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The Migration of Highly-Qualified into the European Union. Is the European Blue Card Pointing towards a Common Admission System?

Comparative Analysis of the Implementation of the Council Directive 2009/50/EC
(Blue Card) in Austria and Germany

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Declaration of Academic Honesty

List of Abbreviations

§	Section (of a legal Act)
AMS	Public Employment Service Austria (Arbeitsmarktservice)
AufenthG	Residence Act (Germany) (Aufenthaltsgesetz)
BAMF	Federal Office for Migration and Refugees (Bundesamt für Migration und Flüchtlinge)
EC	European Community
ECJ	European Court of Justice
EEA	European Economic Area
EMN	European Migration Network
EU	European Union
HQ	Highly Qualified
JHA	Justice and Home Affairs
LP	Liberal Paradox
MS	Member States of the European Union
NAG	Residence Act (Austria) (Niederlassungs- und Aufenthaltsgesetz)
OECD	Organization for Economic Co-operation and Development
ORF	Austrian Broadcaster (Österreichischer Rundfunk)
RWRC	Red-White-Red-Card (Austria) (Rot-Weiß-Rot-Karte)
TCN	Third Country Nationals
TFEU	Treaty of the Functioning of the European Union
ZAV	International Placement Service (Germany) (Zentrale Auslands- und Fachvermittlung)

1 Introduction

“With today’s proposal for an EU Blue Card we send a clear signal:
highly skilled migrants are welcome in the EU!”

(Jose Manuel Barroso in Spiegel, 7 Nov. 2007, in Gümüs 2010:436)

Current headlines like “Migration wanted” in Germany (Die Zeit, 6.2013) or initiatives like “We are Austria”, a thematic week in the media about multiculturalism in Austria (ORF, 3.2013) show the topicality to deal with migration. Labour shortages and demographical changes in Europe are further discussed on political levels and call for immediate action (von Loeffelholz, 2011). In this context the “migrants wanted” are usually legal labour migrants, which will also be the focus of this thesis.

In the following, the *Liberal Paradox* and the structure of the EU as a *sui generis* are introduced to offer an understanding of the difficulties of MS to manage migration properly. The recently implemented Blue Card Directive dealing with the admission of HQ labour into the European Union is thereby interesting from the perspective of both concepts. The Directive is regarded as the first concrete established European legislative act in the sensitive policy field of legal labour admission of TCN (Genchev, 2011:19). This might have implications for the harmonization in this policy field but might also be supportive to the hypothesis that the MS are able to overcome their individual liberal paradoxes. If this was the case MS would be able to harmonize to attract HQ TCN by the most attractive admission system: a European wide. To analyse whether such a system was put forward with the Blue Card Directive this research questions its implementation in two European countries:

Does the implementation of the Council Directive (2009/50/EC) in Austria and Germany point to the introduction of a European wide system for the admission of highly qualified?

Firstly, the theoretical frame of the *Liberal Paradox* as well as the European structure is provided and the choice of research design and methodology is explained. In the analysis the Directive and its implementation in Austria and Germany serve as ground to answer the research question. The discussion part reflects upon the research carried out, its strengths and weaknesses. Implications that arise from the findings of the current stage are presented according to both introduced concepts: First, the likeliness of harmonization and implications for the role of the EU in migration management. Second, reasons for the behaviour of the MS as can be found in the forces of the *Liberal Paradox*.

2 Theoretical Considerations

2.1 The Globalized System

Various scholars and theories in international relations offer approaches to explain today's globalized world system. For this thesis the realist Hollifield and his approach of liberal institutionalism in migration policy will be used and elaborated. Hollifield (2013) describes today's world system as a chair consisting of three legs: goods, capital and labour. Globalization means that these three commodities move in form of trade, finance and migration. Importantly in a globalized system different regimes to manage the exchange of goods and capital exist, but none that manages the movement of people. "There is no regime for regulating migration that comes close to the type of regime that exists for trade (GATT/WTO), or for international finance (IMF/World Bank)." (Hollifield, 2008:208)¹ While this opening up for trade and finance occurs, migration seems to be hampered.

"[...] [C]ontemporary liberal politics is characterized by its neglect of free migration. The current form of globalization has so far been partial, selective – tearing down barriers to the movement of goods and capital, while simultaneously strengthening control over the movement of people." (Kalm, 2012:51)

In the absence of a powerful regime for legal migration the most dominant actors remain states, which are based on the principles of sovereignty and non-interference (Hollifield, 2008:198).

2.2 The State as Migration Manager

Since the Westphalian peace states are considered as unitary actors in international relations. The self-definition of states is the successful demand of power and sovereignty over an area and its people. Because of migration this self-definition is questioned dramatically, even if the exclusive competence to formulate and implement migration policy still remains within the states power (Kicinger, 2013:9). Hollifield uses a Weberian metaphor to explain the role of the state in international migration:

"[...] [T]he speeding train of international migration is fuelled by economic and sociological forces, but it is the state that acts as a switching mechanism, which can change the course of the train, or derail it altogether." (Hollifield 2008: 196)

¹ There exist international organisations dealing with economic migration such as the International Organisation for Migration (IOM) or the International Labour Office (ILO). But Hollifield (2008:208) describes them as "not besieged by demands for action."

Additionally the European states are faced with the logic of welfare states. To be able to maintain the high standards for their citizens “welfare states are expected to operate with the assumption of closure.” (Soysal, 1998:191) However, states do also need labour migration. Similar to those of trade and finance the economic advantages of movement of labour are undeniable. Migrants can fill job vacancies, spread knowledge and new ideas, balance demographical developments and enrich the social and cultural life. Modern liberal states are therefore faced with a paradox.

2.3 The Liberal Paradox

According to the Liberal Paradox of Hollifield the economic logic of liberalism, globalization and free movement of commodities pushes states towards greater openness while the political logic of welfare states and sovereignty pushes them towards closure (Hollifield, 2004:887). However, migration is a sensitive issue as in contrast to other commodities that move, it involves people (Ghosh, 2012:29). As migrants are no commodities but humans, they acquire rights in liberal democracies. Liberal states are bound and limited in their decision makings by their laws constituting their own right of existence:

“[...] [R]ights in liberal democracies have a long half-life. Once extended, it is difficult to roll them back, which may explain why many liberal states, especially in Western Europe are so reluctant to make even small or incremental changes in immigration and refugee law.” (Hollifield, 2008:197)

States fear to relax their admission systems, as migrants once living in their state will acquire rights, which often results in more immigration. The policy of family reunion in the 1960s and 1970s dramatically showed this logic to Western democratic states (Bommes, 2011:120). In addition, international conventions and charters have granted rights to individual migrants based on universal personhood of each individual. During the past this development weakened the European countries’ ability to control rights normally granted because of the legal status of citizenship. Because the EU is a free migration area a transfer of the national modes of citizenship, towards a supranational form on the European level is expected (Soysal, 1998). While the Maastricht Treaty already introduced a rudimentary form of European citizenship, states are reluctant to grant such rights to TCN. Hollifield (2013) points out that in the long run it is important, especially for liberal states, to include people inside their national contracts. This duality between openness and closure and the fundamental role rights play in liberal democracies can be used to explain the struggling of modern liberal states to manage migration properly.

2.4 The Competences of the European Union

In the Foreign and Security Policy an intergovernmental European approach has dominated at all times (Link, 2012:24). Most researchers therefore regard the topic of legal migration as dependent on the decisions of the individual MS (Thränhardt, 2011b:348). The EU only holds few competences and MS manage the policy field according to their own interests in a intergovernmental way. Still, the EU can influence migration management by “hard” legal outputs, for instance in the form of Directives (Boswell & Geddes, 2011:70). MS are free to implement Directives according to their own needs, yet they must adopt the principles into their national law. Notably the process of European integration has been most extensive when the MS were driven by a common interest to develop solutions against common problems and consequently delegated power to the supranational level (ibid., 2011:228).

2.5 The Liberal Paradox and the European Union

For several reasons the role of the EU in managing migration and its relation to the LP is unique. For European citizens inside the EU no Liberal Paradox exists (Thränhardt, 2011b:351). Thus, the EU is repeatedly called an important exception, which developed its own regional regime for managing migration (Hollifield, 2008:208). However, the LP becomes evident again at the external borders to non-European countries. Due to the principle of free movement inside the EU, one MS’s admission system for TCN is also of crucial interest for all other MS. In politic reality it is acknowledged that migrants of one MS in the process of settling become migrants of the EU (Bommes, 2011:131).

“The most comprehensive legal enactment of a transnational status for migrants is encoded in European Communities law. Citizenship in one EC member state confers rights in all the others, thereby breaking the link between the status attached to citizenship and national territory.” (Soysal, 1998:198)

Accordingly a link between the LP and the admission practise of the European MS can be observed: the MS are not only trapped in their own LP but also in a free migration area. Hence the openness within the EU is crucial for understanding its demand for external closure (Boswell & Geddes, 2011:31). In general the likeliness to deal properly with all Liberal Paradoxes in the EU and to adopt a common management of migration is low and a behavioural change would demand a strong common interest of all MS. However, if such an interest existed, the MS were able to overcome their individual Liberal Paradoxes by delegating power to a supranational level. The thereby established supranational authority or regime would support the MS by setting common rules and regulations to finesse their individual Liberal Paradoxes (Geddes in Hollifield, 2004:903).

3 Methodology

3.1 Case Selection

The policy field migration can roughly be divided into two aspects, which are often considered as “two sides of the same policy coin” (European Commission, 2011:2). These are the admission of foreigners and their integration, whereby this thesis focuses on the former. Many scholars consider one universal approach or blanket harmonization of migration channels into the EU as not realizable due to the differing interests of states (von Weizäcker, 2008:2). As a consequence each MS has to deal with its own LP regarding the admission of TCN. Some institutions and scholars try to make sense of international migration by putting migrants into categories. This is a questionable ethical choice, but has various practical reasons (Boswell & Geddes 2011:13).

Especially one clear exception and common attitude of all European states towards a specific category of migrants can be identified: highly qualified or skilled migrants are welcomed in all European countries (Hollifield, 2013; von Weizäcker, 2008:2). Therefore within the field of migration management the group of HQ workers provides the ideal starting point of a research as it lies in the common interest of all MS to attract such migrants. This interest, from the logic of the LP, is an economic force demanding for openness. A current change in this policy supporting the European wide demand for openness is the Council Directive (50/2009/EC) establishing the European Blue Card scheme for highly qualified labour migration. This Directive has been implemented in most MS’s national legislation by now and inherits the described link between the LP and the level of harmonization in migration policy in the EU.

3.2 Hypotheses

The LP describes the duality between forces towards open respectively closed borders. Due to the publicity about needed labour migrants, demographical changes and labour shortages, it could be assumed that the MS and the EU strongly demand labour migration. Consequently, the forces between openness and closure of all Liberal Paradoxes of each MS would require openness more than they demand closure, at least for this limited group of TCN. This leads to is the first hypothesis of this research: Due to their common very strong economic interest, MS were able to overcome their individual Liberal Paradoxes for this highly specialized group of HQ TCN. (1. Hypothesis)

Consequently MS would be able to establish a common approach for dealing with the migration of this group. It serves their own economic interest and the EU as a migration area can offer more to HQ migrants than single states. Von Weizäcker (2008) describes how a European migration system for HQ migrants could improve Europe's attractiveness in the global competition for talent. Moreover, Hollifield (2008:903) states that the great advantage Europe has in comparison to other migration areas is the existence of the European Union "which is not only creating a free trade zone, but also a free migration area." Europe's chance lies in its diversity, which could offer enormous economical, but also cultural incentives to attract TCN. This knowledge builds the second hypothesis of this thesis: MS are able to establish a common European system to attract a high number of HQ TCN to the EU. (2. Hypothesis)

In order to achieve this aim, to build a European wide admission system, MS need to harmonize their individual systems and delegate power. The Council Directive of 2009 deals exactly with this topic, the admission of HQ into the EU. Embedded in the Directive lies the chance to contribute a first step towards a homogenous admission system. Thereby the case of the Council Directive is used for the third hypothesis: The implementation of the Council Directive (2009/50/EC) points towards the establishment of a European wide admission system. (3. Hypothesis)

3.3 Research Design

In the following only the third hypothesis is tested and is used to draw references to the first and the second hypotheses, which are not individually tested but only discussed. In the admission process of migrants states play a significant role. They are the implementers of the Directive and thus serve as the unit of analysis in this research. To be able to estimate, whether the implementation of the Directive points into the direction of a European system, two countries were selected as samples for a comparative analysis. Thereby I chose Austria and Germany to conduct a most similar systems design:

"From the comparative perspective, one well-known model for political analysis is the 'most similar systems design'. In such a design countries that share many economic, cultural and political characteristics are seen as 'good' samples." (Ludvig, 2004:504)

Germany and Austria have numerous similarities, which qualify them as appropriate for this research design. The particular demographical situation in Germany and Austria is alike. Both countries had relatively low fertility rates since the 1970s and are not expected to be able to significantly change this situation soon. The reasons are cultural and structural incompatibilities in the societies, which will further limit recovery of fertility in the future

(Bijak, 2013:97). Furthermore, both countries are traditionally self-professed ‘non-immigration’ countries and had guest-worker politics going back to the mid-1960s (Ludvig, 2004:500). In Austria and Germany TCN are overrepresented in the group of lower educated, which also shows both countries’ difficulties to attract HQ labour from foreign countries (European Commission, 2011:30).² Regarding the already stated research question it could be expected that very similar countries such as Austria and Germany are able to implement the Blue Card in a similar way. If even very similar countries like the two samples have implemented the Directive in a dissimilar way this does strongly contradict the possibility to establish a common European admission system with the Blue Card. During the research, aspects that point towards the establishment of a European wide system and those, which point against, might be discovered. The findings can be used in a second step for possible generalizations on the European level. In this respect, the second hypothesis and the likeliness of a common system in Europe for legal migration of highly qualified is questioned. Finally, the first hypothesis and the finessing of the individual liberal paradoxes of the MS for this specialized group will be regarded as well.

3.4 Operationalization

To analyse the current stage of harmonization the considerations for an attractive European wide system have to be defined. Based on my research of literature I identified a number of indicators that might be important for future migrants.³ Therefore I posed myself questions like: What would a European wide scheme ideally look like? What would make this scheme most attractive to highly qualified TCN?⁴ It has to be kept in mind that the unit of analysis is the state. Thus the state as implementer of the Directive only has influences on several aspects that contribute towards a common system. The important elements of a common system include the following aspects:

- Similar preconditions for admission: Do migrants need similar qualifications to be considered as highly qualified? Is the threshold system the same in every country?

² In addition, there exist various other aspects, which show the similarities between the two countries, for a brief overview see Ludvig, 2004:505

³ The indicator “similar preconditions of admission” is based on one definition of systems as an arrangement of patterns forming a whole. The indicator “simple and fast administrative process” is drawn from competition to other programs such as the US Green Card. The indicator of “family friendliness” is included because of the disadvantages of the German Green Card (von Loeffelholz, 2011). The indicators of “permanence” and “portability” were included because of the theory of von Weizäcker (2008) that these aspects are most important. The indicator “exclusiveness” was included by myself as a question each rational migrant would ask himself if the Blue Card is the most attractive possibility

⁴ This is according to the explained situation that such a European wide system would be most attractive

- A simple and fast administrative process: Is the process fast and easily applicable? Does a European administration handle the EU Blue Card?
- A high level of family-friendliness: Is family reunion provided immediately and do family members have access to the labour market?
- Permanence of residence permit: Is the residence permit permanent or offers such a possibility?
- Market size and portability: Do migrants have access to the whole European labour market? Is the EU Blue Card easily transferable to other MS?
- Exclusiveness of the system: Do other admission systems exist, which are more attractive or requested than the Blue Card?

These six aspects are used in the following analysis as indicators to ask in what way these elements of a common system are implemented and put forward by the EU Blue Card scheme. Those might constitute already, or point towards the direction of the establishment of a European wide admission system as suggested in the second hypothesis. Reasons for the behaviour of the MS lead back to the first hypothesis and their Liberal Paradoxes.

My research is based on a desk study, including the Council Directive, the national laws regarding its implementation and documents accompanying that process. Further references are provided by publications in European law and migration journals as well as historic and comparative works about migration into the EU. Reports from the European institutions as well as the EMN and its national report offices have been applied. Finally, media channels, newspapers and websites are used to illustrate the way in which the European public as well as prospective immigrants are informed about the EU Blue Card and migration issues.

4 The EU Blue Card in Austria and Germany

4.1 Migration into the European Union

To be able to analyse the European Blue Card Directive and its implementation the first part of this chapter aims to give a brief introduction. The overview in the next chapter provides a basic understanding of European migration policy especially on the topic of legal labour migration. This will help to understand how and why the European Blue Card Directive was initiated and adopted in the first place. The last section provides an already more detailed, but still only basic overview about the content of the Directive itself.

4.1.1 From Amsterdam to Lisbon

The starting point of cooperation in the field of European migration was the Amsterdam Treaty of 1999. It transferred issues of JHA, which includes migration policies, from the third (exclusively intergovernmental pillar) to the first pillar. Until then and under the Maastricht Treaty (1992) JHA was the exclusive competence of each individual MS, and thus subordinated to the ministries of the interior. As an important aspect of European understanding of mobility the Amsterdam Treaty also incorporated the *Schengen* provisions into the main body of the Treaty (Boswell & Geddes, 2011:58). With the Treaty of Nizza (2003) the community rights, especially in the field of asylum and illegal migration, have been strengthened and co-decision procedures for the European Parliament were introduced. Finally, the current Treaty of Lisbon further expanded the competences of the EU in this policy field (Bendel, 2011:189). Hence, it provides a significant possibility for supranational regulation and changes in the management of migration.⁵ The new Treaty gives the explicit legal basis to deal with migration and “communitarises decision-making on legal immigration – an area which has previously required consensus in Council.” (Parkes, 2010:160) Politics dealing with migration management must further be viewed under the goals of the current Europe 2020 strategy, the successor of the Lisbon strategy (European Commission, 2011:2).

EU policies in JHA, including migration issues, are managed through five-year programs, which are adopted by the European Council. The first program was initiated in Tampere in 1999 and the second in Den Haag in 2004. Since 2009 the current program providing a frame for EU policy in this area, is the so-called Stockholm program, which will be in force until 2014 (Bendel 2011:190). This procedure also receives criticism:

“The five-year rhythm of programming has not been actively synchronised with other European programming processes, despite the clear need to coordinate JHA with ‘neighbouring’ policy areas [...] nor is there any obvious reason to believe that five years is a suitable timeframe for agenda-setting in this broad complex and multi-speed policy area [...]” (Parkes, 2010:161)

It might seem as if the European path of integration in the policy field of migration is constantly granting more power to the supranational level since Amsterdam, but this is not the case. Some policy fields, especially illegal migration, are more communitarized and managed on the supranational level, in contrast to the admission of legal labour migration, which is to little extent coordinated on the European level. Important tools of EU legal outputs in

⁵ Compare Article 77 – 80 TFEU and Article 68 TFEU: „The European Commission shall define the strategic guidelines for legislative and operational planning in the area of freedom, security and justice.“

migration management are Directives as they take precedence over national law and must be implemented. However, they leave room regarding the method of implementation (Boswell & Geddes 2011:57). Such a European tool and legal output to approach legal migration management is the Blue Card Directive 50/2009/EC.

4.1.2 Approaching the EU Blue Card

The context in which the Directive was formulated was the at that time effectual Lisbon strategy. The demographical changes and the lacking of good and high-qualified labour in the EU can obviously be identified as the main reasons (Genchev, 2011:41).

“The EU Blue Card scheme is intended to be the EU’s main instrument in the global competition for highly-mobile high-skilled workers. It aims firstly to solve common problems that Member States face in areas such as falling birth rates and ageing populations, and secondly to remove the disparities between the immigration policies of Member States.” (Gümüs, 2010:437)

Especially the second argument of this quote is notable. With 28 different MS, various different systems for the admission of labour migrants exist in the EU. Originally, the European Commission intended to implement a uniform European framework for legal migration for economic purposes. It aimed to remove disparities between MS and to create a single integrative system. However, the proposal for the Directive resulted in intensive discussion in the European Parliament and was finally adopted in a very alleviated version. In accordance with the wish of the MS the Directive now leaves a strong room for national shaping (Huke 2011:24). Due to this reluctance of the MS, finally four sectoral Directives have been adopted of which the EU Blue Card is only one (Genchev, 2011:41). The European Parliament was in general able to amend the Directive in some respects but for example failed to implement the right for TCN to work in one MS and live in another (Lay, 2010:139).⁶

4.1.3 Content of the Directive

The ‘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’ primarily deals with the conditions of entry and residence in a MS for a period of more than three months for TCN and their family members. It also includes the conditions for the movement from the first entered MS to any other, then called second MS (Article 1).

⁶ For a more detailed discussion about the process of adoption of the Directive see Lay, 2011 pages 126-146. For an overview about the opinions and influences of employer associations, labour unions and NGOs on the EU Blue Card Directive see Huke, 2011

The Directive applies to TCN who are to be admitted to the territory of a MS for the purpose of highly qualified employment. This type of employment in particular includes ‘higher professional qualifications’. These can either be attested by evidence of higher education, at least three years of studies, or by five years of professional experience on a level comparable to such qualifications (Article 2).

Persons who fall within the scope of other treaty provisions or Directives like refugees, researchers, seasonal workers, spouses of EU citizens etc. are excluded (Article 3). The Directive is without prejudice to more favourable provisions. These can be found in Community law, in special contracts between MS and foreign countries and in the country specific legislation of MS (Article 4). As a precondition for the application of the EU Blue Card the TCN has to document a valid job offer and an employment contract in a European country. The salary has to be at least 1.5 times the average gross annual salary of the MS concerned. Particularly in jobs that have an extreme shortage of employees the salary threshold can be reduced to 1.2 times the average salary of the MS (Article 5).

The EU Blue Card enables its holder to stay and work between one and four years in the European MS. It is an immediate combination of entry and work permit. The duration of permit depends on the individual decisions of each MS. Normally the EU Blue Card is valid for the job offer and additional three months, intended to search for new employment. After the expiration of a Blue Card a new Blue Card can be applied for. The standard validity is two years and after 18 months of residence in the country that initiated the Blue Card, the TCN can move to another MS (Article 18). The right to apply for permanent residence permit inside the EU is permitted to TCN who have stayed within one MS of the European Union for a period of five years.

The Directive does not affect MS’s right to control the total number of TCN they want to admit into their territory (Article 6). This is important given the constant fear of the MS to loose control over migration and their sovereignty. The scheme does not form any right of admission and is entirely demand-driven. The MS have the freedom to adapt the scheme according to their market needs. This possibility has a number of benefits for individual workers and for the MS (Gümüs, 2010:442). The Directive left the MS two years to implement the provisions into their national legislation.

4.2 Comparing the Implementation of the Blue Card in Austria and Germany

In both countries the EU Blue Card was implemented into national law by amendments. As an interesting aspect Austria used this new Directive in combination with other economic incentives and European targets to transform their complete admission system for TCN migration in 2011. These changes introduced not only the EU Blue Card, in §42 NAG, as a new residence permit, but also a so-called Red-With-Red-Card, in §41 NAG, and a Red-White-Red-Card Plus, in §41a NAG. In Germany the implementation took more time than the two years provided by the Directive, as the new rules just came into effect on the 1st of August 2012. The amendments mainly included a new paragraph, §19a, into the Residence Act (*Aufenthaltsgesetz*). In the following the approach of a homogenous system should be analysed according to each previously identified aspect. I decided to state the implementation regarding each aspect in Austria and Germany in a first paragraph and to evaluate its comparative effects in a second one. Repetition is avoided so that it is possible to focus immediately on the question of the establishment of a common system.

4.2.1 Preconditions for Admission

For establishing a common system similar preconditions for issuing a Blue Card must be given in all countries. According to the Directive, applicants for the EU Blue Card need to prove at least a one year valid working contract in a highly qualified area of occupation. Furthermore their admission is restricted according to a monetary threshold scheme. Similarly, both countries establish a right of residence and working permit when these preconditions are met.

In Austria the rules for applying for a Blue Card are implemented in §42 NAG. The TCN has to prove that his/her salary is at least one and a half time the average Austrian annual gross pay (*Bruttojahresgehalt*). This marks a salary threshold of € 54,409.50 annually in 2013. In Germany university graduates and people who can document five years of professional working experience can receive the Blue Card (§19a(1) *AufentG*). There exist two different groups, which can apply according to different salary thresholds (§19a(2) *AufentG*). The first group of people needs to prove high qualification and a binding job offer with a salary of € 46,400 annually for the year 2013. The second group are graduates in a shortage occupation, they need to earn € 36,192 annually to be able to apply for a Blue Card in 2013.

The Directive does not say anything about the process of recognition of qualifications. There is no common EU scheme for determining qualifications earned in non-European countries. It may be the case that one MS accepts a qualification as sufficient for a Blue Card while

another does not (Gümüs, 2010:446). This might be one of the reasons why the salary threshold based system was introduced as it is easily comparable. However, this handling receives criticism:

“More importantly, a Blue Card that can be obtained on the basis of, say, monthly earnings of as low as €400 in Romania is unlikely ever to be accepted throughout the EU. A more promising approach would be to allow skill, age, language skills and other migrant characteristics to determine eligibility for a Blue Card.” (von Weizsäcker, 2008:4)

In the current Blue Card implementation the “real” qualification of the highly qualified worker is not decisive. Most important is the salary, which thereby receives an “imperative role” (Genchev 2011:45). However, when comparing Austria and Germany it can be stated that the preconditions are quite similar based on the binding working contract for at least one year and the similar required salary.

4.2.2 Simple Administrative Process

A common system would require immediate and transparent administrative procedures. Notably, the EU Blue Card Directive did not establish any European administration to deal with its implementation and praxis. Thus the ministries of the interior in each country and their subordinations are responsible for the administrative procedures.

In Austria the administrative process is handled according to §42(2) NAG. The regional office of the working service (*Arbeitsmarktservice, AMS*) decides upon the admission of TCN within a maximum of eight weeks. Hence, the implementation in Austria is processed quicker than required by the Council Directive, which limits the timeframe to 12 weeks. For the procedure a written document of the AMS to prove the admission criteria is needed. In Germany the Blue Card is normally initiated by the foreigners’ registration office (*Ausländerbehörde*) in the home country of the applicant. If the conditions are met, the International Placement Services (*Zentrale Auslands- und Fachvermittlung, ZAV*) approves the conditions of employment. To reduce the bureaucratic burdens and fasten the process in many cases the obligatory ‘priority review’ (*Vorrangprüfung*)⁷ is omitted and the examination of working conditions is not taking place anymore. Only for graduates of foreign universities and applicants for shortage occupations, with a lesser salary threshold, examinations of working conditions are obligatory, however no priority reviews. Regarding administrative

⁷ During a priority review (*Vorrangprüfung*) the Employment Agency (*Agentur für Arbeit*) evaluates if the job offer could be filled by so-called “bevorrechtigte Bewerber“. Such are in general persons from the EEA. Only if the Employment Agency states that the free job offer could not be filled with an employee from the EEA it issues an admission for a residence and working permit for a TCN.

procedures the admission is valid if the ZAV does not contradict the issuing within two weeks (Bundesagentur für Arbeit, 2013).

As can be seen in both countries, the legislature tries to establish a quick and less bureaucratic system. However, the administrative procedures in Germany and Austria are not very alike. In addition, this was only a brief summary and more administrative difficulties might occur on an individual basis.

4.2.3 Family-Friendliness

A common attractive system would require advantageous conditions for family reunification and their labour market access. According to Article 15 of the Directive, family reunification is immediately possible in the first as well as in the second MS (Article 19).

In Austria, family members of holders of the EU Blue Card are entitled to receive a RWRC Plus, as a residence permit (§46(3) NAG). This residence permit includes the immediate access to the labour market and thereby fulfils the conditions of the Directive. In addition, family members of Blue Card holders do not have to prove knowledge of German, as they are exceptions as defined in §21a NAG.⁸ In Germany family reunification is made possible within a maximum of six months. Family members are provided with immediate access to the German labour market defined in §29(5) AufenthG.

The implementation of this aspect is easily understandable in both countries. The conditions for family members are very advantageous, as they do not require any knowledge of languages, a job offer or any other preconditions.

4.2.4 Permanence of Resident Permit

Von Weizäcker (2008) states that the more permanent a residence permit with access to the labour market is, the more attractive it is for highly skilled migrants. In this respect, the duration of stay and the possibilities to accumulate time for a permanent European residence permit are important. The EU Blue Card in Article 16(2) of the Council Directive should explicitly make this possible.

According to §42(4) NAG the residence permit of a Blue Card is usually granted for two years and may be for a shorter period of time as long as it is covered by a working contract. In Germany the Blue Card is issued at first for a maximum of four years; depending on the

⁸ Usually family members of RWRC Plus holders need to prove knowledge of German on a basis of A1 of the Common European Framework of Reference for Languages.

duration of the working contract this can be shorter (§19a(3) AufenthG). In both countries the Blue Card is initiated for the employment contract and additional 3 months. In Austria, Blue Card holders can apply for a Red-White-Red-Card Plus after two years of legal residence⁹ upon which 21 months have been spend in a highly qualified occupation (§41a(2) NAG). In Germany, EU Blue Card holders can apply for a national settlement permit, which is unlimited, after 33 months and already after 21 months if they prove adequate knowledge of German¹⁰ (§19a(6) AufenthG).

Regarding the long-term EC residence permit the migrant has to prove a legal and continuous stay of five years in a European country. Blue Card holders are allowed to accumulate periods of residence in different MS in order to fulfil these requirements according to Article 16(2) of the Directive. These five years may also be interrupted. In Austria §45(5) NAG allows Austrian holders of a Blue Card to stay abroad for a maximum of 18 months in total as long as no stay outside of the EEA-area exceeds 12 months, without considering the five-year period as interrupted. Usually, with different residence permits, this is only possible for ten months in total or five months without interruption. The same rules apply for German Blue Card holders (§9b(2) AufenthG).

The applicants for a permanent residence permit in Austria and Germany have to prove two years of legal and continuous residence within the MS, prior to the submission for the EC-long term residence permit (§45(3) NAG; §9b(2) AufenthG). This can dramatically limit the likeliness of real mobility dealt with in the next paragraph. The permanence of residence permit is different in Austria and Germany and the possibilities for a long-term stay are given, but not within the issuing of the first Blue Card.

4.2.5 Market Size and Portability

The most attractive solution would be a EU Blue Card, which is valid for the whole EU and easily transferable to other MS. Notably the EU Blue Card is a residence and working permit granted in 24 of the 28 European countries.¹¹ Thus it does not include the whole European market, as Great Britain, Denmark and Ireland decided not to participate in the Directive.

⁹ Notable holders of a RWRC can apply for a RWRC Plus already after only one year of residing and working in Austria

¹⁰ A level of B1 according to the Common European Framework of Reference for Languages

¹¹ Regarding Croatia I contacted the EU Blue Card Network online support of the EU. As a response they stated that they have no information of the current situation in Croatia and in addition: “Presumably they will participate in the program, but it take[s] time before EU legislation is implemented in national law.“ (23.07.13)

Regarding the transferability §50a NAG regulates the mobility of Austrian Blue Card holders inside the EU. They are entitled to move to another MS after 18 months of permanent residence in Austria. The holders of a Blue Card from another MS can move to Austria and receive the residence permit Blue Card EU according to the definitions under §42(1) NAG. However, they are not able to use their Blue Card, which is for example issued in Germany to work in Austria. They have to apply for a new Blue Card. In addition, according to §45(3) NAG the accumulation for a permanent EU residence permit is only possible after two years of continuous stay in Austria. Thus, if a highly qualified TCN has already worked for four years with a Blue Card in Germany and then moves to Austria the TCN would have to stay for another two years to be able to accumulate the necessary five years of legal stay and the required two years of previous stay in the country where the application for the long-term resident's EC residence permit is lodged. The same situation is given in Germany according to §9b(2) AufenthG. Here additionally the migrant can only accumulate those stays in another MS, which have been of at least 18 months duration. The situation is even more complicated and less advantageous for the TCN if the Blue Card holder decides to move several times within the five years.¹²

Von Weizäcker (2008:4) argues that “portability would be the principal added value of an EU scheme compared to any national scheme.” Thereby it becomes clear that although Germany and Austria restrict the possibility of mobility in a similar manner, and thus probably account for a similar system, the tone of the system itself is important. Both national implementations contradict a real portability of the Blue Card.¹³ Migrants who move with the EU Blue Card are disadvantaged to those who stay in one country, which cannot be the intention of a real European system.

4.2.6 Exclusiveness of the System

To establish a common European system it would be supportive if the Blue Card was the only and most advantageous solution for TCN. Yet, Germany and Austria have more ways of entry for highly qualified TCN, which are shortly presented in the following.

As already stated, the amendment in Austria in 2011 introduced a completely new admission system for TCN introducing a Red-White-Red-Card and the Red-White-Red-Card Plus. The RWRC can be initiated to TCN with various backgrounds and qualifications. These can be

¹² For detailed observations and calculations on these difficulties in acquiring the long term residence permit as a moving Blue Card holder see Genchev 2011:80-87

¹³ And probably also the Blue Card itself according to Article 16 of the Council Directive

highly qualified employees, qualified employees in shortage occupation, other key workers (*Schlüsselkräfte*), graduates of Austrian universities and self-employed key workers. The RWRC is issued for twelve months and allows its holder to settle for a temporary time and work for one employer. TCN who have successfully worked in Austria for ten months during the year of legal residence on the basis of the RWRC can apply for the RWRC Plus (§41a(1) NAG).¹⁴ The RWRC Plus allows settling temporarily and provides access to the whole labour market. Family reunification is possible according to §46 NAG. Family members of RWRC Plus holders or EU Blue Card holders, as well as those of permanent settled foreigners can obtain a RWRC Plus (Migration Portal Austria, 2013).

Similar to EU Blue Card applicants the regional office of the working service (*AMS*) decides upon the admission of TCN in general. The possibility itself to obtain a RWRC is based on a point system. Higher education, knowledge of language, age, and in some cases working experience or studying in Austria, can influence the point score positively. Hence, a highly qualified TCN does not need knowledge of German if he or she is able to achieve the required number of points in other categories, however, the spouses usually do. In this context the focus to gain HQ workers in Austria does not necessarily refer to workers with the highest educational degrees. Rather it is focused on the professionally acquired competences and experiences explicitly needed in the industry (EMN 2011:25). In total, the newly introduced system emulates classic immigration countries like Canada and is also regarded as positive by the EMN: “It is expected that the new immigration model ‘Red-White-Red-Card’ will facilitate the immigration of highly-qualified third-country nationals.” (EMN, 2011:105)

Remarkably Germany has not yet reformed its admission system for HQ completely, as Austria did. Since the beginning of 2005 with the new Immigration Act (*Zuwanderungsgesetz*) Germany actively supports immigration of defined migrant groups. New incentives from the European Union were adopted with reformation of legislation in the recent years. In general skilled migrants can migrate to Germany according to §§18, 19, 20 and 21 AufenthG (Parusel & Schneider, 2010). However, this migration is not based on a points-based system but sets different preconditions for every occupation, often combined with a certain level of education.

Side by side with the implementation of the EU Blue Card in 2012 additional amendments into the legislation were made. These include advantageous conditions for university

¹⁴ Notably EU Blue Card holders are only entitled to receive the RWRC Plus after two years of working and staying in Austria (§41a(2) NAG)

graduates. Any university graduate can come to Germany for half a year to search for an occupation (§18c AufenthG), graduates of German universities are given 18 months for this purpose (§16(4)AufenthG). Those graduates also receive a settlement permit if they worked in an adequate occupation for two years (§18b AufenthG). The conditions for participants in German vocational systems have been improved as well (§17(3) AufenthG).

In Germany, comparatively little information exists for qualified workers with no degree who want to use the five years of higher employment qualification to apply for a Blue Card. Nevertheless, the law on the implementation of the Blue Card explicitly states this possibility. This is in line with the findings of the EMN which presented Germany as a country where the term ‘highly skilled’ refers at least in part to ‘highly qualified’ in meaning of degrees often focusing on skilled workers in the field of information and communication technology (EMN, 2011:25). According to the BAMF, it is not yet possible to say which impact the changes in the legislation from August 2012 will have. However, it emphasizes the likely improvement of migration channels, for the occupation of highly qualified migrants (BAMF, 2012:72).

The OECD survey “Recruiting immigrant workers in Germany” conducted in 2013 shows a comprehensive overview of the situation in Germany (OECD, 2.2013). Academics and young professionals with high skills and a job offer have good possibilities to migrate to Germany. Especially the Blue Card has proved to be advantageous in this respect. It has been tried to solve the difficulties attested to the system during the last months. At the end of July 2013 the system was revised to account for a broader number of migrant groups. Especially the suggestion of the OECD report, to amend the shortage occupation list by including migrants for lesser-qualified occupations was realized (DW 28.07.13). The criticism concerning the lack of transparency and the complexity of the system is, however, persisting (OECD, 2013).

4.3 Findings

4.3.1 Approaching one System?

According to the research design, if the findings suggest that Germany and Austria were not able to establish a similar system, it weakens the idea of a common system in general as both countries were selected because of their similarity.

Regarding the preconditions for admission the situation is alike in Germany and Austria. This is of course due to the required binding working contract, the proof of higher qualification and the comparatively similar required salary in both countries. From my findings, this points towards the establishment of a common system, although the generally huge differences in

salary inside the EU have to be kept in mind. As could be shown, the administrative procedures of the admissions of TCN in Austria and Germany are not very alike. The new legislature tried to speed up the process e.g. by omitting the “priority review” or shortening the time for admission documents. In total, however, the huge influence of national bureaucratic agencies and the lack of a European administration regarding the Blue Card contradict the establishment of a homogenous system. As a significant improvement to earlier regulations, for example the Green Card in Germany, the Blue Card is very family friendly. The family members of Blue Card holders are allowed to reunite and work immediately. Regarding this aspect the implementation establishes, although individually implemented, a similar and attractive system. Regarding the permanence of residence permit, the validity of the EU Blue Card of two years in Austria and four years in Germany depends on the actual working contract. In addition, the accumulation for a permanent residence permit for the European community after five years is not immediately possible. Although in theory different times of residence can be accumulated, it was shown that these conditions are very limiting and do not encourage real movement inside the EU. This as well as the fact that only 24 of 28 European countries are participating in the Blue Card scheme at the moment shows that regarding its market size and portability the Blue Card is not pointing towards the establishment of a common system.

Regarding the exclusiveness of the system for TCN explicitly wishing to stay in Austria the RWRC Plus would be an alternative to the EU Blue Card. The points-based system is easily understandable and accounts for individual qualifications and does not require a binding job offer. Gümüs (2010:453) expressed his concern that the ability of MS to opt-out may lead to competition between the EU scheme and national schemes. After analysing the implementation in Austria and Germany it can be stated that even a side-by-side implementation between the Blue Card and national schemes leads to this competition as can be shown in Austria. In Germany, for some groups like researchers or students the system has been improved, but in general the Blue Card constitutes the most attractive solution for the group of HQ migrants. In this comparison it is evident that at least in the case of Austria the Blue Card is not exclusive and thus not pointing towards the establishment of a common system.

In total my findings from the comparison of the implementation of the Blue Card in Austria and Germany suggest that these two countries were not able to establish a common system of admission. Neither does the current stage of implementation point towards the introduction of

such cooperation in the near future. Both countries, especially Austria, have heavily worked to improve their admission system. It is unlikely for countries to change their regulations before the effects of the current systems can be evaluated. The findings and its implications for the European level will be further discussed in the next part.

4.3.2 The Effectiveness of the Blue Card

The European Commission itself states that the process of evaluation of the Blue Card Directive and its transposition is still on-going (European Commission 2013:6). So far no data has been published in Eurostat although the MS are obliged to report the issued numbers as of January 2013. The Commission expects to be able to publish a first report by mid-2014. Information on the effectiveness of the Blue Card in Austria is rare. Since the revised legislation of July 2011 until 2012, 900 HQ workers acquired a residence permit in the form of Austria's RWRC or the EU Blue Card (Statistic Austria, 2012). Information about the satisfaction of these results or current numbers is not available.¹⁵ In Germany the first reports illustrated the EU Blue Card as failing. However, a few months later its success was acknowledged (Wirtschaftswoche 11/2012; 02/2013). The recent numbers of the BAMF, from the end of June, state that during the first eleven months in effect 8879 Blue Cards have been issued. Within this number only 2635 were issued to migrants actually coming to Germany while the others were issued to people already residing in Germany (BMI, 31.07.2013). This was presented as a success by officials but received also negative echoes in the German media as not sufficient due to the little number of newly attracted.

4.3.3 Legal Entitlement for the Blue Card

A positive aspect for TCN is the legal entitlement to receive the EU Blue Card. If the cumulative necessary conditions to obtain a Blue Card are given, the wording in Austrian legislation “ist zu erteilen” (§42 NAG) implicitly states that the applicant has a legal claim to receive the EU Blue Card. This is in contrast to the Directive that renounces such rights on purpose. Similar to the wordings in the Austrian law the German law issues a legal entitlement as well. Paragraph 19a(1)AufentG states “wird erteilt wenn”. When the preconditions are met, the TCN is entitled to receive a Blue Card by law. This legal entitlement clearly points towards harmonization, as in both countries migrants who fulfil the preconditions have to be admitted. A quota on the total number of admission, as would also be possible according to the Directive, is not implemented in both countries.

¹⁵ I contacted Statistik Austria and Eurostat. They had no current numbers, neither was the Austrian media dealing with the effectiveness of the Blue Card recently, which I consider as surprising

5 Discussion

5.1 Reflection on the Results: Competition instead of Cooperation

The European Union is able to set legal frames and has done so with the Blue Card Directive. A common European Blue Card system could have been a first step for the nation states to use the attractiveness of the EU to gain HQ migrants. My findings, however, state that the implementation does not built or point towards the establishment of a common admission system. The analysis of the Austrian and German cases showed that possible harmonization is not as likely as some literature or the name EU Blue Card suggest. The MS did not transfer significant power to the European level. Instead, they started to establish their own system, which is now, in the case of Austria competing with the European solution:

“When Austria reformed its immigration legislation in 2011 and introduced a points-based scheme [...] the reform was clearly connected to the Blue Card at EU-level, but in a negative way [...] instead of integrating the Blue Card into the newly introduced criteria-based immigration system, it was introduced as an additional work permit regulated by different conditions.” (Perchinig et al., 2012:18)

Thus Austria went its own way even while European solutions to common problems were possible (Perchinig et al., 2012:18). The Minister of Interior, Maria Fekter, considered the RWRC as far more attractive than the Blue Card and is confident to be able to reduce the importance of the EU Blue Card (Der Standard, 10.12.2010, in Perchinig et al., 2012:18). Germany recently started to partly establish their own scheme as well (DW, 2013), which should better account for individual skills and preferences of migrants and employers (OECD, 2013). Furthermore, it is not evident why the European Blue Card did not implement a points-based scheme although these types of schemes are considered by the EU as most successful: “Innovative points-based migration systems and a ‘migration-friendly’ branding by states and companies are necessary to attract the right talent globally.” (EMN, 2011:13)

5.2 Reflection on the Research Conduction

The analysis outlines the general implementation of the Blue Card Directive in Austria and Germany. In this way, it is possible to see similarities and differences in the two countries. In total the findings clearly contradict the hypothesis that Austria and Germany have been able to approach a common admission system by the EU Blue Card. Thus the likeliness of a common system throughout Europe in the near future is not very high. However, some weaknesses exist in the way the research has been conducted and within the methodology that may account for the findings as well.

In the theory part, I focused on the state versus European relationship. However, my research made clear that migration management is never only a simple state versus supranational dichotomy (Boswell & Geddes 2011:67). In addition, the state versus state level is also important. Austria and Germany were selected because of their similarity according to historic, economic and demographical facts. Additional factors and current political discourses in the country were not considered in the sample selection, although especially the attitude towards the European Union might have been important. While Germany in general is a more pro European country, in Austria the attitude about European decisions has always been more negative (Perchinig, 2010).

Besides, it was possible to show national differences in the understandings of the term ‘highly qualified’. In Germany the term referred to those with the highest degrees, while in Austria the suitability for the job offer was taken into account. Although I tried to separate the admission completely from the integration, attitudes towards integration influence admission systems. Different notions of a welcoming culture and understandings of national citizenship are most important in this respect.

In addition, several other reasons might exist, which are very important to migrants and for establishing migration systems. Based on methodological choices, I was not able to include them. Other aspects might be important to establish a common system but are not influenceable by the state. Finally, there are many other reasons and circumstances motivating HQ migrants to migrate, which are independent of a special migration admission system. One important example in this respect is the so-called chain migration. Many migrants are immigrating to countries where country citizens are already actively living (Thränhardt 2011b: 355). Various other reasons can be found in aspects such as language, climate, reputation of countries abroad and individual preferences.

5.3 The Future Role of the European Union

The European nation states have transformed to the second biggest destination for immigration during the last years. They are still occupied with conceptually handling this situation (Thränhardt, 2011b:352). In the scientific debate there are two different positions noticeable regarding the Blue Card and its implications for the role of the EU. One point of view regards the Blue Card as a first step towards harmonization in this policy field and describes the fact that the Commission managed to push through the Directive as “surprising” (Boswell & Geddes 2011: 95). Genchev (2011:88) names the Directive even the revival of a common European wide recruitment of migrants. The other position argues that the EU Blue

Card is no communitarised instrument as it did not transfer significant power to the supranational level. Those scholars consider the Blue Card in its current form as not supporting harmonization in this policy field (von Weizäcker, 2008; Gümüs, 2010).

Referring back to the second hypothesis, it stated that the MS are willing to become the most attractive destination for the prosperous migrants. As a result they delegated power to the EU as they were aware of the fact that a European system would be most attractive. Yet, the findings of my research revealed that this line of my argumentation does not illustrate the MS actions. Although they probably know of the advantages of a European system they do not think from this perspective. Instead they put considerable effort in establishing a national system that is more attractive than the European solution. In the way Austria changed its system and Germany started to do so, it is noticeable that they are indeed competing for the best talents instead of using the attractiveness of the EU for a common approach.

HQ TCN are searched for in all countries. The competition between MS might lead to more advantageous solutions in each country, which are nevertheless not as attractive as a European wide approach. In addition, for the process of European integration and its self-definition this development does not support further cooperation. MS bargain for relative gains of HQ instead of absolute gains for the EU. While this is logical from an economic perspective it is not wise in general. Here, the lacking of a supranational regime becomes most evident. With cooperation the whole EU community can benefit from HQ TCN, but states remain limited in their national focus of assumingly maximizing individual utilities.

I regard MS in their current stage as too different to establish a common approach based on a single criterion like salary. In this respect, the difference of MS concerning the economic standard of living and their attractiveness are important. It would be more suitable to acknowledge the differences of MS in the admission system as such, for example by granting points for knowledge of the country's language or for earlier visits. To remain its capacity to act, the EU, because of its heterogeneity, needs to link admission systems and integration necessarily with differentiation (Link 2012: 30).

Probably lesser-developed countries fear that the once attracted HQ will migrate to another European country. Migrants are very rational and would not stay in a country that has lesser offers than the next if they had the possibility to move (Hollifield, 2013). Yet, recently during the economic crisis in the southern parts of Europe, mobility inside the EU is rising. Well-educated Europeans are searching for work possibilities within the European Union (Becker

et al., 2.2013). Negative consequences for their states of origin, which have no jobs for them available and whose welfare system they would rely on, are not evident. The same applies for the movement of once admitted HQ TCN. If they move to another country after some years of working why should that be of disadvantage for the first country? And of course even HQ TCN can get unemployed but allowing them to search for job vacancies in the whole EU would help them to find work again sooner and thus be beneficial for all countries. Regarding the field of integration it is acknowledged that migrants are always especially well integrated in the host society if they bring skills that are needed (Thranhardt 2011a:102). Also Huke (2011:6) states that it is not evident in the whole discussion about the Blue Card why an increase in supranational powers of the EU for this particular group of migrants is not in the interest of the MS. Regarding the difficulties to find explanations why the MS behave in a certain way a closer look at my first hypothesis needs to be taken.

5.4 Persistence of the Liberal Paradoxes

In the research it was suggested that the LP for this highly selective group of TCN is about to be overcome because all MS have a stronger interest in openness than in closure. However my findings revealed that the MS are not likely to delegate power to the supranational level. This falsifies my first hypothesis, as apparently the MS are still trapped in their Liberal Paradoxes.

It is important to point out that political narratives, especially in migration management, can considerably differ from the actual actions. However, the possibility to implement the Blue Card Directive supported the idea of common economic forces in all MS in the first place as a fact that all states need HQ migrants. Thus other explanations must exist. One sees the MS as not able to overcome the Liberal Paradox because, while economic forces demanding for openness might be similar, political forces strongly demand closure and are not similar in the MS. It is possible to identify reasons for closure against TCN in the different national understandings of citizenships. These offer access to welfare systems and other rights. A European wide EU Blue Card status would inherit such rights and take away the decision power from the individual MS. Thus MS apparently fear for their sovereignty. However, regarding the legal status of TCN the “permanent exclusion of a considerable part of the population from political participation is considered to be bad for the political stability of a country.” (Groenendijk, 2011:75) In this respect I suppose that a common European approach to migration management and a regime will just be possible if a approach to bringing such migrants inside the national contracts of the EU is developed. This solution might lie in the

expansion of European citizenship. Especially the ECJ, which combines the right of free movement with the general principle of non-discrimination, is likely to play a major role in developing such a European solution (Venables & Holford, 2008:54). Yet, also other possibilities of immigration without incorporation of the migrants might be found (Hansen, 2013). How these developments might limit and change the liberties of the EU as we know it, is interesting and discussable.

Although I assume from the non overcoming of the Liberal Paradoxes that harmonization is not very likely to occur after the way the MS implemented the Blue Card, one can also be sure that the Commission will not give in trying. After all, even the Blue Card's "weak" impacts on harmonization are more than the level of "no harmonization" in the years before. The current power of the Commission and the European level of management remains yet predominantly to encourage 'best practices' or engage in the process of migration management through 'OMC'; in short, to encourage states to learn from the experiences of each other (Bommes, 2011:131). The future will show how successful the way of competition of each MS will be and what results it may bring for the EU in general.

5.5 Promotion for Europe

I want to include some personal observations from my stay in Beijing during this spring. Europe is considered as very strict regarding the admission of foreigners and associated with high bureaucratic and language barriers. I received the subjective impression that some young Chinese I met had never heard of the Blue Card although they would qualify for it. The name Blue Card is, however, easy to understand and better memorisable for searching for additional information than anything I could have said about the RWRC in Austria or possible residence permits according to §19a of the German Residence Act. While obviously the Blue Card needs to be made more popular and known abroad¹⁶ it carries a high degree of symbolic importance and thus can be seen as a good and needed promotion for Europe abroad as an attractive destination for immigration.

5.6 The Blue Card as an Ethical Choice

Another aspect is important to point out although it is not directly linked to my research: the ethical choice of a Blue Card admission system. Prominent concepts, which are very popular today, are the understanding of a 'circular migration' of highly qualified. This model replaces

¹⁶ For example Germany is encouraging this with campaigns like www.make-it-in-germany.de or www.fachkräfte-offensive.de but probably not specialized enough or through to little channels

the fear of ‘brain drain’ by the concept of ‘brain gain’. The overall statement of the EC and the MS is nowadays pointing towards this idea of a ‘triple win situation’ where everybody profits: the migrants, the host member state and the country of origin (Zerger, 2011:56). The country of origin is expected to profit as many migrants return after a certain period abroad. For reasons of responsibility the Blue Card points out the MS’s possibility to expel certain professions from admission. Art 8(4) gives the MS an option to refuse applications from certain migrants, whose countries are in need of their qualifications and workforce, but no obligation (Peers, 2009:391). Therefore it is important to focus on the ethical choices Europe makes with the Directive (Zapata-Barrero, 2012). Especially the utilitarian approach of the Blue Card has been criticised by labour unions and NGOs (Huke, 2011). Debates about the impacts of migration on the sending countries and Europe’s responsibility in this respect should get more attention and publicity (Kancs & Ciaian, 2010). They can also serve as a starting point for future research.

5.7 Ideas for Future Research

In my research I was only able to show differences in the way of implementation in two MS. Additionally it would be interesting to analyse what other reasons can be found to explain the differing implementation and praxis of the MS. The liberal paradox is an important theoretical insight, but has not been tested much empirically yet. In addition, other perspectives on migration management exist. One example is Freeman who argues that “governments tend to be more responsive to business interests” (Boswell & Geddes, 2011:81). In this respect the role of states is less important and migration is managed behind closed doors. Especially the reasons to establish the Blue Card in its current form and not any other could be analysed in future research. Scholars from transnationalistic approaches see the main problem in today’s migration management in the focus on the state as frame for migration. In this respect a very interesting question, which I also asked myself, is: what are the possible alternatives to states, to putting people who are moving, and thus questioning the definition of states, into the category ‘migrant’? Instead, should the apparently unfitting concept of ‘state’ be rethought?

6 Conclusion

During the last years the topic of labour migration has become more and more important. It is likely that this level of attention will presume in public debates and scientific research alike. The management of migration, as human capital, will be most essential for the future of the European Union in order to reach its self defined ambitious goals.

This thesis questioned the likeliness of the establishment of a European system for the admission of HQ because of the recent development of a European Blue Card. In this context, it was assumed that the MS were able to overcome their Liberal Paradoxes for the limited group of HQ TCN out of their common interest. The EU's possibilities to become a very attractive destination for TCN by establishing a European wide system have been explained in this respect. The recent development of the Blue Card was therefore used to look in detail at the current level of harmonization in the EU.

Austria and Germany offered a suitable ground for a most similar research design. With the comparative analysis of the implementation of the Blue Card Directive in Germany and Austria it was possible to show how the countries transported main aspects into their national law. For most indicators the findings revealed that the approach of one common system by the Blue Card Directive, as the most attractive system for HQ TCN, at least in Austria and Germany, is not very likely. Hence, at least from my findings, the Directive does not significantly change the role of the European Union in managing migration in the future. Some weaknesses of the research were identified, especially the focus on the admission, which is not independent from the integration of TCN. The reflection on my assumptions revealed that the MS are not yet able to overcome the LP, as suggested. In addition, the possibility to promote Europe as an attractive destination with the Blue Card and the ethical choices of admission systems focusing on HQ were mentioned. Reasons for the current implementation as can be found in national cultural and political differences constitute interesting research aspects for the future.

For Europe it will be one of the most important tasks to manage migration properly. The EU as well as the member states have started finding and taking their role in this mission. In its current form the Blue Card is not the clear welcoming signal as the introductory quote claims. Consequently it will be interesting and exciting to observe and examine how all actors and parts of society including the European public will take, or not take, further action.

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Münster, 11.08.13

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