States (in six of them with specific schemes for highly qualified migrants). Those national schemes were developed to meet the specific needs of national labour markets and are implemented through point-based, employer-led or demand driven systems. The Commission Communication on the implementation of the Blue Card suggested that the existence of those national schemes might explain the low number of Blue Cards issued by Member States. In any case, between 2008 and 2012, work permits granted through such national schemes stood at, on average, 17,500 permits, against the 15,261 Blue Cards granted in 2013. In both cases these are quite low numbers in relation to the size of the EU labour market<sup>9</sup>.

This low level of use of the Directive is thus common to the Blue Card scheme and the highly-qualified national migration schemes. Both EU and national

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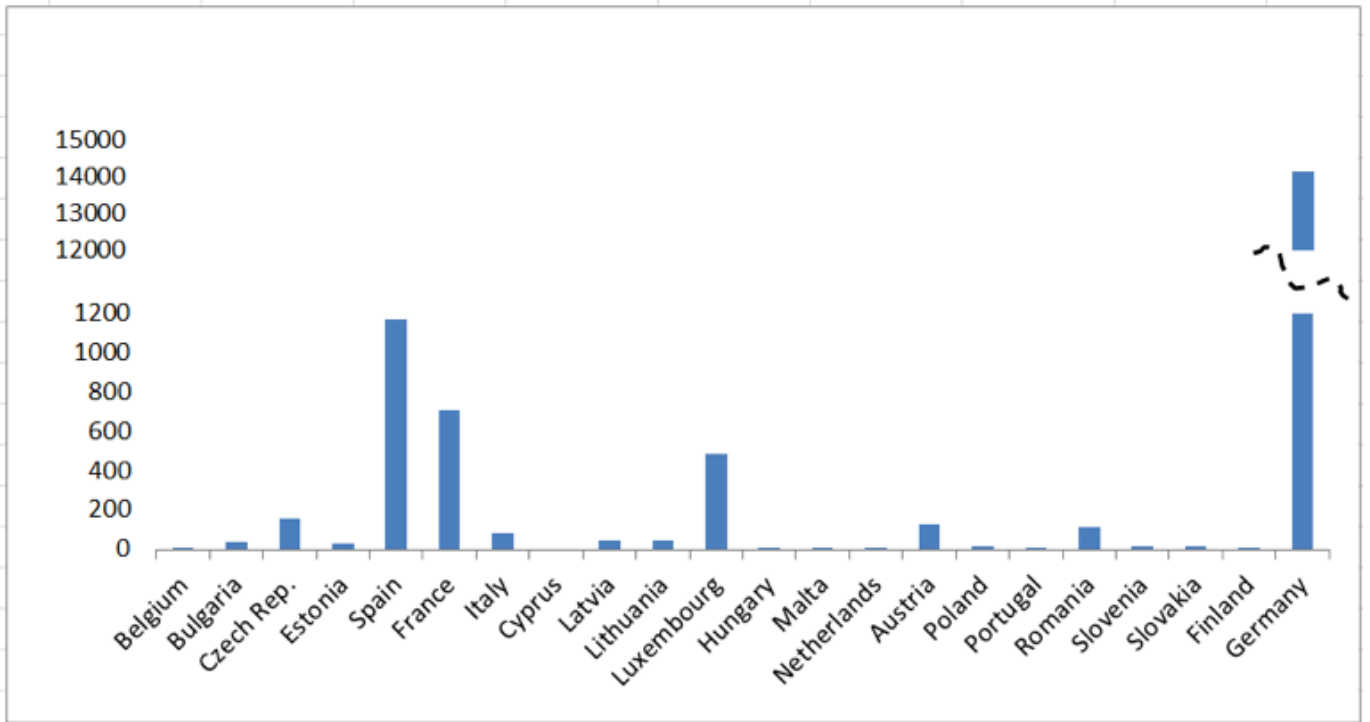
6 Of course, this possibility is excluded for the Member States who “opted out” and do not apply the EU Directive, i.e. Denmark, Ireland and the United Kingdom.

7 Communication from the Commission COM(2014)287 final, *ibid.*

8 It is significant that only data for 2012 and 2013 are available as for April 2015.



Figure 2. Number of Blue Cards issued during 2012-2013



Source: Eurostat, EU Blue Cards by type of decision, occupation and citizenship [migr\_resbcl]

systems combined remain marginal in relation to the total number of first residence permits issued for employment (remunerated activities) reasons in the EU, that according to Eurostat amounted to 535,475 (only 22.7% of the total number of first residence permits issued) in 2013. This might indicate a dysfunctionality in those schemes as they are implemented today to meet the demand for qualified labour in EU labour markets.

Another reason that might explain those lacklustre results is the high level of heterogeneity in the transposition and implementation of the Directive in national legislation: this is, of course, at odds with the very purpose of the Blue Card, which was to create a harmonized if not single legal framework regulating admission and residence of highly-qualified third-country nationals. This diversity has its origin in the many safeguards and margins of flexibility offered by the Directive in order to accommodate the objec-

9 See Communication COM(2014)287 final, p. 13. For a review of the implementation of the Blue Card by groups of Member States, see Anna Triandafyllidou and Irina Isaakyan (2014), EU Management of High Skill Migration, Global Governance Programme Policy Brief, Robert Schuman Centre for Advanced Studies, European University Institute, <http://cadmus.eui.eu/handle/1814/34706>.



tions and resistance of many Member States. Indeed, the Blue Card Directive was a minimum common denominator compromise which as such threatened the prospects of a common legal framework for highly-skilled migration management. This heterogeneity undermines the potential of the EU Blue Card much more than its coexistence with national schemes.

Finally, the assessment of the implementation of the Blue Card Directive should take into account that Blue Card related procedures are extremely costly for all stakeholders. It is “costly” for the applicant through cumbersome bureaucracy. But the procedure is costly as well for national authorities, because it requires case-by-case processing for which these authorities are often not prepared: a system of certified employers or trusted partners entitled to obtain Blue Cards for their third-country employees through a much lighter procedure, as is applied in the national scheme of the Netherlands, might solve this problem. Finally, the Blue Card is costly for the employer as well due to the one-year minimum contract duration (whereas often national labour law establishes three to six months probationary periods) and the minimum salary threshold. The minimum salary threshold of 1.5 of average gross annual salary in the Member State concerned can be reduced to 1.2 by Member States for employment in professions which are in particular need of migrant workers. It aims to prevent the undermining of the work conditions of those employed. However, it seems that these minimum thresholds are not respected in many Member States<sup>10</sup>. It must also be said that national salaries vary significantly across sectors, occupations and regions and the established single national threshold might not correspond to the competitive salary for a particular sector or occupation in a given place. This clearly discriminates against low-added value sectors and small and medium companies, which may need highly-qualified migrant

labour but face obstacles in benefitting from the Blue Card Directive.

This argument is confirmed by the profile of EU Blue Card beneficiaries. Figure 3 presents the distribution of Blue Cards by occupation. It clearly indicates that the professional characteristics of applicants are quite diverse, even if manager-type occupations prevail. The current definition of “highly-qualified” determined through evidence of higher-education qualifications (ISCED categories 5a and 6) or at least five years of professional experience of a level comparable to higher education qualifications may be too limited. We say this in as much as the definition excludes highly- or even medium-skilled professionals with vocational education and training degrees: yet these may also be badly needed by the EU labour market.

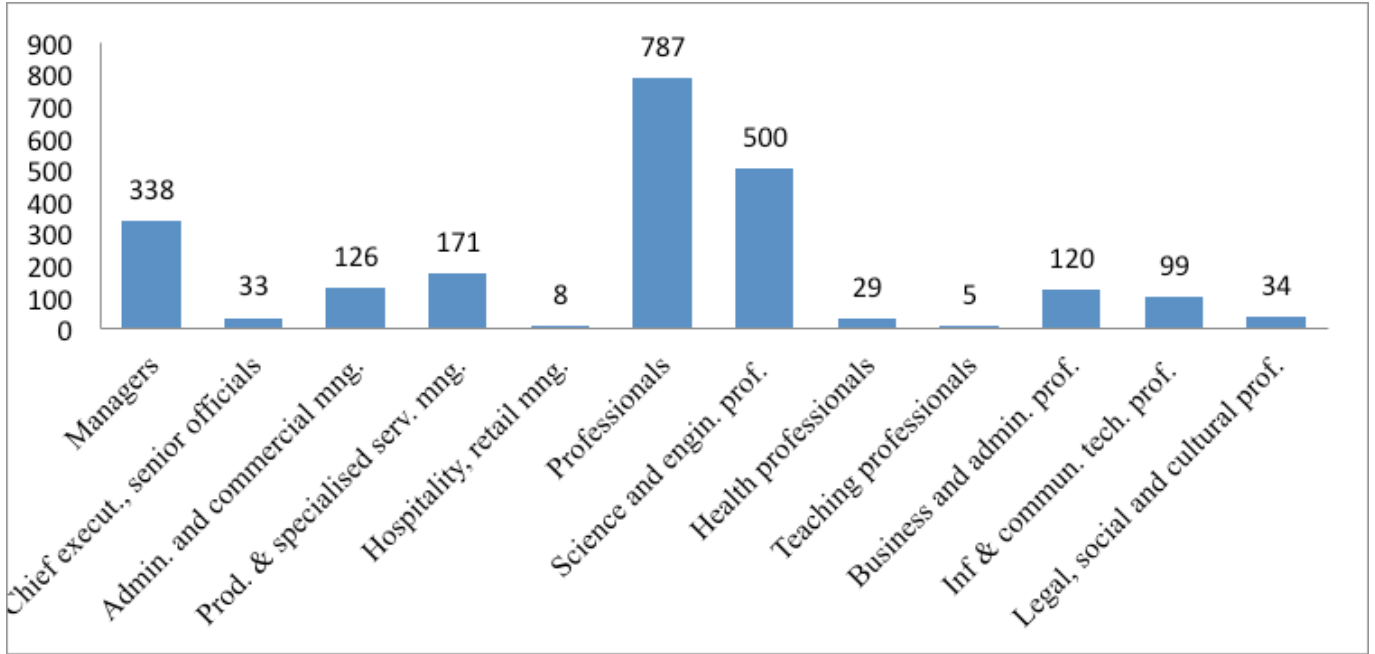
### *How to Reform the Blue Card Directive and to What End?*

There is a wide consensus that the EU needs to improve its channels for legal migration to meet its labour market needs, in particular for qualified workers. And the Blue Card, as an innovative tool to attract this specific category of migrants through a common regime for the whole EU, has an important role to play in this framework. Its demand-driven approach is also appropriate for a labour market with such high levels of unemployment among qualified workers in some Member States (see Figure 1 above) and a comprehensive system of welfare benefits. In Europe, a point or “expression of interest” system which would not be limited to candidates having a concrete job offer would risk increasing the pool of unemployed graduates and displace EU nationals against the EU preference principle, substituting for intra-Community labour mobility. In the absence of a comprehensive welfare system for unemployed workers, the adjustment in the labour market usually happens through the acceptance of jobs and occupations under their





Figure 3 : EU Blue Cards by occupation 2012-2013



Source: Eurostat, EU Blue Cards by type of decision, occupation and citizenship [migr\_resbcl]

Note: The figure includes only the Blue Cards for which occupation is reported. For the majority of cases (12.483) the occupation is unknown.

level of qualification by national or migrant qualified workers. This is often the case in countries implementing a point system such as Canada or the UK and leads to high levels of underutilisation of skills of migrants. But in Europe this might actually lead to more graduate unemployment and a heavier burden for the welfare state.

However, the EU Blue Card system does not respond, at least as it is presently configured, to the EU's needs for highly-qualified labour. It is too costly for all parties involved (employers, beneficiary migrant workers and implementing States), it does not provide

sufficient additional rights to make it attractive for potential beneficiaries (in terms of free access to the labour market of other EU Member States, right to family reunification or prospects of getting a permanent residence permit in the EU) and it does not ensure real added value in relation to highly-qualified national migration schemes. This is reflected in the low numbers of applications and the low number of blue cards granted. As a labour migration instrument, it seems to be limited in practice to one country, Germany (which had lacked a legal migration scheme for highly-qualified third-country nationals and has a

10 According to the information provided by the European Commission (page 6 and Table 4 of COM(2014)287 final), national transposition of the minimum threshold varies significantly, and at least ten Member States established thresholds below the one prescribed by Article 5.3 of the Directive, that is 1.5.



well-identified need for university graduate workers), and to multinational companies with a European reach: small and medium companies are largely excluded because of the high cost, though there is no data on the distribution of Blue Cards across employer company types.

Actually, many of the provisions of the Blue Card Directive, and the way transposition into national legislations was conceived, are geared to restrict the number of beneficiaries rather than to facilitate the matching between EU labour demand and international skilled workers. As such, they tend to discourage talented workers rather than attracting them, in particular if these workers have alternatives. In this context, for the Blue Card to become a true EU-wide labour migration instrument, some key policy reforms are outlined below:

- **One Blue Card giving access to the whole EU labour market.** Without encroaching into Member States competences, the Blue Card should revert to the original idea of one umbrella work permit for the whole EU: i.e., a single permit allowing for free movement and the right of establishment within the EU labour market. Here lies the main added value of having a highly-skilled EU labour migration instrument (see point 25 of the Preamble of the Directive), and hence its justification. Access to the labour market of other Member States should be automatically guaranteed for beneficiaries of the Blue Card, after a qualifying period of one year in the job for which the Blue Card was granted (instead of the current two years, which is too long). There should be no need for another administrative procedure to apply for it. This requires a higher level of harmonization (and maybe simplification) of Member States implementing rules as the one resulting from the Blue Card Directive transposition, which has in fact led to multiple national Blue Card systems instead of a single one. This would be the only way to grant beneficiaries of the Blue Card “equal social and economic

rights as nationals of the host Member State”, as stated in point 7 of the Preamble of the Directive. There is no reason why this would cause “prejudice to the right of the Member States to determine the volume of admission of third-country nationals entering their territory for the purposes of highly qualified employment” (point 8 of the Preamble). It would not, then, require a change in the current distribution of competences.

- **EU Blue Card and national labour migration schemes can coexist without any dysfunction.** If the objective is to develop a flexible system that is responsive to national and EU labour market needs as they emerge, the coexistence of several systems is not detrimental to the overall objective. Economic actors will seek in each case the scheme best adapted to their needs. It might be assumed that the existence of numerous national schemes would lead to confusion among potential employers or migrant employees. However, national schemes might be more flexible and dynamic in meeting the needs of national labour markets. What is needed is, rather, more transparent, comprehensive and widely available information on the conditions for benefitting from a Blue Card in each of the Member States. The current information on application procedures provided by the European Immigration Portal and national immigration authorities on conditions, procedures, rights and other features of the Blue Card is poor. It is not up to the job of guiding potential applicants through the bureaucratic procedures required to obtain it.

- **The cost of benefitting from the Blue Card should be reduced.** The high salary threshold established (minimum of 1.5 of the average national salary, even if not all Member States respect this minimum) can only result in a limitation of the Blue Card to very specific cases (such as multinational companies). As such it will reduce its effectiveness as a labour migration tool (in particular, for small and medium enterprises). It also penalizes those sectors with lower



than average salaries in the economy. In order to make sure that labour immigration does not undermine national work conditions and salaries, the only required threshold is that of the collective bargaining or average salary applicable in each sector. At the very least, the salary threshold should be made sectorial or occupation specific so it can better adapt to the different needs of national labour markets.

- **Rights attached to the Blue Card should be enhanced.** Family reunification for the relatives of Blue Card beneficiaries – one of the main advantages of the Blue Card in relation to national systems – should be granted at the same time that the Blue Card is given. On the other hand, the maximum period for granting the Blue Card should be extended to five years that would entitle beneficiaries to a permanent residence permit according to EU legislation. In a labour market context where highly-skilled labour migration needs in Europe seem largely long term, it does not make sense to approach the Blue Card as a purely temporary work permit.

- **Finally, a more flexible and in particular more targeted definition of “highly-qualified”** integrating specialized professionals in highly sought-after occupations would contribute to approach the EU Blue Card to the needs of the EU labour market. The analysis of EU labour markets shows that migrant labour needs do not target graduate workers at large (who have high levels of unemployment in several Member States, in particular in Southern Europe). They regard very specific highly-skilled occupational profiles, and the Blue Card should be geared to those needs.

### *Migration Policy Centre*

The Migration Policy Centre at the European University Institute, Florence, conducts advanced research on global migration to serve migration governance needs at European level, from developing, implementing and monitoring migration-related policies to assessing their impact on the wider economy and society. The Migration Policy Centre is co-financed by the European Union.

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