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IMMIGRATION POLICY OF THE EUROPEAN UNION⁹⁰

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Summary

Immigration to European Union (hereinafter referred to as the 'EU') as a reality and a need of refreshing its ageing population has made the EU to recently adopt some important documents. Traditionally, European countries seem to be more closed towards the immigration comparing to United States of America and Canada which enabled the entry of new population even through various lotteries. However, EU did recognize the need for import of experts from various areas. Thus the Council has adopted the EU Blue Card Directive for highly skilled workers (Directive 2009/50/EC). Still, having in mind the legal power of a EU Directive, the member countries are given the power to adopt their immigration policies. This paper analyses the regulations on immigration enacted by the EU and the implementation of such regulations at the level of member countries. Although the EU does regulate the immigration policy, it is up to the member states to deal with particular cases. In that respect the paper shall also address the issues of immigration which violated the European Convention on Human Rights and Fundamental Freedoms by analyzing the key judgments of the European Court for Human Rights in Strasbourg. The issue of residence v. citizenship as the grounds of immigration shall also be explained. The short overview of inter migration in the EU, is presented for the purposes of comparison. The paper is based on a hypothesis that immigration policies in member countries still lack some consistency in the implementation of EU regulations, and therefore reveal weaknesses of the EU immigration policy. Method used in this paper is normative analysis, method of induction and deduction, comparative method and case study.

Keywords: immigration policy, inter migration, human rights, high skilled workers.

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1 Introductory remarks

Some authors point out migration as a highly controversial issue in public debate, having in mind the fear of the European countries of being overwhelmed by mass immigration from poorer countries (Corry, 1996). However, the economic and labor migration is something the Europe has recognized as a need for its development. Freedom of movement is recognized by European Convention for the Protection of Human Rights and Fundamental Freedoms, predominantly as a right to migrate within a territory of a State, providing that 'everyone lawfully within the territory of a State shall, within that territory, have the right to movement and freedom to choose his residence'⁹². This right has been established in 1963, aimed to protect namely the citizens or nationals of a State at issue, prohibiting the expulsion of nationals. It also prohibits the collective expulsion of aliens. This is a first step towards the protection of immigrants in Europe.

It follows the spirit of Universal Declaration on Human Rights, which in Article 13 provides for the freedom of movement and residence within borders of each State.

The European Union has gone a step further stressing out the freedom of movement as one of its objectives.

Therefore, the European Union Charter of Fundamental Rights provides for freedom of movement and of residence. It guarantees the right to movement in a twofold manner⁹³:

- The right of every citizen of the Union to move and reside freely within the territory of Member States.
- Freedom of movement and residence to nationals of third countries legally resident in the territory of a member state.

The EU Charter thus proclaims the right to intermigration to EU citizens, and also to its legal residents, nationals of third countries. The straightforward aim of the EU is to provide for free migration of its citizens, going in line with the common market. The Treaty of Rome introduced the provisions of free movement of workers, self-employed persons and providers of services stressing out the economic purpose of intra EU movement. However, the EU was still reluctant towards the third countries immigrants. Such provisions were based in international agreements that the Community has signed with third States, such as with Greece and Turkey, with Maghreb countries and with the Central and Eastern European Countries, and were dealing mainly with post-entry rights (Papagianni, 2006), and not to the right of entry of third country nationals to EU.

⁹² See Protocol No. 4 to the Convention for the Protection of Human Rights and Fundamental Freedoms, Article 2.

⁹³ 2 EU Charter of Fundamental Rights, Article 45.

2 Differentiating the features

Speaking of immigration policy in the EU we have to make difference between the intermigration within the EU, immigration from third countries and the relevant integration processes. Intermigration is considered as exercise of the right to free movement introduced by the Rome agreement and further fostered by Schengen agreement. Right to free movement as such was introduced by the EU Charter on Human Rights prescribing that ‘every citizen of the Union has the right to move and reside freely within the territory of the Member States’⁹⁴. Immigration as such is related to entering of third-country nationals for purposes of residence in the EU. Charter provided that the ‘freedom of movement and residence may be granted (...) to nationals of third countries legally resident in the territory of a Member State’⁹⁵. Integration of immigrants is final stage or immigration but not less important. It entails the wide circle of rights that are to be enjoyed by immigrants in order to become a part of a society of their new residence.

This paper deals with some recent issues of immigration of third-country nationals into EU, which is a very slow process with some perspectives opening but others viewed very reluctantly by the Member States.

3 Immigration from third countries

Real immigration appears with immigration processes of the population from third countries in the European Union. This entails the immigration of persons who are neither residents nor nationals of any EU Member State. The process of enacting EU legislation with a view to immigration from third countries was gradual. Even more gradual was the implementation of such legislation by the Member States of the EU. However, the main reason for the EU to push for more simple immigration proceedings is its awareness of lack of competitiveness comparing to other immigration countries in particular the USA. To this extent the EU has enacted several important directives. The first significant such directive that we are going to look at for the purposes of this paper, is so called Family Reunion Directive issued in 2003, followed by the Blue Card directive in 2009 and finally by Single permit directive adopted in 2011. The common immigration policy was launched by the Lisbon Treaty calling for the efficient management of migration flows, fair treatment of third-country nationals residing legally in Member States and measures to combat illegal immigration and trafficking in human beings⁹⁶.

3.1 Family reunion

Family reunion as a mode of immigration is an important aspect of the protection of human rights in particular right to respect for family life and the right to respect for private life enshrined by the European Convention for the Protection of Human

⁹⁴ Article 45 of the Charter, para 1

⁹⁵ Article 45 of the Charter, para 2

⁹⁶ Article 79 para 1 of the Treaty on the Functioning of the European Union

Rights and Fundamental Freedoms of the Council of Europe of 1950. The European Union has incorporated those rights in the 2000 Charter of Fundamental Rights under the provision named 'Respect for private and family life'⁹⁷ using the wording of the European Convention.

The European Court of Human Rights ('the Court') has on several occasions protected the right for family life in cases where immigrants were ordered to leave the country. For example, in the case of *Gulijev v. Lithuania*⁹⁸ the applicant was ordered to leave Lithuania due to certain views of the Government that he was a threat to national security. The Court however found no such reasons present and considered the prohibition of his re-entering Lithuania until 2099 where his two children and wife live, an interference with his right to respect for his family life which was not necessary in a democratic society. On the other hand, the Court did maintain that a State is entitled, as a matter of well-established international law and subject to its treaty obligations, to control the entry of aliens into its territory and their residence there. The Convention does not guarantee the right of an alien to enter or to reside in a particular country⁹⁹.

In 2003 the Council of the EU has adopted a Directive on the right to family reunification as a first step towards harmonization of immigration legislation ('Family Reunion Directive')¹⁰⁰. It applies to third country nationals and not to the EU citizens. The Directive was meant to determine the conditions for family reunification by third country nationals lawfully residing at the territory of the Member States. As to the family members eligible for the reunion according to this Directive, they include the spouse of the legally residing family member (the sponsor), minor children (under age of adulthood regulated by the country of origin and provided that they are unmarried), adult children (only if they are dependent upon sponsor due to health reasons) first-degree relatives in the direct ascending line if they are dependent on the sponsor or his/her spouse. It can be noticed that the Directive is pretty restrictive concerning the family members, in particular limiting the reunion of children to their minor age (in most European countries up to 18) no matter if they share family life in the country of origin. It also provided that the procedure for issuing a written notification of a decision was to be completed within nine months or even later in complex cases¹⁰¹. The sponsor must hold a residence permit for a period of validity of one year or more, and have prospects of obtaining the right of permanent residence¹⁰². Member States may require the sponsor to have stayed lawfully in their territory for a period up to two years before having his family members joining him/her. Member States could also provide by derogation the waiting period of three years between submission of

⁹⁷ Article 7 of the Charter of Fundamental Rights of the European Union (2000/C 364/01)

⁹⁸ See Judgment of *Gulijev v. Lithuania*, of 16 December 2008, European Court of Human Rights

⁹⁹ Judgment of *Nunez v. Norway*, of 28 June 2011, para 66, and judgment of *Butt v. Norway* of 4 December 2012, para 77, European Court of Human Rights

¹⁰⁰ Council Directive 2003/86/EC of 22 September 2003 on the right to family reunification

¹⁰¹ Article 5 para 4 of the Directive

¹⁰² Article 3 para 1 of the Directive

the application for family reunification and the issue of residence permit¹⁰³. So, having in mind those vague time limits, it is possible that a significant period of time lapses before the family is reunited again. It opens much space for violation of the right to respect for family life guaranteed by the European Convention.

In the regard of many problem areas regarding the Directive, the European Commission has published the Green Paper¹⁰⁴ on 15 November 2011 addressing in particular the issues of waiting period for reunification, family circle to which the Directive is applicable, the time of validity of sponsors residence permit, the length of administrative proceedings etc. The Commission has called for discussion on these important issues regarding the immigration of third country nationals. The Court of Justice of the European Union has stated, regarding the Family Reunion Directive, that the terms and concepts therein should be considered to be uniform concepts of EU law except where there are references to national law¹⁰⁵. As authors stress, this opinion of the Court is important for implementation of directives which do not refer to national law and is a general rule for implementation of EU law (Peers, Guild, Acosta Arcarazo, Groenendijk, Moreno-Lax, 2012). The directives have therefore subsidiary application in national laws.

On the other hand the Council and the European Parliament enacted the Family Reunion Directive in 2004 laying down the conditions governing the right to free movement for Union citizens and their family members and their right of permanent residence¹⁰⁶. As to the family scope, we can notice from the wording of the Directive that they include the spouse, (either married or in registered partnership equivalent to marriage) the direct descendants under the age of 21 or are dependents. If we compare this to the family circle of the Directive of 2003, this family circle includes children under 21 (regardless of Member States age for adulthood) and older if they are dependents, while Directive of 2003 provides that they have to be dependents due to health reasons. This Directive spreads out the freedom of movement to family members of the Union citizens, even if they are not themselves the EU citizens but nationals of third countries. However it clearly puts them in more favorable position than family members of third country nationals regally residing in the EU. Therefore the nationality of the EU, comparing to the residence only, enjoys more favorable treatment with a view to family reunion.

3.2 Common immigration policy

Lisbon treaty was signed by the EU Member States on 13 December 2007 and entered into force on 1 December 2009. In its Article 79, the Treaty on the Functioning of the EU introduces the concept of the common immigration policy with a twofold aim. One is enabling the free migration of population including migration of third country

¹⁰³ Article 8 of the Directive

¹⁰⁴ Green Paper on the right to family reunification of third-country nationals living in the European Union (Directive 2003/86/EC)

¹⁰⁵ Chakroun Rhimou v Minister van Buitenlandse Zaken Case, 43, 44, 45, Case C-578/08, para 45

¹⁰⁶ Article 1 of the Directive 2004/38/EC

nationals legally residing in the EU, and at the same time the combat against the illegal immigration and trafficking in human beings. The migration of population may be seen as one way of accomplishing the freedom of movement within the EU. TFEU also adds a nondiscriminatory clause as to third country nationals legal residents in the EU providing at the outset for fair treatment of third-country nationals residing legally in Member States¹⁰⁷.

TFEU further provides that the European Parliament and the Council shall adopt measures regarding the standards for the issue of long term visas and residence permits as well as the family reunification. It also calls for definition of the rights of third-country nationals legally residing in a Member State as well as the conditions of their movement towards other Member States. According to TFEU the European Parliament and the Council may provide support to Member States regarding measures of integration of lawfully resident nationals of third countries excluding any harmonization of the laws and regulations of the Member States.

So it basically gives attention predominantly to third country nationals already legally residing at the EU territory, but also calls for harmonization of minimum standards for residence permits issued by Member States. It therefore gave the background for the EU governing the basic immigration rules. However, the TFEU was precise when determining the role of Member States as to the volume of admission of third country nationals¹⁰⁸. Upon Member States, therefore, lies the exclusive power to determine the volume of admission of third-country nationals.

3.3 Blue card directive

Following the adoption of the Lisbon treaty, the first important Directive by the Council was the Directive on the conditions of entry and residence of third-country nationals for the purposes of highly qualified employment which was adopted on 25 May 2009¹⁰⁹. The purpose of such Directive was to foster the admission of highly qualified non EU workers, in order to enrich the Union's expert needs and to make it more competitive. It is called the Blue Card Directive as it provided for issuance of blue cards to highly qualified third-country nationals, entailing the wide spectrum of their residence and labor rights. It thus opposes to the USA Green Card system, wishing to make the EU Card recognizable by the potential immigrant experts. Why is the Blue Card Directive so important speaking of immigration to the EU? It is derived from the recognized need of EU for spreading its refreshment of its qualified population. It has decided to increase its competitiveness and to attract the highly qualified workers. It is also derived from the EU recognition of lacking experts in various fields.

Member States are, however, left the freedom to determine the volume of admission as provided in the TFEU above, but also to deny the residence permits for employment in certain professions, economic sectors or regions¹¹⁰. This leaves open

¹⁰⁷ Para 1 Article 79

¹⁰⁸ Para 5 Article 79

¹⁰⁹ Council Directive 2009/50/EC

¹¹⁰ Para 8 of the Preamble of the Directive

hands to Member states to keep certain fields reserved for its nationals but others open for third-country experts. They accordingly retain the possibility not to grant residence permits for employment in general or regarding certain professions, economic sectors or regions (Blanpain, 2010). Member States thus keep a general power to control the overall volumes of admission of third-country nationals (Peers et al., 2012) on the grounds of the Directive. This is provided by the Directive wording that it shall not affect the right of a Member State to determine the volume of admission of third-country nationals¹¹¹, and also incorporated as one of the grounds for refusal the application for the EU Blue Card¹¹².

Member States are also given the space to determine the salary threshold for the admission of highly qualified workers. Salary above the threshold must be offered to the Blue Card seeker. The salary threshold is at least 1,5 times the average gross annual salary in the Member State¹¹³. Having in mind that the Directive provides for minimum threshold, the Member States may impose even higher threshold and thus limit the volume of admission of experts. On the other hand the Member States may impose threshold of 1,2 times the average gross salary for more deficit groups of qualifications, according to International Standard Classification of Occupations¹¹⁴. The salary threshold applies for first two years of the validity of blue card, and after that period the holder of Blue Card may be granted the equal treatment with nationals are regards access to highly qualified employment¹¹⁵. The Commission has not yet received the formal data from countries implementing the Directive, but here is a short overview of available information for the purposes of this paper, regarding the Blue Card salary threshold. Finland has set threshold of 4,667 EUR per month for 2013¹¹⁶.

Germany has set gross annual of 46.400 EUR or 3.867 per month and in shortage occupations (scientists, mathematics, engineers, doctors and IT- skilled workers) the amount of €36.192 (3.016 Euros per month)¹¹⁷. In the Netherlands, according to Dutch Highly Skilled Migrant Program EU Blue Card applicants have to earn an annual salary of at least €60,952. Immigrants, 30 years of age or older, need to earn an annual salary of at least €2,010. For foreigners younger than 30 years of age, the salary threshold is €38,141. For foreigners who have studied in the Netherlands the threshold, valid for one year following their studies, is €27,336¹¹⁸. In Sweden, which

¹¹¹ Article 6 of the Directive

¹¹² Article 8, para 3 of the Directive

¹¹³ para 11 of the Preamble of the Directive and Article 5 para 3 of the Directive

¹¹⁴ Directive recalls the ISCO issued by the International Labor Organization, major groups 1 (legislators, senior officials and managers) and 2 (professionals such as physical, mathematical and engineering science professionals, computing, architects, etc.) as the grounds for applying 1,2 times the average annual gross salary, see <http://www.ilo.org/public/english/bureau/stat/isco/isco88/major.htm>

¹¹⁵ Article 12 of the Blue Card Directive

¹¹⁶ http://www.migri.fi/working_in_finland/an_employee_and_work/eu_blue_card The Finnish Immigration Service

¹¹⁷ <http://www.bluecard-eu.de/eu-blue-card-germany/>

¹¹⁸ http://www.eubluecard.nl/comparison/hsm_program

allowed for the application of Blue Card only on 1 August 2013, the threshold is SEK 44,700 per month (circa USD 6,800)¹¹⁹. Austria requires binding employment offer with 150% of the average yearly gross salary for a full-time employee (in 2011: annual gross salary of at least 52 417.50 € that is about 3 745 €gross per month)¹²⁰.

As to the conditions for acquiring the Blue Card, a third-country national must present, inter alia, a valid work contract or a binding job offer for highly qualified employment of at least one year. Some countries added further conditions, for example Austria which requests for completed university course of three years minimum duration¹²¹. Sweden requests that a highly-qualified employee must have a bachelor's/master's degree or five years professional experience¹²². The validity of the Blue Card is to be set by a Member State, and must be between one and four years. The Directive also provides that Member States may examine the situation of their labor market and may verify whether the vacancy at issue could not be filled by an EU citizen or third-country nationals already lawfully residing at the territory of that Member State. Member States may also reject an application on the ethical grounds of lack of qualified workers in the countries of origin, so as not to jeopardize the country of origin labor market or diplomatic relations with Member States in unfair manner. As regards Austria, for instance, labor market test is mandatory¹²³.

The procedure for issuing the Blue Card is shorter than the family reunion procedure, and is limited to 90 days after the application is lodged. If unemployment occurs during the validity of EU Blue Card, it does not automatically annul the Card but only if the period of unemployment exceeds three consecutive months or if it appears more than once during the validity of EU Blue Card¹²⁴. The holder of Blue Card shall enjoy equal treatment as EU citizens regarding the working conditions, freedom of association, education etc¹²⁵. Being aware of the possibility that Member States define differently the conditions for granting of the EU Blue card, the Directive provided that any such worker should be bound to stay at least two years in the country which granted him the Blue Card before eventually moving to another EU Member State¹²⁶. The holder of EU blue card is however allowed to travel between the EU country and his country of origin.

3.3.1 *Implementation of directive*

¹¹⁹ <http://www.faegrebd.com/20329>

¹²⁰ <http://www.bmeia.gv.at/en/embassy/pretoria/practical-advice/travelling-to-austria/residence-permit.html>, Austrian Foreign Ministry information

¹²¹ <http://www.bmeia.gv.at/en/embassy/pretoria/practical-advice/travelling-to-austria/residence-permit.html>, Austrian Foreign Ministry information

¹²² <http://www.faegrebd.com/20329>

¹²³ <http://www.bmeia.gv.at/en/embassy/pretoria/practical-advice/travelling-to-austria/residence-permit.html> Austrian Foreign Ministry information

¹²⁴ Article 13 of the Directive

¹²⁵ Article 14

¹²⁶ para 15

The Directive calls for the Member States to inform the Commission and other Member States of legislation enacted at a national level. These legislative measures are related in particular to the volume of admission of workers and to national procedures for filling specific vacancies that give priority to EU citizens or third country nationals lawfully residing at the territory of EU¹²⁷. In particular the Member States are obliged to transpose the Directive into their legal system by enacting the laws, regulations and administrative provisions by 19 June 2011¹²⁸. The Commission does not yet have any statistics from the Member States on implementation of Blue Card Directive, and it shall start to collect data on the number of third country nationals to whom and EU Blue Card has been issued, renewed, withdrawn or refused, on their nationalities and occupations, and on their families as from 2013. Starting from 2014, it shall report to the European Parliament and the Council every three years and shall propose any changes¹²⁹.

However, it appears that Member States were not so keen in implementing the Directive. In that regard the Commission has issued a Press release on 27 February 2012 pointing out that Austria, Cyprus and Greece had not brought their laws in line with EU legislation. The Commission has reiterated the need of Europe for immigrant workers in order to secure economic prosperity, to remain competitive and maintain its welfare systems¹³⁰. The Commission also pointed out in the said Release that Malta, Romania and Luxemburg were late in implementing the Directive, but have eventually enacted the national legislation necessary to apply the Directive. The Blue Card does not apply and does not bind Denmark, Ireland and the United Kingdom¹³¹.

However, it can also be noticed that some countries, apart from enacting the legislation, were late in praxis as to the procedure of issuing the Blue Cards. For example, Romania started accepting the applications as from 1 January 2012¹³². Germany started accepting EU Blue Card applications as from 1 August 2012¹³³. Sweden opened the possibility of issuing Blue Cards only on 1 August 2013¹³⁴. From the following table we can see the rate of immigration of experts in various European Countries. The data is not related to Blue Cards but to expert immigration in 2011.

TABLE 1. IMMIGRATION OF EXPERTS

¹²⁷ Article 20 para 1

¹²⁸ Article 23

¹²⁹ http://europa.eu/legislation_summaries/internal_market/living_and_working_in_the_internal_market/114573_en.htm, Article 20, para 2 and Article 21 para 1

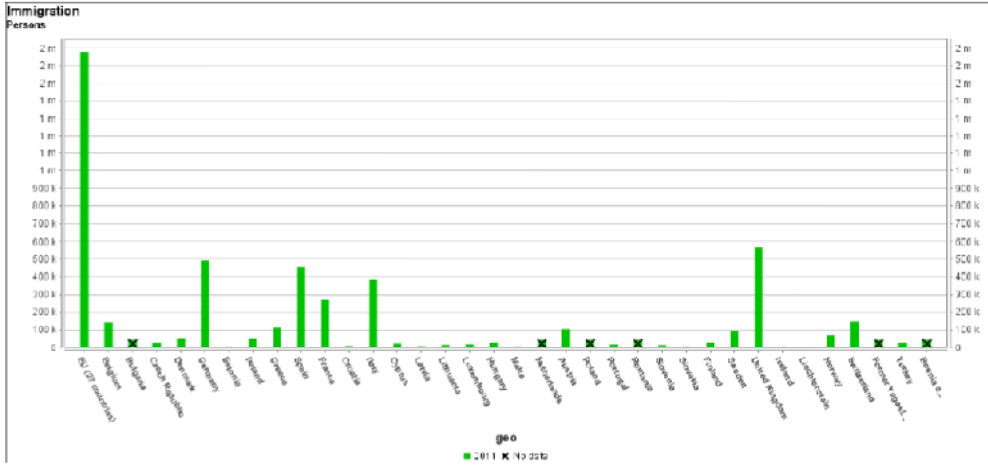
¹³⁰ Press releases database http://europa.eu/rapid/press-release_IP-12-167_en.htm

¹³¹ [http://ec.europa.eu/immigration/tab1.do?subSec=29&language=7\\$en](http://ec.europa.eu/immigration/tab1.do?subSec=29&language=7$en)

¹³² Romania Immigration Bulletin <http://www.moveoneinc.com/blog/immigration/enromania-immigration-bulletin-eu-blue-card-issuance-start-2012/>

¹³³ <http://www.workpermit.com/news/2012-07-11/europe/germany-to-begin-accepting-eu-blue-card-applications.htm>

¹³⁴ EU Blue Card Network, <http://www.apply.eu/>



Source: <http://epp.eurostat.ec.europa.eu>

However, the following data is available by Eurostat on Blue Card application procedure for the year of 2012. We can see that the data is available only for 15 countries, out of which Belgium, Cyprus and Malta had none Blue Cards issues for the said period. They are followed by Italy, Hungary, Poland, Slovenia, Slovakia and Finland who issued less than 10 Blue Cards. The leading immigrant country, speaking of Blue Cards is Germany with 2584 granted Blue Cards for 2012. Having in mind that Germany started the Blue Cards proceedings on 1 August 2012, as indicated above, that figure seems even more significant. The Commission does not yet have the unified data on reports from various countries on transposition of Directive. Eurostat, has collected the information available from Member States from which very divergent implementation of the Directive appears.

TABLE 2. EU BLUE CARDS GRANTED, RENEWED AND WITHDRAWN IN 2012

EU Blue Cards by type of decision, occupation and citizenship

Last update: 15.08.13

Source of data: Eurostat

CITIZEN: Total **UNIT:** Persons **ISCO08:** Total **TIME:** 2012

DECISION	Granted	Renewed	Withdrawn
GEO			
Belgium	0	.	.
Bulgaria	15	0	0
Czech Republic	62	1	0
Germany (until 1990 former territory of the FRG)	2,584	0	.
Estonia	16	0	0
Italy	6	.	.
Cyprus	0	0	0
Luxembourg	183	0	0
Hungary	1	0	0
Malta	0	0	0
Austria	124	5	0
Poland	2	0	0
Slovenia	9	0	1
Slovakia	7	0	0
Finland	4	0	1

Source: http://epp.eurostat.ec.europa.eu/portal/page/portal/product_details/dataset?p_product_code=MIGR_RESBC1

The main objective of the Directive is to increase the competitiveness of the European Union in order to attract the experts from various fields in particular to offer more competitive market then in Canada, USA, Australia and New Zealand¹³⁵.

For the purposes of comparison, from the table 3 we can see that economic immigrants amounted to more then 156 thousands in 2011 and more then 160 thousands in 2012 in Canada.

TABLE 3. IMMIGRATION TO CANADA IN 2011AND 2012

Immigration to Canada in 2011 & 2012 by immigrant category:

	2011	2012
Family Class	56,452	64,901
Economic Immigrants	156,118	160,617
Refugees	27,873	23,056
Other immigrants	8,305	8,936

Source: <http://ca.news.yahoo.com/blogs/canada-politics/2012-immigration-statistics-released-canada-remains-one-most-235820655.html>

¹³⁵ Inter alia <http://www.workpermit.com/news/2011-11-02/europe/eu-blue-card-update.htm>

As to the USA, according to U.S. Department of Homeland Security in 2012 more than 484 thousand persons immigrated to USA and in 2011 nearly 482 thousands.

TABLE 4. LEGAL PERMANENT RESIDENT FLOW, FISCAL YEARS 2010 TO 2012

Legal Permanent Resident Flow: Fiscal Years 2010 to 2012

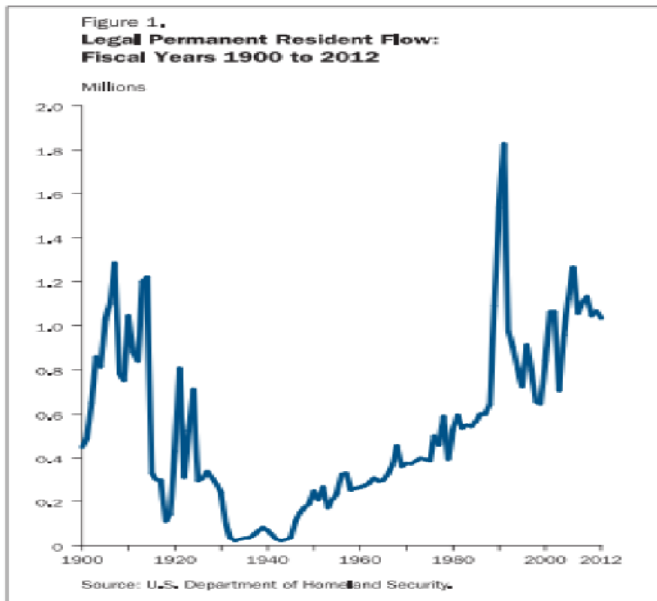
Category of admission	2012		2011		2010	
	Number	Percent	Number	Percent	Number	Percent
Total	1,031,631	100.0	1,062,040	100.0	1,042,625	100.0
New arrivals	484,072	46.9	481,948	45.4	476,049	45.7
Adjustments of status . .	547,559	53.1	580,092	54.6	566,576	54.3

Source: U.S. Department of Homeland Security, Computer Linked Application Information System (CLAIMS), Legal Immigrant Data, Fiscal Years 2010 to 2012.

Source: *Annual Flow Report, March 2013, U.S. Department of Homeland Security, Computer Linked Application Information System (CLAIMS), Legal Immigrant Data, Fiscal Years 2010 to 2012.*

In the following graph we may notice slight decline in legal permanent resident flow, from the year 2000 onwards, but still reaching very high figures.

GRAPH 1. LEGAL PERMANENT RESIDENT FLOW: FISCAL YEARS 1900 TO 2012



Source: *Annual Flow Report, March 2013, U.S. Department of Homeland Security, Computer Linked Application Information System (CLAIMS), Legal Immigrant Data, Fiscal Years 2010 to 2012.*

The following table gives figures on immigration to USA by various categories of admission from 2010 to 2012. We can notice family-sponsored immigrants, diversity programs, refugees and asylees. For the purposes of comparison with the EU Blue Card immigration, it is interesting to look at the figures regarding employment based immigration.

TABLE 5: LEGAL PERMANENT RESIDENT FLOW BY MAJOR CATEGORY OF ADMISSION: FISCAL YEARS 2010 TO 2012.

Legal Permanent Resident Flow by Major Category of Admission: Fiscal Years 2010 to 2012

Category of admission	2012		2011		2010	
	Number	Percent	Number	Percent	Number	Percent
Total	1,031,631	100.0	1,062,040	100.0	1,042,625	100.0
Family-sponsored immigrants	680,799	66.0	688,089	64.8	691,003	66.3
Family-sponsored preferences	202,019	19.6	234,931	22.1	214,589	20.6
Unmarried sons/daughters of U.S. citizens	20,660	2.0	27,299	2.6	26,998	2.6
Spouses and children of alien residents	99,709	9.7	108,618	10.2	92,088	8.8
Married sons/daughters of U.S. citizens	21,752	2.1	27,704	2.6	32,817	3.1
Siblings of U.S. citizens	59,898	5.8	71,310	6.7	62,686	6.0
Immediate relatives of U.S. citizens	478,780	46.4	453,158	42.7	476,414	45.7
Spouses	273,429	26.5	258,320	24.3	271,909	26.1
Parents	124,230	12.0	114,527	10.8	116,208	11.1
Children*	81,121	7.9	80,311	7.6	88,297	8.5
Employment-based preferences	143,998	14.0	139,339	13.1	148,343	14.2
Priority workers	39,316	3.8	25,251	2.4	41,055	3.9
Professionals with advanced degrees	50,959	4.9	66,831	6.3	53,946	5.2
Skilled workers, professionals, unskilled workers	39,229	3.8	37,216	3.5	39,762	3.8
Special immigrants	7,866	0.8	6,701	0.6	11,100	1.1
Investors	6,628	0.6	3,340	0.3	2,480	0.2
Diversity programs	40,320	3.9	50,103	4.7	49,763	4.8
Refugees and Asylees	150,614	14.6	168,460	15.9	136,291	13.1
Refugee adjustments	105,528	10.2	113,045	10.6	92,741	8.9
Asylee adjustments	45,086	4.4	55,415	5.2	43,550	4.2
Parolees	758	0.1	1,147	0.1	1,592	0.2
Other categories	15,142	1.5	14,902	1.4	15,633	1.5
Children born abroad to alien residents	643	0.1	633	0.1	716	0.1
NACARA [†] Section 202	183	—	158	—	248	—
Cancellation of removal	6,818	0.7	7,430	0.7	8,180	0.8
Subject to annual limit	4,015	0.4	4,206	0.4	4,475	0.4
Not subject to limit (NACARA [†] Section 203)	2,803	0.3	3,224	0.3	3,705	0.4
Haitian Refugee Immigrant Fairness Act	93	—	154	—	386	—
Other	7,405	0.7	6,527	0.6	6,103	0.6

* Includes orphans.

[†] Nicaraguan Adjustment and Central American Relief Act of 1997.

— Figures round to 0.0.

Source: U.S. Department of Homeland Security, Computer Linked Application Information Management System (CLAIMS), Legal Immigrant Data, Fiscal Years 2010 to 2012.

Source: *Annual Flow Report, March 2013, U.S. Department of Homeland Security, Computer Linked Application Information System (CLAIMS), Legal Immigrant Data, Fiscal Years 2010 to 2012.*

In the above table we can notice the number of employed-based preferences amounting to almost 144 thousands in 2012, out of which there were nearly 51

thousand professionals with advanced degrees and 39 thousands of priority workers. If we compare these figures with the immigration of those persons the year before, i.e. in 2011, the number of priority workers significantly raised, while the number of professionals with advanced degrees dropped (from 66 thousands to 50 thousands). Although it is early to discuss whether this drop was related to the EU Blue Cards system. We therefore notice that the number of immigrants to Canada and USA is still much bigger than the number of immigrants to the EU.

We can outline some good points and weak points of the Directive. The good points are provided by the Directive, such as fast track procedure for rendering a decision on the blue card. However, the Directive has left much freedom to Member States as to volume of admission and salary threshold for the acceptance of experts. The Blue Cards are also of limited duration, and regardless of duration of employment, it is valid for 4 years at most. Then renewal of Blue Card is warranted. We can recognize the weak points of the Directive as the lack of consistency in transposition of the Directive, delays, lack of stronger influence by the EU, more consistent approach, a body or agency specialized to control the implementation of the Blue Card directive. The Commission has come out with only one Press release in February 2012. The Commission does not yet dispose with the information on transposition of the Directive in Member States.

3.4 Single permit directive

With a view to further extending further the European labor market the European Parliament and the Council have on 13 December 2011 enacted the so called Single Permit Directive. The idea of the Directive was to simplify the procedure of granting the residence permit and work permit by granting only one single administrative act that combines the two immigration issues¹³⁶. The Directive applies to third-country nationals wishing to reside and work in the EU, and third-country workers already legally residing in a Member State¹³⁷. Therefore such administrative decision relates to issuing, amending or renewal of single permit. The Directive envisages that the administrative procedure is completed within 4 months from lodging the application¹³⁸. So, comparing to Blue Card Directive the proceedings is longer by one month and comparing to Family Reunion Directive the proceedings is shorter (4 instead of 9 months for reunion). However there is also the possibility of extension of that administrative time limit in complex cases in exceptional circumstances¹³⁹. But the Directive does not refer to these particular exceptional circumstances. It also further says that if not decision is taken within the time-limit, the national law shall determine the consequences thereof¹⁴⁰. This is also very broad and gives Member States much opportunity to prolong the proceedings in case where there is no first hand EU body to monitor the implementation of the Directive and where the

¹³⁶ See the preamble of the Directive 2011/98/EU

¹³⁷ Article 1 of the Directive

¹³⁸ Article 5 para 2

¹³⁹ Article 5 para 2

¹⁴⁰ Article 5 para 2

consequences for delay are not determined by the Directive. We can wonder why the EU opts for different administrative time limits. One possibility is the criticism of 9 months in the Family Reunion Directive, or too short Blue Card proceedings. The Single Permit directive encompasses the right to equal treatment regarding working conditions, freedom of association, education, recognition of diplomas, just as the Blue Card Directive.

The application of the Single Permit Directive seems very simple. Salary threshold and volume of admission is not mentioned. The Member States have to bring into force the laws, regulations and administrative proceedings by 25 December 2013 and have to inform the Commission thereof¹⁴¹. This Directive seems to introduce very liberal rights to third-country nationals wishing to live and work in the EU, and to bring them in line with EU workers.

Some issues are left open in the Directive, for example the choice whether the employee is to seek for the permit or his third-country employer¹⁴². Member States are also free to designate the authority competent to issue single permits¹⁴³. The Member States can also restrict the implementation of the Directive to third-country workers who are employed or registered as unemployed, and may lay down specific conditions including language proficiency and payment of fees¹⁴⁴. The aim of the Single Permit Directive was to 'simplify application procedures by providing a 'one-stop-shop' system and to ensure a common set of work-related socio-economic rights for third-country workers' (Diamond, Countouris, Lianos, 2012:166). Single Permit Directive, introduces with no doubt many benefits for the third-country nationals immigrating to the EU, but leaves many issues unresolved at the EU level, giving rather vague freedom to Member States to decide upon them. It is still early to speak of the success of this Directive, since first reports by Member States are expected by 25 December 2014 and first reports of the Commission on the application of this Directive by 25 December 2016¹⁴⁵.

4 Conclusion

Measures regarding the immigration policy of the EU were gradual and rather lengthy in implementation. We noticed above the several instruments by the EU urging the Member States to adapt their immigration legislation, starting from very reasonable instrument protecting the family life via Family Reunion Directive, through opening of EU gate for immigration of highly qualified workers, admitting the need of the EU to progress in that field. The most recent one opened doors to persons wishing to reside and work in the EU by the simplified procedure under Single Permit Directive. However, many issues under the above Directives were left over to Member States to regulate. One can notice a lack of consistency in the EU immigration policy, which is

¹⁴¹ Article 16

¹⁴² Article 4 of the Directive

¹⁴³ Article 5

¹⁴⁴ Article 12 para 2

¹⁴⁵ According to Article 15 of the Directive

seen in gradual adoption of various immigration instruments and various proceedings applicable. While the Blue Card Directive is rather strict as to the conditions of eligibility, salary threshold, the Single permit directive is quite broad and vague. They even might overlap at some instances. One can wonder if a highly qualified third country national may opt whether to apply for labor permit according to Blue Card Directive or according to Single Permit Directive. Which might lead us to a conclusion that if he/she does not have a binding employment offer above the salary threshold, he/she may apply according to Single Permit Directive. The idea of the EU is quite understandable though, which is to attract more new labor force and to simplify the immigration procedures. The problem might lie in the implementation as the States are often reluctant in admission of third country nationals (Pascouau and McLoughlin, 2012).

The EU has mechanisms of adopting its secondary legislation. The EU opted for Directives for purposes of immigration policy, probably wanting to encourage the member states to make their legislation in line with the EU directive. However should they opted for Regulations instead, more strength could have been given on the EU and less on the states. This could probably lead the EU to provide for its net of bodies for control of immigration.

However, this brings us to a conclusion that issues of immigration still lie on the Member State mechanisms, which, although have to follow the EU legislation. The same applies to the issues of acquiring the EU citizenship, which lies on Member States (Čošabić, 2013), who having made their own legislation which differs from state to state, still keep the final say on the import of new EU citizens.

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