



Europeanising labour migration policies and pursuing national objectives

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The EU Blue Card scheme offers skilled labour migrants access to, and onward mobility within, the EU labour market. Due to its justice and home affairs opt-out Denmark is cut off from participation, and instead pursues national schemes for high-skilled labour migration. It is in the best interests of both Denmark and the EU to pursue fully integrated strategic goals aimed at producing a competitive joint policy on economic migration.

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Managing economic migration in the EU

The development of an integrated European approach to the management of economic migration has been disputed and a long time in the making. In 2000 the European Commission officially recognised that the European ‘zero migration’ regime did not successfully stop irregular migration, but did inadvertently restrict and slow down desirable international human mobility, such as that of tourists, students, business travellers and labour migrants. The Commission began formulating policies based on the assumption that the union has to “attract and recruit migrants suitable for the EU labour force to sustain productivity and economic growth”. Since then the EU has worked to develop a supranational system for labour migration.

Drafting common EU policies on migration has proven difficult, first to agree upon and then to successfully implement. The Europeanisation of policies for labour migration, in particular, lags behind integration of other migration management measures. Many member states (MSs) have taken strongly nationally protective stances and been unwilling to give up sovereignty and results are falling short of the Commission’s expectations. The Lisbon Treaty defers the question of deciding how many third country nationals may gain access to EU territory to seek employment or set up their own business to the individual MSs, which means that the EU continues to experience difficulties in acting as

an integrated entity. The European populations and governments are still sceptical about the full internal integration of the EU as an area of freedom, security and justice.

POLICY RECOMMENDATIONS

- The European member states, including Denmark, should strive to further the strategic integration of social policies in the EU to accommodate both intra-European mobility and third country migrant workers. They should stress the need for integration of social, economic and trade policies in a single, comprehensive approach.
- Denmark should change its Justice and Home Affairs opt-out for an opt-in agreement, and engage in the EU’s strategic development of an integrated policy for economic migration. Full commitment from the member states will allow the EU to move ambitiously forward in creating a system that is competitive with the other Western countries of immigration and to reduce internal competition among the European countries.



The EU Blue Card

June 2011 was the deadline for transposition of 'the Directive on an EU-wide work permit for high-skilled non-EU citizens' (the Blue Card Directive) in the MSs. As Denmark has opted out of this policy field, it has no place at the negotiating table so direct influence is ruled out. Before its entry into force, the directive was subject to wide criticism and long and difficult negotiations. Key components are missing from the final version, which is significantly less ambitious than the original 2007 proposal. Specifically, it did not grant immediate access to the EU-wide labour market to third country nationals.

The EU's competences on economic migration and Denmark's opt-outs

Following the Treaty of Amsterdam, the area of economic migration was the only part of the EU asylum and immigration acquis still subject to unanimous voting. With the Lisbon Treaty this has been changed to majority voting.

Denmark has four opt-outs from the Maastricht Treaty outlined in the Edinburgh Agreement, relating to defence, citizenship, the Euro and Justice and Home Affairs (JHA).

The JHA opt-out exempts Denmark from certain areas of home affairs. Significant parts of these areas were transferred from the third pillar to the first under the Amsterdam Treaty, but Denmark's opt-outs from these areas have been kept valid through additional protocols. Acts made under those powers are not binding on Denmark except for those relating to Schengen, which are instead conducted on an intergovernmental basis with Denmark. Under the Treaty of Lisbon Denmark can change its JHA opt-out from a complete opt-out to a case-by-case opt-in version (as applies to Ireland and the United Kingdom) whenever it wishes.

The Blue Card scheme is based on the rationale that Europe is a stronger competitor than the other major attractors of highly skilled labourers when offering a union-wide work permit system rather than one where the MSs function as individual actors. The EU lags behind traditional Western immigration countries such as the USA, Canada and Australia, which started developing labour immigration schemes that targeted skilled migrants much earlier than the European countries did. The Blue Card allows highly qualified workers from third countries to work in the EU for an initial period of four years if they fulfil a number of criteria such as:

- 1) present a work contract of at least one year for highly qualified employment in the member state concerned.
- 2) present evidence of having insurance cover for all the risks normally covered for nationals for periods when entitlement to benefits is not provided in connection with a work contract.
- 3) the person is not considered to be a threat to public policy, public security or public health.

Additionally, the salary specified in the work contract has to be at least 50% above the average national gross annual salary. Individual decisions on whether to issue a Blue Card are left to the MS. This is also true when a Blue Card holder, at the earliest after 18 months, applies to work in another EU country. The Blue Card is renewable and can lead to permanent residency after five years. Blue Card holders are granted the same social and labour rights as the citizens of the receiving country as well as the right to family reunification.

The EU share of highly qualified third country migrants

In 2007 the European Commission noted that of the total EU employee population, only 1.75% are highly qualified workers from third countries.

In comparison, the percentage of highly qualified workers from third countries in the total of the employee population is 9.9% in Australia, 7.3% in Canada, 3.2% in the USA and even 5.3% in Switzerland.

European integration and national prerogatives

The version of the Blue Card that the Member States committed to shows that while the countries recognise the recruitment of highly skilled workers to be necessary, they are unwilling to establish a truly common EU policy. The directive leaves open the possibility for more advantageous national programs, such as those run by the Netherlands, Sweden and Germany. To this end, the system does not replace national schemes, but merely offers an additional channel of entry via the common process. This is not harmonisation in the traditional EU sense, which seeks to break down barriers and differences between the various national regulatory systems across Europe, as is the cornerstone of the single market, for example.

Immigration potentially leading to permanent residence and social rights is a vested area of cooperation in the EU and precisely this topic is very sensitive in nature for significant segments of national populations. The dividing concern is not the potential economic and social benefits

of high-skilled migration, upon which MS are largely in agreement. Because regulation of labour migration strongly relates to the organisational borders for inclusion and exclusion, concerns about a common framework lie in the optimisation of the domestic labour force and ongoing structural differences between the countries, i.e. the organisation of national labour markets, and the structure of welfare systems. Despite the convergence processes, the EU members still differ widely in terms of production structure, degree of value added, structure of employment, and the level of government regulation. Agreeing upon which skills are needed EU-wide, let alone developing integrated standards for selection criteria, is a troublesome exercise due to the differences in the countries' labour needs. Also, the EU has not seriously confronted national questions of social rights.

Another concern to a European integration is the difference in experience of MSs of immigrant societal incorporation. Yet the Commission's directive on high-skilled immigration does not provide a far-reaching response to this challenge. Before the entry into force of the Lisbon Treaty in December 2009, the EU did not have any clear competence in the area of immigrant integration. The Commission's proposal was thus aimed at the recruitment of new third country nationals, but ignored the societal consequences of immigration, which is one of the driving themes in domestic migration management policies. To accommodate national differences, the institutional context for building common EU immigration policies that has been possible to forward allows the MSs to retain control over who can take up work in their countries. As a result, the directive contains a number of safeguards, which in turn weaken the Blue Card's competitive advantage. The programme may very well prove inadequate to relieve the demand for high-skilled workers and not render the EU competitive as an immigration region compared to other knowledge-driven economies.

Internal competition serves no one

In reality the MSs compete with one another to attract desirable migrants. Their development of parallel immigration schemes shows signs of convergence and of looking to each other for inspiration, or else highlights inspiration from e.g. the Australian system for labour migration. The majority of the 27 MSs have chosen to join the Blue Card scheme, either as a singular commitment to the common EU system or as a supplement to their own systems for labour immigration. Six countries failed to meet the deadline for transposition and Denmark, the UK and Ireland stand entirely outside and have instead, through the 2000s, developed their own systems for labour migration.

The Danish solo project

Since 2002 Denmark has developed a selective system for labour immigration designed to ensure that only migrants with desirable and in-demand competences can gain access

and residence. The system on the one hand responds to the interests of industry and employers as well as the state's desire to fill key labour functions in the welfare state, such as healthcare professionals, and to attract knowledge workers who contribute to the competitiveness of the state as a knowledge economy. On the other hand the idea of the ideal citizen weighs heavily; i.e. adaptability plays a role. Practically it means that migration is managed into either temporary measures that dictate return or onwards mobility, so as to avoid considerations of societal incorporation, or the State, via its selection criteria, seeks to ensure that long-term access is only possible for migrants who have proved that they possess qualifications and competences that secure that they will not become an economic burden to the state or pose a risk to society. For highly skilled migrants adaptability is first and foremost understood as educational background, economic self-sustainability, language proficiency and lasting labour activity.

Selective criteria in the Danish labour migration schemes

Denmark currently runs a variety of access routes for desirable labour migrants. The three primary routes are the positive list, the pay limit scheme and the Green Card scheme.

The former two are both prerequisites for a concrete job offer and are based on in-demand skills, requiring at least a professional Bachelor's degree or an annual income of at least 375,000 DKK (approximately €50,280), respectively.

The Green Card scheme is a points-based system. To acquire a six-month temporary residence permit to look for a job, a migrant must score 100 points based on education, professional skills, language proficiency, age and adaptability.

One of the concerns that keeps nations from single-handedly committing to a common EU strategy is the desire to maintain autonomy both regarding flexibility in determining labour market policy and in deciding which immigrants are granted entry to the country and its labour market. Designing labour immigration policies that enable a country to respond quickly and independently to changes in the national labour market or to economic downturns, and to regulate and limit work-related immigration in accordance with national demand, wages and social security standards are among the policy instruments used to this end. This is the case with the Danish 'positive list', a list of trades lacking qualified labourers, which is subject to immediate change and which grants access to migrants with the desired qualifications.



The problem with the idea of being able to manage migration to precisely match labour market needs is firstly that the idea presupposes that Denmark is such an attractive immigration country that it will be able to attract the desired migrants. Therefore, rather than attraction of the desired migrants, policies focus on restricting undesired immigration. But Denmark is in competition with other immigration countries and highly skilled and educated migrants are in great demand. Secondly, the current mindset suffers from ideas about a mobile migrant labour force similar to the ideas that drove and proved unsuccessful during the primarily unskilled labour migration of the 1960s and early 1970s, where migrants who the receiving countries had expected to be a temporary labour reserve, ended up as long-term immigrants. The policies do not sufficiently recognise and accommodate that labour migrants are people, not commodities.

The flawed notion of mobility

The Danish situation is likely to reflect the inherent weaknesses of the European mobility ideal. The project of European integration – and this also accounts for creating supranational migration and incorporation policies – suffers from the idea that the movement of services, goods and money all act alike when given the possibility. But people's approach to free movement differs vastly, as they are much more prone to remain in familiar surroundings where they have formed ties. The 2012 OECD Economic Survey reports that labour mobility in the EU remains low. Despite an increase after the 2004 EU enlargement, still only 3% of working age EU citizens live in an EU country other than their own. Indeed, migration from outside the EU is higher, accounting for around 5% of the working age population.

Even though the European integration process has sought to create an area of unhindered movement of money, goods and people in the internal market, structural barriers to mobility still exist. For example, portability of social security contributions, including pension schemes, remains a domestic competence, with the national differences this entails. Third-country nationals entering on a Blue Card encounter the same obstacles as EU citizens who, despite the freedom of movement for Union citizens, have a much lower internal labour mobility compared to the United States. While a direct comparison between the US and the EU does not make sense, the differences highlight the competitive disadvantage of the EU. The EU is beginning to build strategies to target many of the social policy areas, but social policy

belongs within a separate domain – Employment and Social Affairs – while the Blue Card proposal came from the Justice, Liberty and Security Directorate General. It is precisely this failure to ambitiously integrate social policy with (labour) migration policy that constitutes the major and in-built weakness of the supranational migration management agenda

The lack of structural integration hinders competitive advantage

Hitherto, achievements of the joint EU policy have focused on high-skilled labour immigration. The EU's focus on movement of services rather than on the societal effects of migration holds at least part of the explanation for the difficulty of moving ambitiously forwards on integrating policy areas that potentially relocate the decision of long-term access of third country migrants to national territory to an EU-level. It remains unfeasible to tackle the societal incorporation of foreigners anywhere other than in the state.

Denmark's separate schemes compete with the other MSs and the EU to attract skilled labour migrants. It is unlikely that Denmark will, in the long run, be competitive as a small national agent, nor that it will be in the country's interest to remain excluded from the decision on, and the integration of, the EU's strategic goals for legal economic migration. In turn, the EU's policy strategies for economic migration are compromised by the MSs' reluctance to ambitiously tackle the internal integration and as a result the EU Blue Card has serious shortcomings and lacks competitive advantage over the other large Western immigration countries.

The opinions expressed in this policy brief are those of the author alone and do not necessarily reflect the official opinion of the Danish Institute for International Studies.