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RESEARCH ARTICLE

Understanding the diversity of EU migration policy in practice: the implementation of the Blue Card initiative

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High-skilled immigration (HSI) policies, and their harmonisation across member states, have been an important part of the EU's Lisbon strategy focusing on the knowledge-based economy, and the subsequent 'Europe 2020' which emphasises economic recovery. Intra-EU mobility of high-skilled workers is quite low, and member states have targeted high-skilled third-country nationals (TCNs), both through national policies and the EU's recent Blue Card scheme. However, the Blue Card Directive (adopted in 2009, transposed by June 2011), despite its scope for Unionised regulation, allows member states to decide how many high-skilled TCNs they want to admit, if any. The article argues that tensions between openness and closure to migration exist at both member state and EU level. These tensions are resolved through considerable diversity in the conditions and rights accorded to Blue Card holders across member states. Drawing on new empirical data, the article analyses first results of the transposition of the Blue Card Directive. It examines how far, in what form, and with what implications, diversity continues regarding the principle of mobility for these migrants across member states. The pattern and nature of transposition are hence important in shaping an EU-regulated liberal market in labour recruitment, and the development, or otherwise, of rights-based mobility regulation.

Keywords: Blue Card; diversity; European Union; high-skilled immigration; Lisbon strategy; regulation

Introduction

The EU has been undergoing a number of challenges in recent years. From ageing populations, labour shortages, pressures on social security systems, decreasing competitiveness vis-à-vis the USA and Asia to its self-identified goal of developing a knowledge-based economy (as detailed in the EU's Lisbon strategy and subsequently 'Europe 2020'¹), the EU and its member states are struggling to find responses to these problems. To give one example, the Commission's agenda for new skills and jobs estimate that by 2020 there will be a shortage of about one million professionals in the health sector – and up to two million taking into account also ancillary health care professions. By 2015, it is estimated that shortages of information and communications technology practitioners will be between 384,000 and 700,000 jobs (Commission 2010a, 9).

In addition, European labour markets now need new stimuli to respond to the current economic crisis and weak job creation, and to avoid negative attitudes

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towards immigrants (Zimmermann 2009). High-skilled immigration (HSI hereafter) has been considered one solution to fill labour shortages, respond to demographic needs and develop a knowledge-based economy. The main focus has been on EU workers, but most member states suffer from similar problems, and intra-EU mobility is generally low (the share of citizens living in another country relative to the population of the country of citizenship was around 2% in 2006).² Therefore, the EU has started to look for high-skilled third-country nationals (TCNs) as a (temporary) solution to the aforementioned challenges. The important position of high-skilled TCNs has prevailed despite the crisis, as labour shortages can coexist with high unemployment rates. But the conditions and rights attributed to TCNs in EU policies and regulations are different from those for EU workers. Besides the distinction between internal EU mobility and external migration, there is also considerable diversity in member states' policies for particular migration types within each of these two categories (see Carmel 2012). For instance, most adopted transitional provisions for workers from new member states in 2004 (especially EU8³) and later in 2007. The main reasons to impose a transitional period in the first place included concerns about high unemployment and 'welfare tourism' (Kvist 2004). The only three countries which allowed access to their labour markets from the start were Ireland, Sweden and the UK. In contrast to the relatively small numbers migrating to Sweden, both Ireland and especially the UK received a large number of workers from new EU member states. The transitional provisions expired in the last two member states (Austria and Germany) in May 2011, but continue for Bulgarian and Romanian nationals until 2014. Despite the entry into force of the Lisbon Treaty, which led to a number of changes in EU migration policy-making, the free movement of persons is only partially upheld in the area of labour migration. It applies to most EU nationals (except those with transitional agreements), but not to TCNs.

Of course the concept of the EU as a regulatory patchwork is not new (see Héritier 1996), and the lack of Unionised policies in labour migration – a relatively recent policy area where competences are still not fully delegated to the EU level – is perhaps not surprising. Diversity among member states can coexist with moves towards the creation of a European policy area at the same time (see, for example, Lavenex 2001). Nonetheless, there are tensions between principles of liberalised mobility and selective closure across these levels, which have not been resolved and which continue to affect migration policy, including HSI (see Favell and Hansen 2002).

More specifically, this article argues that underlying tensions between openness and closure towards labour migration policy coexist at both member state and EU levels. The resolution of these tensions at member state level can then lead to diverse policies, as the example of the Blue Card Directive demonstrates. Understanding this diversity is key for assessing Unionised rights, and mobility regulation and its limits. The different ways in which the tensions are resolved at member state level lead to some resistance to liberalisation of mobility in the EU for two reasons. First, diversity disrupts EU regulation because it results in varying transpositions and hinders a harmonised policy at the EU level, and second, most transpositions at member state level can also establish more rather than fewer conditions, resulting in less rather than more rights-orientation in regulation.

The continuing diversity in the policies adopted (and varying labour geography) in the EU demonstrates that labour migration policies continue to diverge, even

within the EU's attempts of a common policy. The question remains how far, in what form, and with what implications, diversity continues. The article seeks to offer some answers to this. It provides a first look at the transposition of the Blue Card scheme, and offers reflections on the idea of Unionised regulation of labour entry and residence policies. Rather than openness towards mobility at the EU level, we find that diversity of national labour markets and interests prevails in national Blue Card versions (see Cerna 2008, 2010). The pattern and nature of transposition are important in facilitating (or otherwise) EU-regulated liberal market in labour recruitment and rights-based mobility regulation. The article therefore contributes to the literatures on European integration and the transposition of EU directives⁴ (through an empirical example of the Blue Card). The cross-national policy variation and internal rights differentiation challenge the EU policy framework of a rights-based approach.

The article draws on qualitative material, such as legal documents, government publications, directives, academic literature, and legal, national and EU websites. It offers a first account of different member state versions of the Blue Card – data on which have been (perhaps surprisingly) difficult to access. To develop the argument, the article proceeds as follows. It first outlines the analytical approach, focusing on tensions between openness and closure in labour migration policies as well as different forms of transposition of EU directives. Next, it offers some background on the Blue Card Directive, followed by an overview of different Blue Card versions and member states' recent transposition into national legislation. The article then seeks to explain the extent of this diversity and analyses what it means for a rights-based mobility in the EU. The last section summarises main findings and offers some concluding comments.

Analytical approach

HSI is about openness and closure. TCNs constitute outsiders to the EU and are hence treated differently than EU citizens (though there are some differences of treatment among both groups). EU member states prefer to recruit high-skilled immigrants on a temporary basis. This implies that as migrants provide economic value for a limited amount of time, states do not have to deal necessarily with more long-term consequences of integration and citizenship.

The distinction between temporary and long-term migration policies and their particular societal implications is visible in tensions between globalisation pressures for openness and tendencies of nation states to close territorial borders (Mau et al. 2012). As Mau et al. (2012, 5) argue, 'liberal states have reorganised their borders and their means of mobility control with the aim of making their borders more selective'. Closure is more prevalent for citizens of states which are more politically, economically and culturally contrasting (see Paul 2013 in this issue). This would also explain transitional agreements put in place between dissimilar EU member states in order to manage the process more gradually. While some predicted that enlargement would make European borders more porous (Favell and Hansen 2002), the transitional agreements imposed demonstrate that especially the old EU member states have been hesitant to make the movement of persons really 'free' from the start. As mentioned in the Introduction section, the described tensions between openness and closure of migration policies interact at two levels.

Different types of border-drawing⁵ illuminate the coexistence of diversity and move towards the creation of an EU-regulated policy area. As Geddes (2005) succinctly elaborates, states engage in border-drawing at different levels, since immigration policy is politically constructed. ‘International migration is about borders, relationships between types of population mobility and their encounter with the territorial, organisation and conceptual borders of states’ (Geddes 2005, 324). These borders refer to the inclusion or exclusion from state territory, institutions such as labour markets and ideas about belonging to a political community, respectively (Geddes 2005, 324). The territorial and organisational borders establish migration categories such as high-skilled labour – these migrants are wanted and encouraged (Geddes 2005, 329; McLaughlan and Salt 2002).

In a similar vein, Lavenex (2001) has shown how distinct border-drawing processes manage openness and closure tensions at different policy-making levels. Thus at the same time, member states can coordinate their efforts in finding policy solutions for similar challenges (such as external migration pressures and demographic developments) but cautiously regulate policies at the EU level. This limited regulation is due to great heterogeneity among EU member states (see also Green Cowles et al. 2001; Knill and Lehmkuhl 2002; Lavenex 2006, 2009).

The article adopts the terminology of openness and closure to depict the tensions within and between member state and EU levels of policy-making. The case of (high-skilled) migration policy is taken as an example to identify particular drivers of policy. The existing literature has examined this tension in relation to immigration policies, even though the terminology used can differ from the one adopted in this article. The literature (such as market-driven approaches or liberalisation as well as state-centric approaches or securitisation) often conflates national state levels with a terminology of ‘closure’ and the EU with liberalising ‘openness’. However, member states are not necessarily against more open migration, but they select immigrants depending on their needs and interests. EU policy has also changed considerably in the last decades due to enlargement – member states are incorporated into an EU migration regime and thus have to work around commitments of openness (such as the free movement principle). Focusing solely on market-driven or state-centric approaches exposes an analytical problem since we are beyond this simple terminology. The key tension is that member states have to operate in a context where they do not have control over migration anymore (see Paul 2013 and editorial in this issue).

Thus the terminology in the existing literature is confounding the situation as migration policy-making operates in an interactive environment. Therefore, this article seeks to uncover the analytical dimensions and complexities, and move beyond a simple dichotomy. It offers a contribution to two debates in the HSI literature regarding

- (1) the extent of integrated EU policy-making in (admissions) migration policy through openness or closure, and
- (2) the transposition of EU directives into national legislation (internal rights).

Regarding the first, EU integration scholars have tried to resolve the tension in the literature between a state-centric approach (here closure) regarding ‘fortress Europe’ (e.g. Huysmans 2000; Joppke 1998; Kostakopoulou 2000) and a market-driven

approach (here openness) around liberal markets (e.g. Borjas 1989; Castles and Kosack 1973; Favell and Hansen 2002; Piore 1979). Even though the literature portrays the (state-centric versus market-driven) approaches as dichotomous, this paper regards openness and closure as a continuum. Favell and Hansen argue that:

The (normatively informed) image of fortress Europe is an inadequate account of migration and migration policy in Europe in three respects: the movement of family members, asylum-seekers and labour migrants has been substantially positive; enlargement itself generates dynamics of inclusion as much as exclusion; and there exists a significant component of intra-European circulatory migration. (Favell and Hansen 2002, 581)

There is disagreement whether the (open/closure-oriented) approaches enable us to identify particular drivers of policy. Most of the literature highlighting the state-centric approach to migration has focused on citizenship and sovereignty, or the centrality of the political and legal process. Contrary to the ‘fortress Europe’ accounts, Favell and Hansen argue that migration scholars should think more about the fundamental labour market dynamics that underpin economic and demographic changes. Labour migrants are those who have been ‘selected’ by labour market demand. States have lost the ability to close their borders completely.

In a similar vein, Borjas (1989, 460) points out that an ‘immigration market sorts out immigrants across potential host countries’. However, there are constraints on the market, in terms of individual’s financial resources and legal environment imposed by both sending and receiving countries (i.e. migration policies) (Borjas 1989, 460). Countries compete for human capital through these immigration policies. But the legal environment – the political and institutional constraints – can play a major role in the selection process and its outcome in terms of migrant numbers. It might seem that nation states are ‘letting go’ of their governance control over the flow of capital, goods, services and persons (Favell and Hansen 2002), but they still hold on to the control of their borders – migration of TCNs remains much more controlled than intra-EU migration. This indicates that member states are selectively opening or closing their borders to particular types of migrants.

In the first decades of the European Community, member states did not intend to engage in the area of cooperation in migration policy, and only did so in order to achieve a core founding objective: free movement of persons (Thranhardt and Miles 1995). The removal of internal border controls for Community nationals saw ‘unwanted’ secondary movement of asylum applicants and unauthorised migration. Therefore, most initiatives in this policy area have revolved around the strengthening of the external borders through, for instance, creating a common visa regime, concluding readmission agreements with third countries and the mutual recognition of asylum status. The free movement principle applies to four commodities: goods, services, capital and labour. While it is generally recognised that the first three freedoms have been achieved, the fourth one is more debatable. The tension between openness and closure has become more prevalent with the changing landscape in the EU due to, for instance, recent enlargement, and increased focus on labour mobility within the EU.

Despite the efforts for regulation of immigration at the EU level, states are not retreating as might have been expected. Instead, member states remain in charge of migration policy, exemplified by a differentiated integration when member states

negotiate opt-outs (Kostakopoulou 2000). Kostakopoulou (2000) further shows the juxtaposition between an increasing openness to free movement of EU nationals and the development of controlled approaches to the free movement of TCNs (termed the liberalisation versus the securitisation ethos) (see also Boswell and Geddes 2011).

While member states might support openness in general, they have not given up their sovereignty and continue to control admission through the transposition of the Directive into their own versions of the Blue Card. One of the ideas behind the Blue Card is that TCNs should be mobile within the EU – a self-regulating supply and demand factor determines the movement of people. This goal behind intra-EU mobility has largely remained unfulfilled as mobility is quite low for various reasons.⁶ Nonetheless, few countries have opted out of the Blue Card Directive and continue to rely on their national HSI policies.

Therefore, it is important to examine the transposition of EU directives into national legislation as well as related difficulties with such process. This national diversity is significant for our understanding of Unionised regulation and its limits. The literature on EU compliance has analysed several factors which might lead to delay in transposition, ranging from political culture (Thomson 2009; Toshkov 2007), nationally distinct implementation styles (Falkner et al. 2005), goodness-of-fit and administrative capacity (Börzel 2000a, 2000b; Duina 1999; Knill 2001; Knill and Lenschow 1999), opposition to directive or interpretation problems (Falkner et al. 2004), corporatism (Lampinen and Uusikylä 1998), federalism (Knill and Lenschow 1998) to veto players (Kaeding 2006). Due to the variation of studies and methodology, there is no clear conclusion regarding the most significant among these factors. In the case of the Blue Card, delays in transposition could be due to complicated procedures, disagreements between institutional agencies or general lack of enthusiasm for the Blue Card.

Comparison with other directives (see Falkner et al. 2005) reveals that member states with their own national policies might not recognise the need to opt in for the Directive, or alternatively they might consider it as an additional venue to achieve desired policy goals (such as attracting more high-skilled immigrants). The remaining variety of transposition formulations depends considerably on the degree of misfit between the directive and national legislation, but also different national implementation styles (Falkner et al. 2005). The Commission treats non-implementation by sending letters of formal notice to member states and, as a second step, enacting reasoned opinions. If all else fails, then the Commission can refer the member state/s to the European Court of Justice for a decision on the case (Falkner et al. 2005). The next sections will demonstrate that member states have transposed the Blue Card Directive with considerable discretion in the conditions and rights attached. Discretion is not problematic *per se* and is part of the transposition procedure, but the extent to which and with what levels of diversity the principle of mobility for high-skilled migrants is applied has important consequences for a rights-based approach.

EU Blue Card

The rationale and process of the Blue Card are explained further elsewhere (Cerna 2008; Guild 2007; Gümüs 2010; Peers 2009; Van Riemsdijk 2012; Wiesbrock

and Herzog 2010); therefore the focus here is on the Blue Card regulation and transposition. After many years and failed attempts, the Blue Card was the first Directive on TCNs labour immigration to be adopted by the EU. It was proposed in 2007 (Commission 2007a), based on a 2005 European Commission Policy Plan for four directives over the following years: high-skilled immigrants, trainees, seasonal workers and intra-company transferees (Commission 2005). Some arguments for an EU policy such as the Blue Card are that the EU would represent a common area for high-skilled migrants and would have greater 'natural advantages as opposed to single member states. The EU could offer greater possibilities for professional upgrading than one member state alone' (Zaletel 2006, 634). As Zimmermann (2009, 18) argues, 'national migration policies are not only superfluous in an open economic zone but dangerous' (this would constitute openness at the EU level). Thus the Blue Card example could be seen as one step towards EU regulation of labour migration policy, though some argue it has only symbolic value so far (Boswell and Geddes 2011) since key decisions remain in the hands of member states. Indeed, the Directive's flexibility regarding how member states might make use of the scheme might be one of the reasons that the Directive was passed.

The Commission decided to start with HSI as consultations with stakeholders indicated more support than for developing EU-level regulation of low-skilled immigration (Guild 2007). But it still took many years of negotiations among member states to reach a compromise. Some member states were concerned about training opportunities for their own citizens, while others feared losing sovereignty in migration matters. Several politicians in the Netherlands and Germany were hostile, and the Austrian government condemned the plan as 'a centralisation too far' (BBC 2007). Countries, such as Denmark, Ireland and the UK, wanted their immigration policies left to their own jurisdiction not the EU's and thus opted out (Cerna 2008). Most member states were reluctant to cede their right to regulate labour market access to the EU. According to the EU principle of subsidiarity, decisions should be taken as closely as possible to the citizens, which can be at the national, regional or local level, rather than the EU level. Hence member states may know best about their needs and constraints.

The Council of the European Union adopted the Directive on the Blue Card on 25 May 2009 (Council 2009). It allows high-skilled TCNs with a job offer to work in an EU country for a maximum of four years. Eligible applicants have to show a recognised diploma or have at least five years of professional experience, and been offered a salary above an established threshold (usually 1.5 times average gross annual salary (set each year), or 1.2 times for shortage occupations). The Blue Card holder can move to another EU country after 18 months, which is the only provision of geographic mobility for TCNs (Card holders must re-apply for a permit for the second member state). Highly skilled migrants can bring their families, and a work permit is offered to the spouse. But the Directive does not create the right of admission. The regulation of migrant numbers and conditions for high-skilled migrants has remained at the national level. Therefore, openness versus closure tensions are evident in the limits of the Blue Card's regulation, which leaves selection and admission to national level, while setting other terms and conditions at the Union level.

Transposition of the Blue Card: variation in member states' versions

Since intra-EU migration is so low, member states have opted for other policies to attract high-skilled immigrants. For instance, several member states already had national HSI policies towards TCNs in place, serving as alternatives to the Blue Card. This constitutes tensions between national and EU-level migration policies. Labour shortages intensified across the EU during the years that the Blue Card was debated, but when member states finally agreed on the Directive, most countries were hit severely by the economic crisis. Many have responded by trying to reduce TCN in-migration through restrictive measures in order to protect labour market access (such as Ireland and the UK), but there are also some cases when policies towards high-skilled immigrants became more open (e.g. Germany and Sweden – see Berg and Spehar 2013 in this issue).

In previous work (Cerna 2008, 2010), I have argued there is great diversity in the conditions attached to HSI policy among member states since coalitions between domestic high-skilled labour, domestic low-skilled labour and capital differ across countries and over time. This diversity in national policies leads to tensions at the EU level and is then resolved in different ways at the national level – as the variety of Blue Card versions outlined below demonstrates. However, it is important to point out that the interests of EU member states regarding the Blue Card might have changed from the time of negotiation to the transposition of the Directive. This could have also affected the relative priority accorded to the transposition in different member states.

Once the Blue Card Directive was passed, participating member states had until 19 June 2011 to transpose the Directive into national legislation. While member states supported openness to high-skilled immigrants, they differed in their responses at the national level. Many member states considered the Blue Card as a complement to their national HSI policies (e.g. Czech Republic and France). For those member states without a specific HSI policy, the Blue Card could be a useful scheme to attract high-skilled workers (such as in Hungary, Slovakia and Spain). Other member states hurriedly implemented their own HSI policy while lengthy Blue Card negotiations at the EU level took place (e.g. Austria). Still others wanted to focus on their national policy and decided to opt out of the Directive.

But a number of participating member states have failed to meet the aforementioned deadline and received warning letters from the Commission. A few lagging member states are not unusual; indeed, their number can be considerably higher (as was the case for the Researchers' Directive where the EU launched infringement procedures against 17 member states). Overall, compliance to the Blue Card Directive has been mixed.

In October 2011, the Commission formally requested six member states (Germany, Italy, Malta, Poland, Portugal and Sweden) to comply with the rules of the Blue Card. The Commission had already sent letters of formal notice to these six countries in July 2011. Three of them (Italy, Malta and Portugal) did not signal any such measures within the set deadline (two months). The remaining three member states (Germany, Poland and Sweden) replied to the letters but indicated that implementing legislation would not enter into force until 2012. The Commission then sent reasoned opinions to them as well (Commission 2011).

As of 27 February 2012, additional three member states were found to still be operating too many barriers for high-skilled people to come and work in the EU. Despite having been warned, Austria, Cyprus and Greece had not transposed the rules of the Blue Card Directive. Therefore, the European Commission issued reasoned opinions (Article 258 TFEU) requesting these three countries to bring their laws into in line with EU legislation (Commission 2012a). Austria, for instance, implemented a national alternative to the Blue Card (its own HSI policy is now called the 'red-white-red card') in July 2011 but delayed the transposition of the Blue Card Directive until 2012. At the same time, the Commission decided to end the proceedings against Malta (IP/11/1247), Romania and Luxembourg. The latter states were late in implementing the Blue Card Directive, leading the Commission to start legal proceedings against them, but they have brought into force the national legislation necessary to apply the Directive (Commission 2012a). The following table offers the first account of member states' compliance with the Blue Card Directive and examines the rights and conditions transposed into their national legislation. There is limited empirical material for some country cases, so considerable research (see sources for Table 1) has been done for this article in order to present different national versions of the Blue Card. The lack of publicly available information on national Blue Cards also might indicate their low prioritisation, their apparently low significance in some member states' immigration policies or member states' unwillingness to acknowledge this EU-level scheme as part of their national immigration policy.

Table 1 presents key aspects of the transposition in 17 countries. Denmark, the UK and Ireland all exercised their opt-out from the Directive, leaving seven countries for which no data have been presented. The non-included member states are Cyprus, Greece, Lithuania, Poland, Portugal, Slovenia and Sweden. Of these, Cyprus and Greece, and possibly Lithuania and Sweden (information is incomplete), still have not transposed the Directive. The national versions of the Blue Card demonstrate different admission requirements and conditions. For instance, applicants for the Bulgarian Blue Card need a higher education certificate and have at least five years of experience in the job position, with an annual salary threshold of at least €8280. However, it is necessary that no suitable Bulgarian worker is available for the vacant position (i.e. resident labour market test). The holder can work in Bulgaria for two years and then can renew his/her Blue Card. The processing time is short (15 days) and family members can accompany the Blue Card holder (Novinite 2011).

The Czech Blue Card is a combined work and residence permit which came into effect on 1 January 2011. An applicant needs to have a high-level professional qualification and meet the minimum salary requirements. An employment contract is necessary and the employer has to advertise the position for at least 30 days on the website of the Czech Ministry of Labour and Social Affairs. The Blue Card is valid for the duration of the employment contract, plus three months for departure, up to two years (with possible extensions) (Fragomen 2011; Ministry of the Interior of the Czech Republic 2012).

To obtain the French Blue Card, the applicant has to have a three-year degree or five years of work experience, and an employment contract of at least one year. The job must pay at least 1.5 times the minimum salary set by the government (about €47,898/year). No labour market test is required. The Blue Card is valid for three years (consistent with national high-skill permit, the Skills and Talent visa),

Table 1. Selected member states and their versions of the Blue Card.

Member state	Education	Work experience	Salary threshold	Labour market test	Family members	Duration	Possibility for renewal?	Decision/ other comment
Austria	Three-year diploma	?	€52,418	Yes	Yes	Two years	Yes	90 days
Belgium	Three-year diploma	Or five years	€49,995	No	Yes	One year	Yes	?
Bulgaria	Three-year diploma	Or five years	Around €8,280	Yes	Yes	Two years	Yes	15 days
Czech Republic	Three-year diploma	Or five years	€17,426	Yes	Yes	Two years	Yes	90 days
Estonia	Three-year diploma	Or five years	€14,400	Yes (need consent from Unemployment Insurance Fund)	Yes	At least one year	Yes	?
Finland	Three-year diploma	Or five years	€57,984	?	Yes	Two years	Yes	90 days
France	Three-year diploma	Or five years	€51,444	No	Yes	Three years (or duration of contract)	Yes	90 days
Germany	Three-year diploma	Or five years	€44,800 or €34,900 for severe skills shortage occupations	No (except for shortage occupations)	Yes	Four years (or duration of contract)	Yes – permanent residence after three years (two years with good German language skills)	?
Hungary	Three-year diploma	Or five years	Around €11,950	Yes	Yes	One year	Yes	30 days

Table 1 (Continued)

Member state	Education	Work experience	Salary threshold	Labour market test	Family members	Duration	Possibility for renewal?	Decision/ other comment
Italy	Three-year diploma	Or five years (profession must be at Levels 1–3 of ISTAT)	€25,000	No	Yes	One year	Yes	90 days
Latvia	Three-year diploma	?	€12,000	No	Yes	One year	Yes	?
Luxembourg	Three-year diploma	Or five years	€66,564	No (but employer has to register vacancy)	Yes	One year	Yes	90 days
Malta	Three-year diploma	Or 10 years?	Around €22,500	Yes	Yes	One year	Yes	?
The Netherlands	Three-year diploma (validated)	Or five years	€60,000	?	Yes	One year	Yes	90 days (15 if sponsor recognised)
Romania	Post-secondary qualifications	Or five years	Four times average salary (around €24,000)	No	Yes	Two years	Yes	15 days; quota of 1000 for 2012
Slovak Republic	Bachelor's degree	Or five years	€13,800	Yes	Yes (Temporary residence permits)	Three years or duration of contract	Yes	30 days

Table 1 (Continued)

Member state	Education	Work experience	Salary threshold	Labour market test	Family members	Duration	Possibility for renewal?	Decision/ other comment
Spain	Bachelor's degree	Or five years	€33,767	Yes (need to be on shortage occupation list), but no if filed through Large Business Unit	Yes, but need special residency permit	One year	Yes (for period of 2 years)	90 days?

Note: Unless noted otherwise, the salary threshold is 1.5 times average gross yearly salary in member state (the yearly salaries were either computed by author or taken from official documents). Only Romania differed in its requirement of four times the annual salary. The salary threshold for shortage occupations (1.2 times salary) is usually not indicated. ISTAT-National Institute for Statistics.

Source: Author's own data, compiled from national ministries, legal firms and relevant EU websites (such as Ministry of the Interior of the Czech Republic 2012; EU Immigration Portal 2012; Fragomen 2011a, 2011b, 2011c, 2011d; Immigration Professionelle 2012; Kroes 2011; Local Knowledge 2011; Ministerio de Empleo y Seguridad Social 2012; Ministry of the Interior of the Czech Republic 2012; Novinite 2011; Tagesschau 2012). However, the information found was sometimes contradictory, so efforts were made to rely on official documents. Data availability varied across member states.

or the duration of the employment contract, whichever is less. Dependent family members are granted combined residence and work permits for one year, which are renewable (Fragomen 2011b; Immigration Professionnelle 2012).

For a Romanian Blue Card, an applicant has to demonstrate post-secondary educational qualification and an annual salary of at least *four* times the average gross annual salary for a similar position there (about €24,000/year). If working in a regulated profession, s/he has to have relevant educational qualifications or work experience necessary. Processing times are shorter for Blue Card holders (15 days) than for regular permits. The Blue Card is valid for two years (renewable), and family members can accompany the holder and work. A quota of 1000 permits was set for 2012 (Fragomen 2011c).

To qualify for the Slovakian Blue Card, the applicant needs a salary of at least 1.5 times the average gross monthly salary in the relevant industry sector (about €13,800/year). S/he is also required to possess higher professional qualifications (such as a bachelor's degree or higher, or evidence of five years of professional experience in the field). The Blue Card is valid for the lesser of (1) three years or (2) the duration of the holder's employment contract. The holder is able to obtain permanent residence after this initial period. Dependent family members are granted temporary residence permits (Fragomen 2011d).

Spain has implemented the Blue Card under a royal decree from 30 June 2011. To qualify, an applicant needs to possess a higher education qualification of at least three years or a five-year work experience in the relevant occupation. The salary threshold is at least 1.5 times the average annual salary (about €33,767/year). A labour market test is necessary unless the application is filed through the Large Business Unit. The Blue Card is valid for one year (renewable), and family members can accompany the permit holder and work (Fragomen 2011a; Ministerio de Empleo y Seguridad Social 2012).

There are some tensions and competition between national HSI policy and the Blue Card across member states. Blue Card conditions are often more restrictive than national alternatives to this scheme (Wiesbrock and Herzog 2010). To take the Dutch example, the (national) Knowledge Migrant Scheme (KMR) co-exists with the Blue Card. The KMR involves no skills or education test, only a salary threshold, which is €50,619 for those aged 30 or over, and €37,121 for those under 30 (as opposed to €60,000/year for the Blue Card). The Blue Card application process is laborious and slow: processing time is four weeks, in contrast to two weeks for KMR (Kroes 2011).

More favourable conditions for the national HSI policy than the Blue Card are also visible in Belgium. The Blue Card applicant needs to have higher professional qualifications (diploma of higher education of three years minimum), hold a contract of indefinite duration or minimum of one year and receive an annual salary over €49,995 gross. For the national HSI programme, an applicant needs to possess a diploma of higher education or university and have an annual salary exceeding only about €36,604 gross (Local Knowledge 2011).

Of course, not all member states are participating in the Blue Card scheme as they prefer to focus on their national policies to attract high-skilled immigrants and reject EU-level regulation (such as Denmark, Ireland and the UK). The implementation of the Blue Card reveals a national focus – many member states prioritise their own policy, though Germany (the proposal passed both Bundestag and Bundesrat, and came into force in August 2012) plans to focus on the Blue Card instead of

changing its own policy. This is mostly due to the domestic political constraints, which is quite common in German policymaking (Falkner et al. 2005, 333).

To be more precise, Blue Card applicants in Germany need to have a university degree and proof of earnings of at least €44,800/year (instead of €63,600/year under the national policy). Holders will get a temporary residence permit, which could be turned into a permanent one after three years in a given job. For engineers and technicians in professions with severe skills shortages (such as IT, medicine and engineering), the annual earnings threshold is lowered to €34,900/year. There is no labour market test, except for shortage occupations – where the same salary and working conditions as for national workers have to be guaranteed (Kinkartz 2012; Tagesschau 2012). The next section assesses the extent of this diversity and what it means for a rights-based mobility.

The diversity of transposition and rights-based mobility

Despite the EU's vision of an 'Area of Freedom, Security and Justice' with free movement rights for EU workers and foreign long-term residents (see editorial in this issue), temporary restrictions on the movement of new EU member states and opt-outs for particular EU policies exist in practice. Considerable variation is visible in the practices of employment and residence regulation. This article adds to accounts which have shown that the regulation of mobility and migrant rights in the EU entails significant differentiation and implies both diversity and inequality in migrant experiences (Carmel and Paul 2013). The Blue Card, despite its significance as a key piece of EU legislation on TCN migration, is no exception.

EU member states have different priorities, labour market needs and reception capacities (Hailbronner 2010). The analysis of the Blue Card transposition in this article indicates that Blue Card applicants thus face varying requirements in admission criteria and rights granted, depending on which member state they apply to. The data analysis has shown that while the qualification and salary threshold requirements (1.5 times the annual gross salary, 1.2 times for shortage occupations) are more or less the same in all member states analysed for this article (except for Romania), still, differences prevail in categories such as the actual salary needed (€8280–66,564), the necessity of a labour market test (and under which condition/s), the duration of the permit (1–4 years) and processing time (15–90 days). Of course salary thresholds depend on the average annual salaries in member states, which reflect different living standards and purchasing power. One member state (Romania) has already implemented an annual Blue Card quota.

The tensions between openness and closure are highly visible in the HSI area. The main findings from the empirical analysis demonstrate that diversity in transposition exposes the limits of the EU-regulated liberal labour migration regulation and hence undermines the idea of rights-based mobility, even for the supposedly desirable high-skilled TCNs. The diversity identified here has mobility-related implications, which further limit the extent to which this EU Directive can be interpreted as regulating migrant rights. Gümüs (2010, 439) claims that 'the vast differences in the definition and admission criteria for high-skilled workers clearly limit their mobility throughout the EU, affecting the efficient re-allocation of human resources already legally resident and hampering the overcoming of regional imbalances'.

The EU promotes the existence of ‘border-free Europe’, yet there are borders for TCNs not only from outside the EU but also within the EU. Blue Card holders can move to a different member state after 18 months, but only if they can receive a job offer in the second state and re-apply for a Blue Card there. In the context of the theme of this special issue this constitutes a rather conditional approach to free movement – rights-based mobility in the EU depends on member states’ authority, and their willingness to grant such a right. It is far from automatic – a differential practice is at play. Such treatment is visible in the conditions member states attach to their ‘national’ versions of the Blue Card. The Blue Card eligibility criteria are demanding, and admission can be more difficult than under national HSI schemes. The dual existence of national and EU schemes matters for our understanding of EU rights-based regulation because member states can choose to establish more conditions, resulting in less rights-orientation, when transposing the Directive.

The diversity in the Blue Card regulation described in this article indicates that labour market measures, dividing the EU territory into 27 separate labour markets, contradict the main goal of one labour market (Carrera et al. 2011, 12). But member states continue to be hesitant that more EU regulation adds value to the migration field, which has been based on the national principle of sovereignty (Carrera and Guild 2010). Therefore, they remain in charge of admission volumes and decide to grant or refuse permits to TCNs for any profession or economic sectors, in any region (Council 2009, Article 6). To add to the diversity within the rights-based approach, any member state issuing Blue Cards has to observe the Community preference (Commission 2007b): high-skilled migrants can only be granted a work permit if no qualified EU worker can be found (Gümüs 2010).

Blue Card holders should enjoy equal treatment with EU nationals in several areas, such as working conditions, freedom of association, education and vocational training (but access to grants can be restricted), recognition of qualifications (in accordance with national procedures), provisions regarding social security and pensions (member states can restrict this to long-term resident TCNs), access to goods and services (public housing can be excluded) and free access to the entire territory of the member states (Guild 2007, 5; Gümüs 2010).⁷ The tension between openness and closure at the member state and EU level remains evident. As a result, EU legislations contain low minimum standards, wide discretion for application by member states and restrictive exceptions even to the main elements and rights (Balzacq and Carrera 2005, 1). As we have seen, the Blue Card Directive is no exception.

What implications do these findings have for the regulation of labour migration? The principle of free movement for intra-EU migration (both fundamental freedom and right of EU citizens) can be contrasted with the relative ‘unfreedom’ of the labour migration of non-EU nationals and the persistence of closure (Carrera et al. 2011, 2). Rather than operating a rights-based mobility approach, the EU continues to be founded on an inclusion of EU nationals versus exclusion of TCNs’ principle. In this regard, Carmel (2011, 52) convincingly argues that ‘one of the defining features of EU migration governance has been the explicit and determined institutional, legal and discursive separation of policies concerned with the migration of non-EU citizens and those of EU citizens’. However, in practice the political situation is more contested and ambiguous as there are differences within EU member states and between citizens. In contrast to earlier policies, the Stockholm

Programme has placed ‘a Europe of rights’ (i.e. respect for fundamental freedoms and integrity) as the premise upon which any measures are to be based (Carrera and Guild 2010, 4). The question remains whether such a goal can be achieved.

Conclusion

Through the example of the Blue Card’s transposition across member states, the article has shown that there is a continuing tension between openness and closure in member states’ policies and EU integration in labour immigration policy towards TCNs. Even for the Blue Card, which targets the generally more welcome high-skilled TCNs, member states have made sure they kept authority to determine numbers and conditions of TCNs and retained the possibility to refuse entry.

The national Blue Card versions demonstrate the varying resolution of the underlying tensions between openness and closure. The interaction between EU and national systems is complex, and member states are allowed much derogation. Diversity in Blue Card versions could in the end decrease the EU’s attractiveness to high-skilled migrants (Peers 2009, 410). Contributing to the literature on transposition of EU directives, the article has provided a first account of different national Blue Card versions. The lack of interest and delays in the transposition of the Directive reflect some hesitance by member states regarding the value-added of the Blue Card.

While a rights-based approach might apply to most EU citizens, this is less apparent in the case of TCNs. The Blue Card is advertised as an EU initiative and sends a clear signal that the EU is serious about attracting high-skilled immigrants and allowing them to access a second member state (it is the only EU migration policy where intra-EU mobility is part of the regulation). Yet in practice, applicants have to compare and apply for national Blue Card versions. The EU and its member states appear less serious about a rights-based approach to mobility and free movement of labour – one pillar on which EU integration is based.

What does this example tell us about broader labour immigration issues in the EU? If even the Blue Card has led to such challenges, it does not seem likely that member states will fully embrace the recent Commission proposals on intra-company transferees and seasonal workers. The Blue Card example indicates that member states have not given up their competence on labour migration as they retain the right to set admission criteria and conditions. In the new Lisbon Treaty, co-decision has for the first time become the ‘ordinary legislative procedure’, even for labour migration (Article 79, TFEU) (Cerna and Chou 2012). This means that the Council no longer needs a unanimous majority to decide on labour migration regulation, and legislation is co-decided with parliament. These procedural changes were designed to make it easier to secure agreement of labour migration legislation. However, given the evidence presented in this article on the uneven transposition of the Blue Card, it remains to be seen whether even these Treaty changes will facilitate the resolution of tensions between openness and closure across member state and EU levels in the future.

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Notes

1. Europe 2020 continues the Lisbon agenda, but it is a new approach. While retaining the ‘Growth and Jobs’ agenda, EU2020 aims to address poor implementation and differences across the member states in speed and depth of reforms (Commission 2010b, 2010c).
2. Cross-border mobility varies according to member state, from 13.3% of Cypriot citizens to 0.4% of Austrian nationals (Bonin et al. 2008). However, mobility is hard to measure due to limited, incomplete or contradictory data, and shortage of transnational surveys (Zimmermann 2009).
3. EU8 are Czech Republic, Estonia, Hungary, Latvia, Lithuania, Poland, Slovakia and Slovenia.
4. ‘EU directives specify certain goals that must be achieved in every member state. Within a set time period, national authorities have to adapt their laws to meet these goals, but are free to decide how to do so’ (Commission 2012b).
5. The link between diminishing internal border controls and strengthening external borders rests on the assumption that control happens mainly at the border. Granting of work and residence permits and providing access to welfare provisions are more important mechanisms for control (Huysmans 2000, 759).
6. Reasons include language, family and social networks, cultural differences, diversity in labour markets and needs and the absence of recognition of qualifications (Zimmermann 2009).
7. Guild (2007, 5) argues that the ‘the list does not conform either to the ILO 97 or Council of Europe Convention’ on Legal Status of Migrant Workers 1977 (ten member states have signed it). To date, only ten member states have ratified ILO C97 and only five the ILO 143, while none have ratified the UN Convention on the Protection of the Rights of Migrant Workers and Their Families (Oberreuter 2011, 7).

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