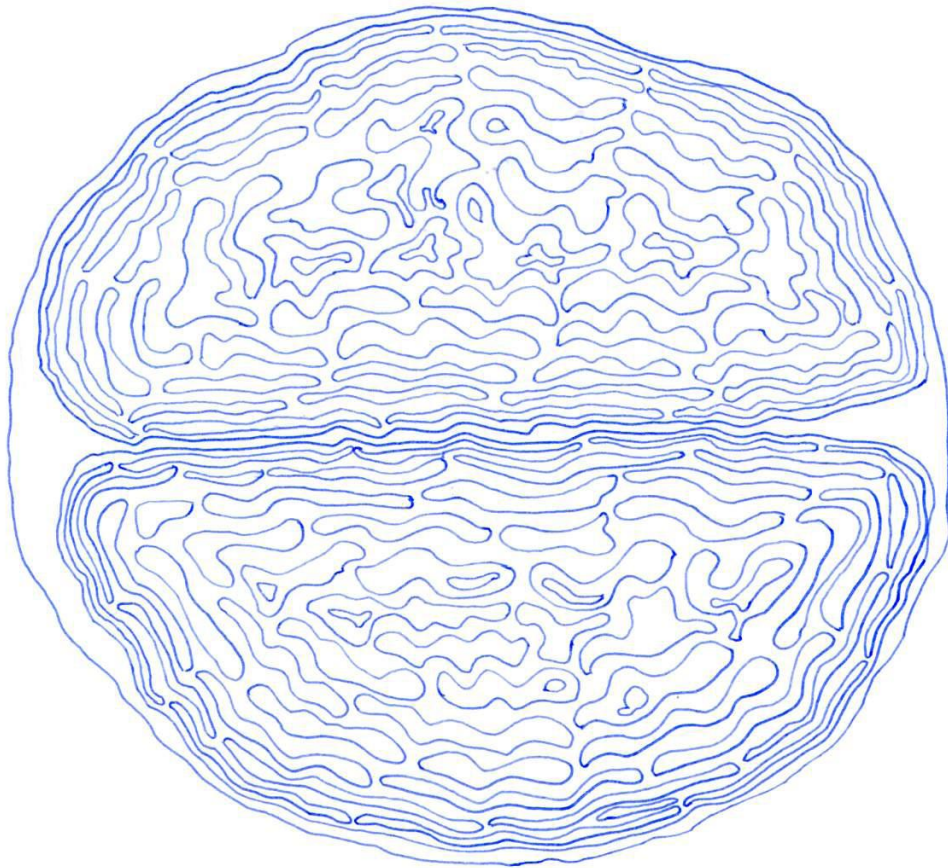Europe on the quest for global brains

A critical discourse analysis of the EU Blue Card

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Europe on the quest for global brains

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A thesis in the Master in Human Geography
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Preface

During my bachelor and master studies in Human Geography, the role of the EU in the world has been one of my main interests and I have read a great amount of literature about its nature from a global perspective. The relation between the EU and the rest of the world has become particularly interesting to me. Literature about the European Neighbourhood Policy has been broadly addressed during my studies. During my time as an intern at the Centre for European Policy Studies (CEPS) in Brussels, I came in contact with a great deal of literature about the European Neighbourhood Policy. Early in 2011, when I first arrived at CEPS, the Arab Spring had just begun and experts all over Europe, including my supervisor at CEPS, Michael Emerson, wrote about the changing role that the EU is playing, or should play in these matters. What intrigued me was the interference of the EU with its neighboring states, on the one hand, and, on the other hand its concern with exclusivity that drives to ban unwanted migrants from crossing its borders. This preoccupation has been subject to a growing body of literature.

Van Houtum and Pijpers (2007), describe the EU as an actor that opens up its internal borders and strengthening while simultaneously strengthening and controlling its external borders to both keep out unwanted migrants and attract wanted migration. Although the number of migrants is rising, the EU persists in keeping its very excluding character. To me, it seems as if EU policymakers were influenced by a optimistic notion of migration in introducing and discussing the policy plans to attract highly skilled migrants. The policy documents for this initiative appear to expose that these efforts are meant as a first step to harmonize overall EU migration policy. The benefits of an EU-wide comprehensive migration policy would be huge, as argued by several authors (Carrera, 2007; Straubhaar, 2006). However, this is one of the biggest challenges for the EU, as immigration remains a very sensitive subject. For me this was the motivation to take a closer look of this first step of harmonizing migration policies across Europe and investigate one of the biggest challenges for the EU, in this 'age of migration'. Attracting highly skilled migrants seems to lie at the crossroads of two greater trends: increasing international migration and maintaining the exclusivity of the EU.

I would like to thank my friends and classmates for their inspiration, help and support in writing this thesis and for the more for the long discussions during countless coffee breaks. A special thanks to Henk van Houtum, my supervisor who inspired me, taught me to be a critical researcher and helped me through struggle that is called thesis-writing.

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We have to shift our traditional way of thinking of migration as a world of loss and sorrow. Let us be realistic in a visionary way. Let us try to use, a new expression: EU mobility. We have to look at immigration as an enrichment and as a inescapable phenomenon of today's world, not as a threat (Frattini, 2007).

Recently, efforts of the European Union (EU) to harmonize its migration policies have focused on curtailing illegal migration and the securitization of its borders. Keeping unwanted migrants out is a primary concern for many member states of the EU. Migration is a sensitive subject in the EU that has been heavily debated. Although common policies would offer better solutions to the problems related to migration, member states are reluctant to share sovereignty over their borders with the supra-national organization.

Despite this background, the widening skill gaps and aging population in the EU have pushed member states to create a common admission track for the kind of migrants it wants to attract: highly skilled workers. Many policy makers have argued that the aging of the working population and specific skill shortages need to be solved by luring highly qualified professionals from other countries. However, the rationale behind these policy plans is that the EU competing with other developed countries in search of skilled professionals. In the introductory speech of the Blue Card, José Manual Barroso's, president of the European Commission, gives the impression that the EU is involved in a true scramble for the scarce resource of knowledge, when he states that *'we are not good enough at attracting highly skilled migrants'* referring to the competition that is perceived from The United States (US), Canada and Australia (Barroso, 2007(Barroso, 2007). This process has been identified as a global war for talent; a competition for global brains or a scramble for the 'best and brightest' (Ackers, 2005; Lucie Cerna, 2007, 2008; Collett, 2008). The Blue Card is the EU's new response to promote the immigration of the highly skilled in a unified way, to overcome impracticalities of dissimilar national policies. The recent implementation of the Council Directive regulating the 'entry and residence of third-country nationals for the purpose of highly qualified employment' in the member states inspired the research question of this thesis:

What were the main considerations in shaping the policies behind the EU Blue Card?

Answering this question aims at *gaining insights into the role of the European Union in the attraction of talent by making a comparative and critical analysis of four programs designed to entice the highly skilled*. This aim raises two further questions, 1) What reasons led to the establishment of the Blue Card; and 2) what strategies are being devised to pursue a

successful implementation of the Blue Card. To grasp the main processes in this policy field, a comparative analysis is essential to create a complete image of the issues in skilled migration. Four cases will be compared: the EU's Blue Card, the H-1B program and employer based Green Card in the United States, Canada's permanent skilled migrant program and Temporary Foreign Workers program; and Australia's visas under the General Skilled Migration program. I will compare the goals and methods of the policies each of these programs pursue to get a general understanding of the trends in the policy landscape. These trends will then be critically assessed relying on a normative argumentation that reflects my opinion, substantiated by the work of a wide variety of scholars. The underlying philosophical assumption of this research is that, as critical social scientists, it is our task and duty to critically and normatively reflect on the policies and institutions that shape our world, pulling ourselves up with the handles offered by the contributions of scientists preceding us. Concepts from critical discourse analysis will help me to recognize and criticize the narratives and logic shaping policy on the Blue Card and competing immigration schemes from the US, Canada and Australia.

1.2 Relevance

Although it is often acknowledged that there is a 'global scramble for talent' (Beechler & Woodward, 2009; Collett, 2008; Florida, 2006; Hart, 2006; Kapur & McHale, 2005; Organisation for Economic Co-operation and Development, 2008; Papademetriou, Somerville, & Tanaka, 2008; Reiners, 2010; Shachar, 2006), the literature has not extensively addressed the role of the EU in this process. A unified take on the matter is only about five years old. In 2006, a researcher from the think tank Brueghel in Brussels came up with the idea of a common European system to attract highly skilled migrants and proposed the term 'Blue Card', taking his inspiration from the US Green Card (Von Weiszäcker, 2006). The understanding of the European role in the global arena is crucial to effectively analyze the policies conducted by the EU. The research will draw upon the discussion held by policy makers and academics about the best, more just and sustainable policy options to deal with immigration in developed countries as well as their repercussions in the sending countries.

Recent evaluation of the policy in the literature has discussed the subject from a legal perspective, but did not yet place it within a broader context by comparing it with similar strategies around the world. A critical analysis from a political geographical perspective will reveal a different, new understandings of the role the EU plays in the field of highly skilled migration. The perspective in this research is influenced by constructivist and post structuralist understanding of science and policy and includes concepts from different academic backgrounds, such as geography, political science, economy and sociology. A critical view of what is going on will prove extremely useful, for it gives a nuanced and

scientific view on the matter instead of a reflection on a much politicized and polarized debate that often takes place in society and politics.

1.3 Methods

In order to provide such a nuanced reflection of this policy field, I will compare the main four developed countries that attract highly skilled migrants. These are the most important and successful actors in highly skilled migration. With the US as the most well-known and traditional 'talent-attractor' (Shachar, 2006), Canada and Australia as the most successful actors today (Jacoby, 2011), and the EU as a potentially new major actor in this policy field, the cases studied here represent the most relevant players in the field today. The EU Blue Card, American H-1B program and employer based Green Card, Canada's permanent Skilled Worker Program and Temporary Foreign Worker Program and Australia's General Skilled Migration Program are compared on two stages of policymaking, which form the conceptual framework: 1) Rationales and objectives and 2) Selection and benefits. This systematic analysis will expose the full scope of prevalent discourses in policy circles. The characterization of key concepts in each of the two aspects of the policies can provide a complete overview of the discourses used by policy makers in each case. With the use of critical discourse analysis, these discourses can be recognized and criticized with the specific tools of deconstruction, ethical evaluation and subversive discourses.

This is done by collecting and analyzing a wide variety of primary sources: policy documents, strategic documents, speeches and websites of governments. These are supplemented by academic literature and reports written on the subject. This diverse array of literature will be examined using Schutt's roadmap for analyzing qualitative data, which consists of five steps 1) gathering document data 2) describing and categorizing data into concepts, 3) connecting and comparing concepts, 4)corroborating and evaluating alternative explanations and 5) presenting the outcomes (Schutt, 2008).

1.4 Structure

The next chapter will give an overview of highly skilled migration by examining its origins are and a brief giving a historical account up until today. Who started to attract highly skilled migrants? What were the main reasons for this at the time? How has this field developed? These questions are answered in the next chapter. The last part of the chapter will give an overview of the state this phenomenon by revealing the main actors in today's policy landscape and identifying the major streams of highly skilled migrants. It is interesting to see where the migrants come from and where they go to, as well as having a rough idea of numbers we are discussing. The last part of the chapter will give a brief overview of global patterns of highly skilled migration today.

In chapter three, the methods that I use in this research will be discussed. This research is a comparative case study with a normative approach in the evaluation of the policies. The interest and relevance of researching the EU Blue Card are illustrated in the first part. The second part deals with the methods used in this research to come to a sound analysis of the policies. These will incorporate the analytical tools for analysis. It will also discuss the sources that are used for the analysis, why these sources are relevant and how these are studied to come to a comparative discourse analysis.

Chapter four delves into theories and theoretical concepts that are used in the analysis of the policies. I discuss the main authors in globalization studies and their views on both the state of migration and the role of the state in this. Important notions for every stage of policymaking (rationales, workings, outcomes) are examined and conceptual tools for analysis will be discussed.

Chapter five is the start of the analysis of primary sources. This chapter will focus on the question of why the European Blue Card was put in place. I trace the steps that eventually led to the Blue Card by identifying major actors and their underlying rationales. I provide a sketch of the discourse that is constructed and propagated by policymakers and others involved in the establishment of EU's policies. The same process is replicated on the other three cases whose different discourses will be characterize and then compare them with those of the EU to determine how it positions itself with respect to other actors in this policy field. I detail the assumptions on which the different discourses rely to gain a better understanding of them.

Chapter six compares the inner workings of the investigated policies. It asks what kind of migrants the countries I focus on are looking for and how they select them. A comparison among divergent selection mechanisms reveal the different preferences each country has. These preferences rely on expectations about which migrants could contribute the most. In addition, the incentives offered to migrants are examined and compared. Comparing the inner workings of the policies will add up to the key concepts in the actor's discourses. It reveals which policy choices are made in order to come to the objectives as analyzed in chapter five. The key concepts in selection and incentives are, again, compared to point out the role of the EU.

After defining the key concepts in each of the discourses for every case, these will be critically evaluated to assess their influences and outcomes in chapter eight. I will conduct a critique on the way that the actors have shaped their policies, with the support of with

academic literature and theoretical concepts. The way the discourses have influenced policymaking is shown and the effect these policies have on the ground is discussed and critically evaluated. In the second part I will elaborate on the role of the EU and the discourse it uses to shape its policy. I will discuss the limitations of the Blue Card as well as its expected benefits.

The last and ninth chapter will give an overview of the conclusions that can be drawn from this research. This includes an answer to the main research question on the role of the EU in the policy field of highly skilled migration, as well as reflections on the discourses that shaped the Blue Card.

2.1 Introduction

The policies underlying the EU Blue Card are the starting point of my research. They are taken from a proposal, numerous commentaries, speeches, and a Council directive of the Council of the European Union. After studying these, it became clear that, in order to make a convincing analysis, first the EU plans had to be put into perspective. When dealing with new policy it is hard to characterize and measure its effectiveness without taking into account the context as well as comparable policies in other states. The value of the new policy can be estimated only through comparison. Yet, it can be argued, that the EU is unique political entity, and neither a state nor a super state nor an international organization comparable to the UN. Is comparing the EU to a state a fair comparison? Probably not. However this is the only possible option, because no other regional actor has created similar programs. Only states have done so. The goal of the Blue Card is to make the EU competitive within the larger framework of the EU as the largest knowledge-driven economy of the world, as stated in the Lisbon treaty (European Union, 2007). The idea is to make the EU competitive in the international market of highly skilled migrants so that it is able to rival traditional migration countries, namely the US, Canada and Australia. While keeping in mind that comparing the EU to individual states would cause problems in the analysis, there seems to be no other option than to undertake this comparison. In order to have at least some consistency in the research an to make the best possible comparison, all cases will be tested using the same two factors, sub factors and theoretical concepts. The three other cases are the 'usual suspects' when writing about highly skilled migration policies, because they are the countries that have traditionally attracted this kind of migrants and are considered the most successful in doing so (Lucie Cerna, 2008). With the US as the most well-known and traditional 'talent-attractor', Canada and Australia as the most successful actors today (Jacoby, 2011; Shachar, 2006), and the EU as a potentially new major actor in this policy field, the cases represent the global players of highly-skilled migration.

What I try to do in this research is to examine if the EU, as a regional actor, can substantially alter this competition with the introduction of the Blue Card as it aims to, and, more broadly, to grasp the processes at play and the motivations behind them. Only by looking into the discourses, rationales and rhetoric behind the policies used by the four actors, the trends and processes in the field of highly skilled migration can be grasped truly.

Firstly, a comparison will be made in order to construct the discourses that underlie policies of the four cases. After having characterized these discourses with the key concepts of their rationales (why), their workings (how) and their outcomes (what), a critical assessment from a political geographical vantage point can be made. The logic behind the plans then will be critically assessed by using subversive discourses as found in academic literature. In this way, the discourses can be deconstructed. This research tries thus to compare the migration policies targeted at the highly skilled and to make a critical analysis of the trends and processes in this specific policy field. The next paragraph will give an overview of the ways in which 'discourse' is understood and how the field of discourse analysis has changed over time.

2.2 Post-structuralism and the social construction of discourse

In this research a critical analysis will be made with the use of critical discourse analysis (CDA). This approach is part of the broader social constructivist and post-structuralist traditions. In this paragraph, I present a short overview of these two traditions and their assumptions.

Scholars of discourse analysis often refer to the French writers Michel Foucault and Jacques Derrida, active in the 60's and 70's, as the roots of their philosophical strand. The former has changed the meaning of the word discourse. In discussions he held with structuralist thinkers he pointed out that he saw the term discourse not just as the 'passages of connected writing or speech'. Rather, he thought of a discourse as a 'group of statements which provide a language for talking about – a way of representing the knowledge about – a particular topic at a particular historical moment (...) discourse is about the production of knowledge through language … since all social practices entail meaning, and meanings shape and influence what we do – out conduct – all practices have a discursive aspect' (Seale, 2004) . It thus encompasses both language and practice. In this way discourse constructs realities. For this reason Foucault can be considered a constructivist, though he put emphasis on discourse rather than language. He also stated that everything that is meaningful exists in a discourse, which is to say that something only acquires meaning when it is framed within a discourse, outside discourse it would become meaningless (Seale, 2004). As Wylie writes, 'post structuralism is profoundly suspicious of anything that tries to pass itself off as a simple statement of fact, of anything that claims to be true by virtue of being 'obvious', 'natural', of based upon 'common sense'' (Wylie, 2006, p. 298)

Constructivist views emphasize the conviction that there is not one truth and that meaning is defined by interpretations rather than by bare facts. In order to research meanings, the post structuralist approach has yielded two techniques: discourse analysis and deconstruction. The latter is a term coined by Jacques Derrida and refers to a way of reading and writing in order to 'oppose and undermine' claims to truth, certainty and authority'. It thus tries to contest claims of how things are or ought to be. Deconstruction, as discourse analysis, challenges the idea that a word, a language, a chain of thought, has meaning within itself and detached from context. 'Meaning is not inside a word, an object a thing a process, inherent to it, uniquely owned by it'. Something also gains meaning by stating what it is not and good examples of this are the many dichotomies we use every day, such as male/female, us/them and so forth. Derrida calls these 'binaries' violent hierarchies, because they often imply that there is one superior half, that is the original, the norm. The aim of deconstruction (when used as a method) is to be aware of those polarizing notions and appoint the 'constructedness' of representations (Wylie, 2006). Derrida's deconstruction has become an important approach in geography, as it influenced the development of critical geopolitics. The representation of states and their interests, which are often polarized, can be challenged by using Derrida's deconstruction (Wylie, 2006).

Another related approach within the poststructuralist tradition is that of discourse analysis. This very diverse set of methods and theories juggles with very many definitions of the concept of discourse, a problematic feature of the approach according to Flick. The approach is also problematic, because it has 'hardly developed a genuine methodology' (2009, p. 359). What is central though is the basis of the approach as found in the works of Micheal Foucault. As said, his notion of discourse refers not only to language, but also to actions and events. Foucault understands discourses in terms of power. Power he understands not as a top-down notion or to be in the possession of a minority elite who constrains limits and forbids: a narrow definition. Rather, he sees power as a widespread force, when he says: 'In fact, power produces; it produces reality' (Foucault in Wylie, 2006, p. 304). Power acts in a diverse and dispersed manner and is to be found everywhere. The goal of a discourse analysis in the spirit of Foucault is to examine how power operates and how it gives ground to inequalities. Discourse is an everyday practice that creates realities and inequalities, leading to the understanding of everything and, indeed, even ourselves. All meaning is socially constructed. A method influenced by the ideas of Foucault would thus 'seek to describe … how certain behaviours, attitudes and beliefs come to be sedimented and reproduced through continual repetition' (Wylie, 2006, p. 305).

Though discourse analysis has general goals and can be seen as a lens to analyze research material, a variety of stances on discourse analysis and different methods of 'doing' discourse analysis exist (Flick, 2009). Critical discourse analysis (CDA) is one of these approaches, yet CDA itself disintegrates in many variations and methods over different fields of study. These variations do have some principles in common as Teun van Dijk points out. The central aim in CDA is to 'deal with the discourse dimension of power abuse and the injustice and inequality that result from it'. This has three major implications; firstly that CDA tries to gain a better understanding of pressing social issues, by using discourse analysis. Secondly, this makes that scholars in CDA take a normative sociopolitical stance. Their activism targets power elites who enable and legitimate their own dominance. Thirdly, CDA tries to find the more structural understanding behind pressing problems (Van Dijk, 1993). Its goal is to research social problems concerned with the 'ways (in which) social and political domination is reproduced by text and talk' (Fairclough, 1995). CDA, according to Van Dijk 'focuses on social problems, and especially on the role of discourse in the production and reproduction of power abuse and domination '(Van Dijk, 2001).

Within CDA discourse has a slightly different role in comparison to other approaches focusing on discourse as Blommaert describes: 'CDA states that discourse is socially constitutive as well as socially conditioned. Furthermore, discourse is an instrument of power, of increasing importance in contemporary societies. The way this instrument of power works is often hard to understand, and CDA aims to make it more visible and transparent' (Blommaert, 2005).

According to Van Dijk, power is expressed in the control of one group over other groups. Control can be exercised as action and cognition, the strong group may actually 'limit the freedom of actions of others, but also influence their minds' (Van Dijk, 1993, p. 254). These theoretical insights are useful for this research because they emphasize the implicit dominance of both the EU and other developed countries over others. They have the right to deny citizens of other countries access to their territories, and have the power over them to attract those whom they find more beneficial, at least up to a certain point. The EU seeks to increase its power in this field, hence its project to harmonize migration policies. Van Dijk states that a major goal of a dominant discourse is 'precisely to manufacture such consensus, acceptance and legitimacy of dominance. Many more or less subtle forms of dominance seem to be so persistent that they seem natural' (Van Dijk, 1993, p. 255)

By using the CDA approach, Ruth Wodak has analyzed political discourses in and about Europe. She analyses different sources (speeches, policy documents) to make sense of the identity and discourse that Europe creates. It is important for Europe to be different than other 'global player'. In EU texts this is made clear with references to the diversity within Europe. With a very diverse background in different cultures and histories, Europe distinguishes itself from other territories, 'for identity is always determined by idem and ipse' (Wodak & Chilton, 2005, P. 121). Europe is unified by common goals and values, by economic and legal cooperation and agreements. The EU tries actively to re-shape Europe's identity. Wodak states that 'the present Europe-discourse consist, as a rule, of the interplay of three dimensions and respective goals: making meaning of Europe, organizing Europe and drawing borders (Wodak & Chilton, 2005, p. 129). Attracting skilled migrants has to do with all goals. It draws borders by excluding some and attracting others, it organizes Europe by harmonizing policies and makes meaning of Europe by branding itself as a highly competitive region, so as to attract more economic activity.

2.4 Qualitative Data Analysis

Much of the literature in CDA is focused on the very textual and micro-level explanations of discourse. For this research however, these methods are too detailed and unsuitable for a geopolitical assessment. Thus, what I will do is following a more generic method for qualitative data analysis as described by Schutt and comparable to the 'roadmaps' other scholars have given for qualitative data analysis, including Dey (1993) and Flick (Flick, 2009). As many authors within the genre have said, CDA is not one method, but rather an approach or a lens. Teun van Dijk makes a plea for more diversity within the 'perspective' of CDA, and finds there are more ways of 'doing CDA'(Van Dijk, 2001). I take this as an encouragement to not follow the methods of CDA as described by his colleagues in the same book, but use a more generic method, while incorporating important notions from CDA
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Schutt argues that a sound qualitative data analysis consists of five steps (Schutt, 2008, p. 330):

1. Documenting of the data and the process of data collection
2. Organization/categorization of data into concepts
3. Connection of data to show how one concept may influence another

4. Corroboration, by evaluating alternative explanations, disconfirming evidence, and searching for negative cases
5. Representing the account

He states that these steps are shared by most approaches to qualitative data analysis. The first step, documentation, collecting and listing the documents, is an important way of conceptualizing and strategizing about the text (Schutt, 2008). In this research a variety of official documents will be analyzed, including policy documents, speeches, websites and strategic documents. This spectrum on information will be collected through official websites of the EU, such as the website of the Commission (ec.europa.eu) and EUR-Lex, which offers access to European law and regulations (eur-lex.europa.eu). Academic literature concerning highly skilled migration from different fields of study are also collected, along with reports from organization such as the Organization for Economic Cooperation and Development (OECD) and statistical data on the numbers of migrants from different sources. Policy plans often refer to each other and this is how I found the important documents on migration in general and specifically, on highly skilled migration. I collected and read these documents, which made me question the reasons behind the emergence of the policy. During my study of these EU policy documents, I noticed they referred extensively to similar strategies of the United States, Australia and Canada, which made me think about the context of the policies. With this in mind I took the decision to make a comparison between these four cases to broaden the perspective on the role the EU plays in the global context. By looking into the policies of three major destinations of highly skilled migrants and comparing the policy plans a contrast can be made, revealing the differences and similarities as seen in the EU case. In the first step of the roadmap, the important documents in each case will be described.

The second step of the 'roadmap' of Schutt requires the categorization of data into concepts. By analyzing primary literature, several things will stand out in the text. With CDA in mind, I try to grasp the underlying assumptions and the logic of choices made by policy makers to expose which 'normalized assumptions and procedures' (Wylie, 2006) underlie the policies. While reading the texts and annotating important concepts that stand out, I was able to find regularities within and among the texts of the same country. The second step will deliver an account of the different discourses found in the four cases that shape thinking about highly skilled migration. The comparative analysis of the policies is broken down into two parts for practical reasons. The two pieces are different phases of the policy: the development of policies, rationales and objectives, and the inner workings of the migration policies, including the selection of migrants and the benefits or incentives offered. Key signifiers in

policy documents will be the basis for the discourses on highly skilled migration in each case. By looking into the why and how of the pursued policies, the discourses in policy making will become clear.

In the third step, these concepts and patterns in logic and rhetoric are compared to see similarities and differences between the four cases. This will be done at the end of chapter five and six. What themes are recurrent among the different cases and which themes are unique for the case? This comparison will help to place the EU within the wider context. Interesting is the way in which these themes are placed in context and history. Looking into this will reveal whether the actor is the first one to introduce these arguments or logic or whether all the cases influence each other as seems to be the case when talking about a competition. In the two chapters that compare the policies and present the found discourses (chapter five and six) all of these first three steps will be taken. They will each conclude in the main rationales, working and outcomes found in each case. By contrasting between the four discourses of the four different cases, the role of the EU will become explicit.

Yet, this is not the end of the analysis. CDA takes a strong normative stance and so do I in this research. The discourses found are under scrutiny in chapter 7, the critical evaluation of the discourses and the role of the EU in particular. Step four of Schutts' roadmap includes the presentation of disconfirming evidence and this fill form the basis for the critical evaluation in chapter seven. This is where deconstruction comes in. The found assumptions, concepts and themes in the discourses will be critically analyzed, using subversive discourses, as is practice in CDA. Academic literature is of great help here, as it helps to think about 'out-of-the-box' options that were not considered in the development of the policies. In this way, theory is used to both understand the processes and as a basis of subversive discourses. The normalized assumptions and procedures as found in the second step will challenged where possible with alternative rhetoric. By applying this deconstruction, it will become clear how existing patterns are 'sedimented and reproduced' in discourses used by policy makers. By challenging the assumptions and rhetoric policy makers make, the construction and working of the discourses will become evident.

The fifth and last step is to report the findings of the analysis, and writing up conclusions. This will be done in the final and eight chapter of this research. The chapter will also evaluate the research process and include suggestions for further research.

Theories on migration policies derive from different academic background and ask for multidisciplinary approaches. As a field, migration studies have provided different approaches to how and why migration takes place. They try to identify the main drivers behind migration processes and how they influence migration and policies regulating it. However, these approaches are not well defined (Meyers, 2000). This chapter will deal with the theories that form the framework to critically understand and evaluate this phenomena. Because the field of migration is highly multidisciplinary, the chapter includes theories from different academic backgrounds. The literature in this chapter will help to grasp the trends in the policies of attracting highly skilled migrants and in migration in general. The first section discusses the approaches to immigration policy theory that can be distinguished in migration studies. Although every approach offers considerable insights, one approach fits this research better than the others. This approach emphasizes the role international and regional institutions can have in migration processes, i.e. globalization theory. Globalization theory is further elaborated by focusing on the works of Saskia Sassen. She discusses the changing role of the state in the field of migration under globalization processes. Among others, David Held and Simon Dalby offer different approaches to the role of the state in migration due to globalization. A discussion among these authors makes up the first part of this chapter. The theories discussed here are used in answering why the EU Blue Card, as well as competing policies were introduced and which logic underlies these policies. The theories are not tested, but used to interpret the creation of policy.

The second part will deal with highly skilled migration in particular, and will include as discussion on the different choices policy makers face while shaping the policies to attract highly skilled migrants. Chaloff and Lemaitre offer a set of available options for determining the strategy in highly skilled migration policies. Ruhs and Chang offer a tool for ethically assessing the migration policies. Considerations for policy makers and their effects form the second part of this chapter. These are used to see what strategies the different actors (EU, US, Canada, Australia) have chosen and what ethical stance these choices imply.

3.1 The State and Migration: Rationales and Objectives

In dealing with migration, the role of the state is crucial, as it is the actor who determines the migration policies that influence migration streams. But how far reaching is this power? How could the implementation of an EU wide migration policy alter the power of the EU states in these matters? Does this mean that EU states are to hand over sovereignty to their regional power?

Some authors state that liberal democracies have full control over migration, while others question this capacity and emphasize economic and sociological aspects to explain international migration. The factors that determine whether a skilled worker will emigrate are not extensively discussed here, however for this chapter it is important to look at the influence states have on international migration. Hollifield writes in his book that while some migration streams can be explained using economic factors, for instance labor shortages after the Second World War in the United States and Europe, and sociological factors, such as migrant networks in mainly family and refugee migration,, but political and legal factors remain to be crucial. 'Economic and sociological factors were the *necessary* condition for continued migration; but the *sufficient* conditions were political and legal' (Hollifield, 2000, p. 148). Hollifield describes three theories of 'how politics matters in driving and channeling international migration'. Firstly an 'interest-based' theory that argues that states are reflective to the needs of powerful organized interests, in which actors push for more expansive immigration policies, 'even when the economic conjuncture and public opinion would argue for restriction'. Secondly the 'liberal state thesis' assumes that migrants and foreigners 'have acquired rights and therefore the capacity of liberal states to control immigration is constrained by laws and institutions', regardless of economic factors, interests or public opinion. These laws and institutions may change over time, but he argues, 'rights in liberal democracies have a long half-life'. In this theory, states would have the fear that enhancing the rights of foreigners would lead to 'opening up the floodgates'. A third theory then is the 'globalization thesis' stresses the importance of economic globalization, which has created 'structural demand for foreign labor (...) and a loss of control of borders, to the point that sovereignty and even citizenship itself may be redundant (Hollifield, 2000, p. 150). To this last body of works belong the contributions of Saskia Sassen, among others.

Hollifield (2000) incorporates elements of different approaches to immigration policy theory as Meyers points out. He shows that immigration policy theory is not well defined and debates among the different schools are absent. An immigration policy, according to Myers consists of two parts: 1) immigration control policy which sets the regulation and selection of migrants, and 2) immigrant policy which sets the conditions that apply to the immigrant including its benefits. In his article he describes several main strands of theory that try to explain the processes and their driving forces. All approaches do offer valuable insights in the driving forces behind migration policy. Different approaches result in different kinds of logic for policy makers. If they believe they are the only ones influencing policies they follow a different rationale from those who believe that migration policy should be constructed in consultation with market actors. Meyers identifies six major approaches or theories of

immigration policy, each with different driving forces behind the shaping of migration policies;

- Marxism emphasize the importance of economic factors and class based policy processes that shape policy. The upper class of capitalist attracts the migrants it needs to drive down wages in order to make more profit. It follows that migration is part of the capitalist development and the international division of labor. Migration processes take place between countries with an uneven development (Meyers, 2000). In this fashion, Manuel Castells describes that migration is the result of the 'uneven development between sectors and regions and between countries' (Castells in Meyers, 2000, p. 1248). Marxism thus sees a great role in the shaping of migration policies for the 'capitalists' or market actors. In the Marxist view, the great corporations are the main drivers behind migration, and have large effect on the policies, as large business owners are protected by elite politicians.

- In the 'national identity approach', the role of debates on national identity and social conflict act as a shaping force in immigration policy. The theory explains that the unique history and a state's identity have a large influence over its migration policies. The approach sees little or no room for 'situational' or external factors. Ideas and traditions about migration drive policy makers. As an example Hollifield shows that the notion of republicanism, as a key concept in French public opinion and policy thinking, has had a large impact of the shaping of France's liberal immigration policy (Hollifield, 1994). This strand of theory focuses on the notions of ideas and identities, as constructivism does in International Relations theory as developed by Alexander Wendt (Wendt, 1999).

- Domestic politics is a strand of political theory that focuses on the interest groups and partisan politics of drivers of policy. When applied to migration policy theory, it sees the state as a neutral platform for societal interests to shape policy. Social actors mainly consist of employers and ethnic groups, who often only act in the interests of a small part of the population. Both of these groups tend to be predominantly pro-immigration. Political parties are another group within these societal interests. Within these parties, a rise of anti-immigration parties in partisan politics in Europe can be observed since approximately two decades, as noted by many scholars (Meyers, 2000).

- The institutional and bureaucratic politics approach sees administration and bureaucracy as the main driving forces behind immigration policy. As Meyers notes, in its pure form this approach believes that states are autonomous in a way that they can control policy without having to acknowledge the influence of societal actors

(Meyers, 2000). Whitacker, an author referred to in this research, belongs to this strand of theory. He sees the state a almost autonomous when he asserts that 'the policies and practices of immigration security have been deliberately concealed from the Canadian public, the press, members of Parliament, and even bureaucrats with no need to know' (Whitaker, 1987), in his book on the 'secret history of Canadian immigration.

- Realism and neorealism, as are well known in International Relations theory, see international affairs as a 'struggle for power among self interested states'. States, as the main actors, are rational and focus primarily on issues that have to do with national security. Conflicts then influence immigration policy, for instance in determining on which refugees to take in or which nationals to restrict access(Meyers, 2000). This approach is not elaborated much in migration theory.

- Liberalism and neoliberalism put more emphasis on economic interdependence and international institutions. These, along with the spread of democracy will motivate states to cooperate and will eventually maybe even bring peace. Translated for migration policy, this strand expresses the economic forces and international institutionist actors as key shapers of immigration policy (Meyers, 2000).

This last approach is the first strand that acknowledges that international actors, such as the EU have substantial influence over migration policies. A sub theory of this liberal approach is the globalization theory or thesis. This theory incorporates aspects of the liberal approach and world system theories. This interest in the role of a regional actor such as the EU of this approach can help to better understand and evaluate the role the EU effectively plays. This approach will be further examined, by looking into the changing role of states in migration policy as an effect of globalization and the rise of international institutions, such as the EU. The importance of the role of the EU in this strand and the changing role of nation states in immigration policy is reason to explore this body of literature more rigorously, starting with the works of Saskia Sassen, one of the main protagonist of Globalization Theory (Meyers, 2000).

Globalization theory

Globalization changes the role of the (nation) state, as economic factors become to dominate or at least influence many policy processes. This is a very important notion for this research because it looks at a non-traditional actor in migration policy, the EU. Saskia Sassen is an important links between the state and migration. In globalization, trends show a shift away from purely national policies and towards a more global approach to policy making. In her

article 'Beyond Sovereignty: De-facto Transnationalism in Immigration Policy' Sassen portrays the changing role of the nation state in migration policies (Saskia Sassen, 1999). While the nation state is still the dominant actor in the shaping of migration policy, the nature of the state is changing rapidly due to the growing complexity of the global economic system. She describes two major trends; 1) 'the relocation of various components of state authority to supranational organizations such as the EU', and 2) 'the de-facto privatization of various governance functions'. In several sectors, including health and transport, a growing number of functions have been privatized in the recent past. This privatization leads to the devolution of the state and lessens the logic of the welfare state. Instead, these trends promote individualist relation with 'capitalist activities'. However, the general trends that this growth of the global economy entails, are embedded in the national territories. This leads to a bigger influence of foreign actors and the private sector in economics, a process of deregulation. Alongside economic deregulation, the legal domain has also changed and now non-state actors have increasingly acquired more power. Yet, this trend is not to been seen in the migration domain: 'While these new conditions for transnational economies are being produced and implemented by governments and economic actors in highly developed countries, immigration policy in those same countries remains centered in older conceptions about control and regulation' (Saskia Sassen, 1999). These older conceptions have much to do with the control of migration. 'Much general commentary and policy making wittingly or not tends to proceed as if most people in less developed countries want to go to a rich country, as if all immigrants want to become permanent settlers, as if the problem of current immigration policy has to do basically with gaps or failures in enforcement, as if raising the levels of border control is an effective way of regulating immigration.' However this policy making on the basis of fear for mass invasions is not justifiable according to Sassen: 'The evidence on immigration shows that most people do not want to leave their countries, that overall levels of permanent immigration are not very large, that there is considerable circulation and return migration that most migration flows eventually stabilize if not decline' (Sassen in J. Friedman & Randeria, 2004, p.233). If this is indeed true, thinking about migration would need to shift from thinking of it in terms of fear to thinking about migration from a more open perspective, as a 'enrichment' as Frattini expressed (Frattini, 2007).

In spite of this alternative view, these negative and fearful assumptions do shape most migration policy of the Western affluent states. Migration is thus an exceptional policy field, which is not, or is lagging behind in, following global trends. While the regulation for the flows of capital and information has opened up, this is not the case for flows of people, i.e. migration. The trends in migration in policy will eventually lead to more multilateralism and internationalism, and should be internalized in policy being de jure multilateral, instead of

just de facto. Sassen talks about the 'control crisis' that prevails in immigration in highly developed countries, which is about the control states have in regulating migration. However, she expresses, control over migration is never absolute, a notion that is not always evident in policy documents. States should incorporate the new 'economic regime, international; human rights agreements, the extension of various social and political rights to resident immigrants over the last twenty years, the multiplication of political actors involved with the immigration question and so forth', into migration policy (Saskia Sassen, 1999, p. 240). States have to understand that they may be the ones designing migration policy, but that they are dealing with complex transnational processes that they cannot control.

In her article 'Regulating Immigration in a Global Age', Sassen expands on her appeal for states to pursue not only economic interest, but 'addresses questions of equity and mechanism for a better distribution of resources allowing more people in poor countries to make a living' (Saskia Sassen, 2006, p. 42). The current policy landscape for immigration policy in developed countries is made up of three key features: 'the handling of immigration as a process autonomous from other processes and policy domains, the handling of immigration as a unilateral sovereign matter and taking the state as given, untouched by the massive domestic and international transformations within which the state operates' (Saskia Sassen, 2006, p. 35). These key features are all challenged by trends that point towards opposite movements: more interaction between processes, more multilateralism and non-governmental actors and a changing role of the state. Therefore, these key features are not a good foundation to build policy on in the changing policy environment. She talks of the EU as one of the cases in which it becomes clear that states have to confront the contradiction between economic internationalization and strictly national regimes. The EU is the one case in which formalization of multilateral migration policy takes place, but also the case where states want to hold on to their national sovereignty in migration issues (Saskia Sassen, 2006).

This leads to a contradiction in national policies which the different governments now face and have to find a solution for. In the ideal solution of Sassen, both sending and receiving states would cooperate more in order to create more sustainable migration flows (Saskia Sassen, 2006). Whether regional organizations such as the EU can provide the proposed solution remains to be seen, but in using these same basic assumptions and the same attitude as states, the EU seems to copy their behavior rather than responding accurately to the changing migration trends.

David Held is another leading scholar in globalization studies. In his 1999 book with McGrew, Goldblatt and Perraton they wrote that international migration has far-reaching

implications for the autonomy and sovereignty of the nation-state. One of their arguments demonstrates that states have limited capacity to control their borders. They argue that even states that go to great lengths to secure their borders cannot do this. Furthermore, 'the growth of international attempts to control or coordinate national policies with respect to migration demonstrates a recognition of the changing nature of state autonomy and sovereignty and the necessity to increase transborder cooperation in this domain' (Held, McGrew, Goldblatt, & Perraton, 1999, p. 321-322). This argument, already written down in 1999, predicted the kind of policy harmonization in the migration field that is happening in the EU today. Additionally, migration has, according to Held et al. changed political interest of states along with their policy options and their cost and benefits of migration. Held also discusses the effects of globalization on citizenship and argues that globalization has caused the erosion of the possibility for meaningful democratic citizenship (Kymlicka, 1999).

Much of the literature on migration within the globalization theory focuses on this changing notion of citizenship. Increased international migration has forces policy makers to think about the inclusion of foreign workers in the labor market, in education, welfare programs and other social services. While the inclusion of these workers does not grant them citizenship, it had policy makers think about what it means to be a citizen in a state. If not based on national belong anymore, what is it based on? Soysal argues that a new and more universal concepts of citizenship sprouted in the last century based on a notion of universal personhood rather than national belonging. Guest workers in Europe were granted rights and privileges sometimes comparable to citizens even without enjoying the formal status of citizen. She then argues that citizenship is, as a consequence, not needed for membership of a state. This shift can be seen as a shift in the 'global discourse and models of citizenship' (Soysal, 1994). In the same line of though, Jacobson has emphasized human rights as a basis for a 'postnational regime', which has caused migrants to gain a 'international legal personality', 'a status that somehow surpasses citizenship' (Jacobson, 1996). However, this is not guaranteed by every state, as Soysal expresses, 'the exercise of universalistic rights is tied to specific states and their institutions' (Soysal in Rosenblum & Tichenor, 2012). While the citizenship issue may not directly influence migration control policy (Meyers, 2000), it may affect the discourses on migration issues that are used by policy makers and thus indirectly influence policies.

Globalization has many effects on all levels, be it international institutions, states or individuals, that can be both positive or negative. Authors writing in the global apartheid tradition often reflect strong normative stances on the desirability of the effects of globalization. It incorporates critique on globalization processes, by making an analogy referring to the South African Apartheid period. Discontent with globalization processes usually comes from the notion that not everyone can benefit equally from these 'global' processes.

The changing role of the state has to do with the leveling of the world, something Friedman pointed out in his 'The World is Flat' (T. L. Friedman, 2006). And while opportunities for people to compete on a truly global scale are growing due to the removal of economic barriers, he also points out that this is not accessible for everyone:

> *'No, not everyone has access yet to this new platform, this new playing field. No, when I say the world is being flattened, I don't mean we are all becoming equal. What I do mean is that more people in more places now have the power to access the flat-world platform to connect, complete, collaborate, and, unfortunately, destroy than ever before'* (T. L. Friedman, 2006, p.205-206)

Though Friedman's book is not without controversies, the fact that not everyone gains from processes of globalization is widely acknowledged. The 'discontents' of globalization have been pointed out by many authors, including (S. Sassen, 1998; Stiglitz, 2002). This criticism on the effects of globalization is the particular interest of a strand of theory known as global apartheid.

As Simon Dalby (1998) explains, the skeptics of globalization have emphasized that globalization processes tend to enrich the already rich and impoverishes the already poor. In this line of thought, the analogy of the apartheid era in South Africa offers valuable insights. This 'model' offers an alternative to the homogenized interpretations of globalization by a large group of scholars. It sees the South African model of apartheid as the state of global politics today. As Köhler describes in his article from 1995, he defined (and more or less coined) the concept of global apartheid in 1978 as 'a structure of world society; a structure of extreme inequality in cultural, racial, political, economic and legal terms, as is South African apartheid' (Köhler, 1995). This leads to a situation in which developed countries try to protect their dominant position by sustaining inequalities at the expense of less developed

states. Where this approach differs from approaches that emphasize a North-South gap or similar concepts is that they are more rooted in an economic dimension, while global apartheid is rooted in a racial dimension. According to Köhler the concept of global apartheid can be interpreted in three ways, firstly as an empirical description of the global society, secondly as a normative stance, criticizing the inequality in a global society, or thirdly as 'an existential category encompassing experience of the world and the lived identities constructed on the basis of this experience by participants in the global polity' (Köhler, 1995). In my interpretation, this third understanding sees global apartheid as a concept that shapes identities and discourses. In the global apartheid analogy, again, the role of the state has a central role. Yet, as Dalby states, 'nation states may retain their decision making capacity, but, having become part of a network of power and counter powers, they are powerless by themselves, they are dependent of a broader system of enacting authority and influence from multiple sources' (Dalby, 1998, p. 145). States have to find their role in larger networks that incorporate market actors and non-governmental actors in a global setting. In other words states and their options in policy making are very much controlled by global trends beyond their sphere of influence.

In the division between poor and rich, citizenship in a rich area is something that is wanted by many but unreachable for most of those living in poorer areas. For states, migration seems predominantly to be about controlling the 'influx' of unwanted migrants. By seeing migrants as unwanted threats, states want to suggest their power over this control. 'But', Dalby argues 'in causing numerous legitimacy crises by dealing with migrants in inhumane ways, the political costs of such strategies that a more flexible administrative structure for dealing with migrants is likely preferable in most situations' (1998, p. 142). Global apartheid in migration means differentiation on the basis of origin. The EU, in many migration policies, differentiates migrants on the basis of place of birth. Van Houtum, in this line of though, describes the EU as a border machine that distinguishes migrants that 'belong in' the EU from those who do not (2010). A global apartheid regime is used by the EU to offer its citizens greater security and protection of the Western identity. Poorer states suffer from these selection processes.

The quote of Frattini in the introduction of this researches is in stark contrast with this view on migration, as 'we have to shift our traditional way of thinking of migration as a world of loos and sorrow' and ' we have to look at immigration as an enrichment and as a inescapable phenomenom of today's world, not as a threat' (Frattini, 2007). Yet, the EU is increasing the securitization of migration (Huysmans, 2000), also evidenced by the establishment of Frontex in 2004, EU regulations such as Schengen and the Dublin regulations aim to limit access for

refugees (Dalby, 1998). The question then rises whether a small migration policy like the Blue Card, specifically aimed at highly skilled migrants can turn the whole migration discourse, into an overall positive approach. The ways of thinking about highly skilled migration and the strategies to shape policies are discussed in the next paragraph.

3.2 The State and Migration: Policy considerations

Last paragraph has given a glimpse of the challenges that states face in regulating migration. This challenging position, in which states have some, but certainly no absolute control over migration, offers a few tools for policymakers to shape migration policy. This paragraph will discuss the practical and ethical choices policy makers face in building policy. States pursuing highly skilled migration policies ha.ve some policy options to choose from. Firstly practical, yet far reaching choices for policy makers are discussed: temporary or permanent visas, demand or supply driven systems and an active or passive role for the state. These offer dilemmas which policy makers have to face in shaping highly skilled migration policies. The second section will delve deeper into the ethical side of migration policies and offers a framework for evaluating the moral standing of the policies.

Strategies

In this first section I distinguish three of them: demand or supply-driven system, temporal or permanent visas and active or passive attitude. Chaloff and Lemaitre (2009) discuss the policy options and the effect they have on the further shaping of their strategies and mechanisms. A basic distinction they make in the shaping of policy is the choice for a supply-driven system, in which states 'select for success' or a demand-driven system, that works via employer requests. To start with the latter, demand or employer-driven systems rely on the request of employers to hire a foreign highly skilled migrant. When the employer and applicant agree that the applicant is the best option to fill the vacancy, the applicant has to prove that he or she fulfills the other requirements imposed upon by the state. These requirements often include educational and professional criteria to fit the definition of 'highly skilled', which is a highly contested definition as shown by policy makers (Council of European Union, 2008) and academics (Koser & Salt, 1997). Thus different policies use different definitions of highly skilled and include different occupations to define this group of migrants. Depending on the exact kind of visa, these requirements for migrants may change. Criteria on wage and working conditions are often put in place by the state in order to protect the foreign worker (Chaloff & Lemaitre, 2009).

Protection of the domestic workforce on the other hand, is a crucial concern for policy makers. While this type of migration is established to fill general and specific labor

shortages, states do not want to attract 'unnecessary migrants', those who would fill vacancies domestic workers could also fill. For this protection, states with a demand driven system can use two mechanisms: labor market tests and shortage occupation lists. In the first, the state issuing the visa requires the employer to search for domestic workers first, before turning to foreign workers. This mechanism is established to protect the domestic workforce and to keep domestic unemployment as low as possible. A labor market test is present in many European states (including Austria, Czech, Germany, Netherlands, Norway, Poland, Portugal, Spain and Sweden), in the US and many other states. Generally, job offers have to advertise for a period of time through a public employment service (Chaloff & Lemaitre, 2009).

A second mechanism is the shortage occupation list. Some states keeps lists of occupations that are highly in demand and sectors that suffer from skill shortages. In some cases these are regional, for example in Canada, where provinces keep track of Occupations under pressure lists. These list can be constructed together with employers or other social partners (Chaloff & Lemaitre, 2009).

The alternative system is the supply-driven system, in which no job offer is required for a visa, but in which migrants must possess a specific set of characteristics. The characteristics and skills are assessed predominantly in point's tests. Among other factors, age, education, work experience and language skills, are awarded by a number of points. Each factor has a maximum number of points, which adds up to the total number of points possible. Successful applicants should collect enough points to reach the pass mark, which is around 60-70% of the total points possible in the cases of Australia and Canada. A job offer is thus not necessary for gaining enough point to reach the pass mark, however it may add extra points in the test (Citizenship and Immigration Canada, 2010a; Department of Immigration and Citizenship, 2011d). In this kind of system the state takes over the role of the employer in selecting the migrants it wants to attract. It should be noted that however it is influenced by the demands of employers (they are consulted in order to create shortage lists for example in Australia (Department of Immigration and Citizenship, 2012a)), they are considered supply-driven systems because of the fact that there is no job offer needed beforehand (Chaloff & Lemaitre, 2009).

Supply-driven systems often lack or only indirectly use safeguards for protecting the domestic workforce (Chaloff & Lemaitre, 2009). They can however, incorporate mechanisms used in demand-driven systems in an indirect way, as Australia demonstrates by using a occupational shortage list (Department of Immigration and Citizenship, 2012a). In theory

each visa can have a different system, and some states do combine demand and supply driven systems in their migration policies directed at highly skilled migrants.

Another choice policy makers face is the duration of initial or original visas for highly skilled migrants, a choice between temporary and permanent migration. Some states have only temporary visas for highly skilled, migrants, others mainly permanent visas. Temporary visas offer limited stay, and are designed to fill acute labor shortages in specific sectors. Temporary migration is more suitable for a fast solution in skill gaps, as the time for processing is shorter for temporal visas. Manolo Abella, in a report for a United Nations organized symposium on migration and development sees three major advantages of temporary programs: first, temporary programs contribute to greater flexibility in the labor market, temporary admissions are easier to 'sell' politically to electorates and third, these programs do not have to deal with integration of permanent migrations and the difficulties linked to this process (Abella, 2006).

Permanent visas, that grant entry for an unlimited period of time, on the other hand are used to fill long term labor shortages. Due to the aging population and falling birth rates of most Western countries and the labor gaps this creates, permanent migration can be a crucial part of the solution (Prime Minister of Canada, 2002). As highly skilled individuals can contribute greatly to the much wanted innovative and knowledge-driven economies that most Western countries try to develop (Florida, 2005), permanent migrants are part of the solution to problems caused by an ageing domestic workforce, says the Canadian government (J. C. Prime Minister of Canada, 2001).

A third choice policy makers face, is the preference for either a system that is active in recruiting and attracting highly skilled migrants or one that is passive. An active policy tries to persuade the migrant to come to their state by offering subsidies for application, job fairs, job listing in other than the native language or assistance in the administrative procedures. A more passive though still 'open' policy tries to reduce the obstacles the migrant faces in applying and moving. This can include fast and easy procedure and application, preferential treatment in for instance exemptions from strict requirements on wages of language skills (Chaloff & Lemaitre, 2009).

Ethical position

Moral evaluation of migration policies is tricky because of the different principles that can be used and the reality that tends to stay far away from those principles. Joseph Carens, a political theorist in favor of open borders (Carens, 1987) explains that while the complete free

movement of migrants would be by far the most preferable, a realistic approach to morality may be more closely linked to policy and informs actual discussions about policies. Such a realistic approach takes existing policies as starting point. A too big gap between 'ought' and 'is' should be avoided. An idealistic approach to morality on the other hand, engages in more fundamental justification and takes not policy but moral principles as its basis. Carens argues that discussions about the ethics of migration should include both approaches (Carens, 1996). Ruhs and Chang (2004) have taken this advice seriously and tried to come up with a framework for the ethical assessment of temporary foreign worker programs. They made a matrix with on one axis the degree of consequentialism (rights-based approach versus the consequentialistic approach) and on the other the moral standing for noncitizens (nationalistic versus cosmopolitan approach) as shown in figure 8.

The first distinction is made with the two extremes being the rights based approaches and the consequentialistic approach. It asks whether policy should be based on the outcomes or consequences, or on the process or means. A policy that is based purely on their consequences, looks only at its outcomes to evaluate the choices. Utilitarianism can be seen as an example of a purely consequentialistic approach. In utilitarianism, the benefit of outcomes is used as the sole evaluation mechanism. Principles or processes are not taken into account, as the utility is the only thing that matters. This is unlike the other extreme, the rights based approach. Here, the outcome is irrelevant, yet principles and processes do matter. Usually the rights of people are protected with no eye for the outcomes or effects this has. Libertarianism serves as an example of this approach. In libertarianism, individual rights are absolute and should be protected. Those rights cannot be violated for a 'greater good', as is the case in utilitarianism (Ruhs & Chang, 2004). Elaborating the example, in utilitarianism, the rights of a minority group can be neglected to achieve a greater good for the largest group. This could not happen in a rights-based approach, as the rights of the minority group would not have been violated in the first place, independently of the outcome.

Translated into migration policy theory, a consequentialistic approach would shape policy according to its outcomes, with no eye for rights of the migrants and non-migrants, while the rights based approach would look at the rights migrants and non-migrants have. The different ethical theories have different stances on the desirability of these approaches. When seen as an axis, most ethical theories would position themselves in between these two extremes.

Figure 1 Matrix for ethical positioning of labor migration policies (Ruhs & Chang, 2004)

The second axis discusses who experiences these consequences or benefits from these rights, its own either citizens exclusively (nationalist view) or potential migrants and non-migrants as well (cosmopolitan view). It basically asks for whom the policy is responsive. If policy should take the rights of migrants and non-migrants into account, a next question is to what degree. Should the rights of a state's own citizens and 'others' weigh equally or differently, and in which proportions? The authors call this the degree of moral standing of the actor. For instance supporters of universal human rights belong to the cosmopolitan side of the axis, while extreme nationalists are placed at the other end. Again, most ethical positions would fit somewhere between both ends of the axis, while the extremes would be unthinkable in today's world because they are either: a) too idealist to be accepted by most people (purely cosmopolitan) or b) inhumane towards foreigners (purely nationalistic) (Ruhs & Chang, 2004).

Migration policies can be placed somewhere along the two axes to determine the position in the matrix. The different migration programs in this research will be positioned within this matrix by analyzing both the degree of consequentialism and the moral standing for noncitizens. These features can be analyzed after having discussed the strategies used in the cases in chapter six. The moral standing are then criticized in chapter seven, which deals with the critical evaluation of found discourses and policies.

3.3 Role of theory in this research

This chapter gave an overview of important academic debates and theories that can be used to gain a better understanding of phenomena in the policies. The chapter started off with an overview of migration policy theories that try to explain driving forces behind migration policies. While all of the approaches offer some valuable insights, and are used in the analysis to understand the logic of some policies, only one was further elaborated on, globalization theory. While other approaches focus more on economic or domestic factors, globalization theory takes the role of international institutions, such as the EU serious as a driver of migration policy. The interplay of nation states and international institutions is an important subject in these theories, as well as the role of citizenship. A more explicit normative position in globalization theory is global apartheid. These theories are used to critically understand the policies as conducted by the governments of the cases.

The same goes for the strategies and policy choices in the second paragraph, by comparing these choices to the actual policies, the logic behind them becomes clearer, as well as the benefits and advantages of these policies. In this research, theory is not tested by a hypothesis, rather is it used to see whether the presented theories are helpful in grasping the new processes in the field of highly skilled migration. As Silverman points out, 'theory provides both a framework for critically understanding phenomena and a basis for considering how what is unknown might be organized' (Silverman, 2009). In the conclusion the usefulness of the presented theories will be evaluated by looking at to what degree they help to understand the phenomena. The phenomena it does not cover highlight the shortcomings of today's academic debate, or should be looked at with another approach.

In this chapter an overview of highly skilled migration is given. This chapter consists of three parts: Firstly a historical overview and secondly a brief overview of the newcomer among global immigration policies: the EU Blue Card. Thirdly, I provide a section on today's patterns of highly skilled migration. The first part, the brief historical account, identifies the most important steps taken in highly skilled migration policies and follows the main actors of the research in the evolution of their policies. The second section provides a brief discussion on the EU Blue Card. It includes the first commentaries on the policy plans to show the reception of the plan in the academic world. This also shows the existing gaps in the literature which this research tries to reduce. The third part provides data on trends in highly skilled migration in today's situation. This part will give an indication of the size of the highly skilled migrant population, their origins and destinations.

4.1 Historical account of highly skilled migration

This bill says simply that from this day forth those wishing to immigrate to America shall be admitted on the basis of their skills and their close relationship to those already here. This is a simple test, and it is a fair test. Those who can contribute most to this country--to its growth, to its strength, to its spirit--will be the first that are admitted to this land (Johnson, 1965).

With those words US president Lyndon Johnson marked the first migration law that targeted 'men of needed skill and talent'. The amendments made to the Immigration and Nationality Act in 1965, also known as the Hart-Celler Act, opened the US borders for skilled migrants from around the world (Shachar, 2006). Though in earlier years much had been said about the attraction of skilled workers, this amendment in the US was one of the first and most important shifts towards a migration policy based on skill selection. From this point onwards, the skills a person possessed became either the reason to be or attracted or the grounds to be refused entry to the US. This remarkable trend seems to have laid the foundation of today's policy. One must note that when president Johnson said 'those who can contribute most to this country' he talked about contributing to the American economy, rather than for instance the social, volunteering or security sectors. An economic focus is dominant in policy making, which is a reflection of the concerns of the capitalist system that sees migration as a way of complementing the national economy along with material and capital flows (Castles, 1992). The prevalence of economic priorities in immigration policy

making, persists up until this day without much justification for it found in any policy documents.

An enormous rise in international migration was seen in the early twentieth century, due to the demand of low skilled workers in industrialized states and its colonies, facilitated by decreasing costs for transportation. Following this increase, international migration declined during the Great Depression and the World Wars. An era of limited immigration began in the industrialized states due to restrictive immigration policies (Chriswick, 2005). In the US, immigration policy before the amendments of 1965 followed a system of quotas determined by national origin (2% new migrants allowed of the number of migrants from that country already living in the US), but seemed to lack a comprehensive migration strategy. Criticisms began to arise. The system was discriminatory on the basis of nationality and religion (migrants from the Asia-Pacific were banned completely and no quotas were applied to migrants from the Western hemisphere) and its focus on family-reunification and humanitarian help was deficient. At the same time, others wanted to preserve the American culture by maintaining a restrictive immigration policy. As a compromise between them, the US government abolished the national quota system gradually, and was replaced by a preference system in 1965 which discriminated less on the reason of background, but still made a distinction between Western and non-Western migrants. A maximum of 170.000 visas were to be issued to non-Western migrants each year, with a maximum of 20.000 migrants per country. Additionally a maximum was set on migration from the Western hemisphere for the first time: 120.000 migrants (Keely, 1971). Under these amendments, more emphasis was put on family reunification, and the preference for professionals and highly skilled migrants, under the categories of 'Members of the professions and scientists and artists of exceptional ability' and ' Skilled and unskilled workers in occupations for which labor is in short supply in U.S.' (Keely, 1971).

Keely states in his analysis (1971) of the effects of the 1965 amendments on the immigration that two important shifts were to be seen as a result: change in national origin and 'occupational levels'. More Asians and more migrants from southern and eastern (instead of northern and western) Europeans immigrated to the US. In occupational levels, that generally remained the same, a rise was seen in the immigration of professionals, technicians and kindred workers, however 'the net effect of the policy chances on the occupational characteristics of the immigrant population during the transition was slight' (Keely, 1971, p. 167). Although the amendments had seemingly limited effect at the time, they are seen as the starting point of immigration schemes aimed at attracting talent all over the world. According to president Johnson the un-American nature of migration law was hereby

abolished. This new migration law did more justice to 'our beautiful America [that] was built by a nation of strangers' (Johnson, 1965).

It is interesting to trace back why policy makers thought there was need for more skilled migrants. As Keely analyses, 'legislation reflected the sentiment and mood of the country and of the particular legislators in office … the debate on the 1965 Act was no exception' (Keely, 1971, p. 158). Yet, he describes that most of the sentiment among voters favored more humanitarian values in migratory policies. In general, the attraction of skilled migrants seems to be an effect of more capitalist policies, for which economic benefit is the main goal, over other social or humanitarian goals. While refugees are accepted on humanitarian grounds and family members on the basis of the (perceived) social rights of families to live together, but economic migrants are accepted in order to deliver economic benefits (Keely, 1971). As Yale-Loehr and Hoashi-Erhhardt describe 'we assume that the purpose of selecting economic-stream migrants is to increase the host country's wealth and to achieve a net economic gain for the entire population' (Yale-Loehr & Hoashi-Erhardt, 2001).

As a reaction to the amendments, Canada was the second state to loosen its immigration policy for highly skilled migrants. In 1967 the country introduced an innovative point system that remains in place to this day. While this marked the first big step towards a selective immigration policy, this selection was already a point of political discussion decades before the introduction of the point system (Whitaker, 1991). Already in 1947, the prime minister of Canada, Mackenzie King, was aware of the potential effect of attracting those migrants who could be beneficial for the Canadian economy: As Whitaker cites in his article on the history of Canadian migration policy, the prime minister King spoke about regulation 'to ensure the careful selection and permanent settlement of such numbers of immigrants as can advantageously be absorbed in our national economy' and pointed out that it was 'quite clear that Canada is perfectly within her rights in selecting the persons whom we regard as desirable future citizens. It is not a fundamental human right of any alien to enter Canada. It is a privilege. It is a matter of domestic policy' (Whitaker, 1991). Though it was not until the fruitful 1960's that the racial tendencies of the former migration policies were discussed and more politicians saw the growing need for more immigrant workers and not just guest workers. In '67 this took shape in the form of a point system, as described by Whitaker, a 'color blind system', though in practice the system was still disadvantageous for the migrants from poorer areas. The point system awards potential migrants with a number of points, depending on their education, language proficiency, work experience, age and so on. The system was used to make sure Canada attracted only those who would be highly advantageous to the Canadian economy and could continue to benefit for quite some time, as

a consequence, age restrictions were implemented (Whitaker, 1991). While promoted as being anti-discriminatory and transparent, the system was discriminating on other grounds such as age. Yet, the new points system would become to be seen as a landmark in highly skilled migration policy (Shachar, 2006).

This system proved successful in the early years, at least in the eyes of Australian policy makers, as it led Australia to introduce a point system similar to that of Canada in 1973. Australia's Minister for Immigration also emphasized that he had 'taken the best from the points system such as that used by Canada' (Shachar, 2006, p. 176). In Australia, in contrast to Canada, the points test was designed only for migrants that applied for a 'skills visa', and not for all economic migrants (Hawthorne, 2005). The Australian test assesses roughly the same skills as its Canadian counterpart, such as language proficiency, education and work experience. The Australian system was designed to be transparent and objective. Australia offers a whole range of visas for skilled migrants and this variety of visas makes room for a flexible and mostly demand driven system (Department of Immigration and Citizenship, 2011c).

Since the first moves of the main actor in this playing field much has changed, but one of the main objectives of migration policies and strategies have remained: the active attraction of highly skilled migrants. Whereas the US always had the largest inflow of this type of migrants, this has changed in the last few decades, due to, most scholars argue, the competitive immigration regimes of other states (Shachar, 2006). As a result the US responded to the growing competition with the Immigration act of 1990. Shachar states that it is 'widely recognized that the 1990 Act was '[r]esponding to fears concerning the US work force's ability to compete in the global economy' (Shachar, 2006, p. 183). In practice most workers come via a temporary visa, extend it and then apply for a green card, the permanent permit. The temporary migrants can receive an H-1B visa. Conditions for this visa are that the migrant holds at least the equivalent of a bachelor's degree and is offered an occupation that requires theoretical or technical expertise in specialized fields, such as science, engineering of computer programming. According to Cobb-Clark and Conolly ,due to these changes in US legislation, the number of migrants that asked for a visa in for example Australia has dropped. At the same time, other actors, including the US were very keen on staying ' number one' as most attractive destination (Jacoby, 2011).

Also in Europe the targeted immigration policies had paid off. Since the post war era, Germany has benefitted greatly from the skilled and unskilled workers that helped it to rebuild its economy. Germany, along with most other European states has had very

restrictive immigration policies for the last half of the twentieth century, and often only allowed temporary workers during the '60s and '70s. Decades later, these guest workers had not moved back to their countries of origin. The controversial debate about the multicultural policies that were pursued in these years and the resistance against such policies led to much of public debate in the last decade of the twentieth century and the first decade of the twenty first century. Immigration became a much politicized and polarized subject (Bruquetas-Callejo, Garcés-Mascareñas, Penninx, & Scholten, 2007), presumably one of the reasons explaining why European countries were late in shaping targeted immigration policies of their own. As a turning point in Germany's restrictive policies, a 'Green Card' was introduced in 2000, aimed at attracting ICT professionals (Shachar, 2006), and shortly after a commission concerned with the revision of migration policy 'made the recruitment of a highly skilled work force the centerpiece of its proposal to overhaul the immigration system'. Following Jacoby the reason for this radical shift was that 'governments were starting to grasp that they were in a race for workplace talent (…) now they were competing for brain power: the scientists, engineers, entrepreneurs and high-end business managers who fuel the dynamism of the international economy' (2011, p.9). Germany was not the only one to 'enter the race' to open up the borders for the highly skilled. The United Kingdom was the second European power to introduce a Highly Skilled Migrant Program, that sought for 'a proactive approach to immigration, in which immigrants are requited actively for the economic benefits they bring', as stated in the official Immigration Rules (Immigration Rules quoted in Shachar 2006). Today this system has been replaced by a points system, which follows the logic of systems used in Canada and Australia. In the United Kingdom a potential migrant does not need a job offer to apply for a visa (UK Home Office, 2011). Shortly after this move, an increasing number of European countries drafted their own legislations to attract highly skilled migrants, including France, Ireland, the Netherlands, Denmark and Sweden (Shachar, 2006).

In 2007, Vice President of the European Commission, Franco Frattini and President Barroso presented a plan to introduce the Blue Card. As Frattini stated on his home page: 'The Blue Card means that while respecting the principle of preference for our European fellow citizens, Europe opens itself to talent and merit in competition with the United States, Canada and Australia'(European Commission, 2011). The Blue Card, inspired on the US Green Card, will thus try to improve the attractiveness of EU countries for highly skilled migrants. But the structure of the EU is of course very different from that of nation states like the US. The question that arises is whether the EU will ever be able to compete with nation states in this field.

A look into history shows us that, at least, national governments feel that they are in competition with each other for the same migrants in the 'pool of potential migrants' (Cobb-Clark & Connolly, 1997). These terms, such as 'pool of migrants' influence the way policy makers and the pubic think about this type of migration and promotes the idea that migrants are (nothing more than) economic tools for the national economy. Such influences on discourse will be analyzed in chapter 4, on the rationales and objective behind highly skilled migration policies.

The used policies and programs seem to get growingly outspoken and more actively in recruiting migrants, to guarantee the 'needed foreign workers' (Jacoby, 2011, p.11) or 'ensure that Canada receives the skilled migrants it needs' (J. C. Prime Minister of Canada, 2001, p. 9). As said, many authors have discussed the 'growing competition' between states. Or, as Doomernik, Koslowski and Tränhardt call it 'battle for brains' (Doomernik, Koslowski, & Thränhardt, 2009), or 'global competition for talent' (Reiners, 2010), 'managing global talent pool' (Hart, 2006), or even the 'global war for talent' (Beechler & Woodward, 2009). Scholars seem to agree on the fact that companies and states are increasingly competing to attract skilled workers. There is also a wide consensus about the US is 'losing' the advantage it enjoyed for many years (Salt, 1988; Shachar, 2006). For example Cobb-Clark and Connolly show that the US, by focusing too much on family reunification instead of highly skilled migration, 'has put the US at a disadvantage relative to Canada and Australia' (Cobb-Clark & Connolly, 1997). Increasingly, Canada, Australia and European states are posing a threat to the US by attracting more of the skilled migrant the US want to attract. American business owners have called upon the government to take action, as the CEO's of both Intel and Microsoft both did (Bangeman, 2006; Collett, 2008).

Data on highly skilled migration is not widely available and is often hardly comparable. Since there are many different definitions of what accounts for highly skilled migration and the variety of policies in many states, statistical data is scattered. Some take actual visa intakes as a starting point, other take percentages of highly skilled among immigrants and temporary workers as proxy measures. Data for this research stems mostly from the most recent OECD report dealing with highly skilled migration, which combines available data sets to present patterns of mobility, and its impact in different countries (Organisation for Economic Co-operation and Development, 2008). Some others that have constructed a database for more quantitative research include Dumont and Lemaitre who count immigrants and expatriates in OECD countries and include data of different skill levels
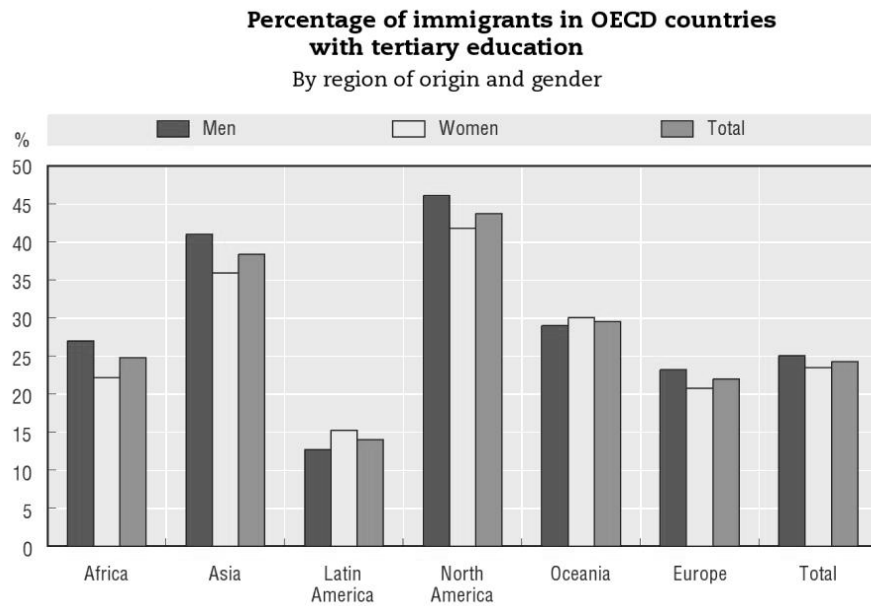
(Dumont & Lemaître, 2005) More research that incorporates data on highly skilled includes Carrington and Detragiache for the International Monetary Fund (IMF) (1999), Adams (2003), and Docquier and Marfouk for the World Bank (2004), Dumont and Lemaitre (2004).

In general, migration of people increased very fast since the Second World War and is still increasing about 2.9 percent annually. This year an estimated number of 214 million people in the world are migrants (International Organization for Migration). Globalization changes the role of the nation state in many fields. This is an important notion for this research as it deals with a non-traditional actor in migration policy, the regional actor that is the EU.

In speaking about highly skilled migration, an estimated seven million migrants moving to developed countries in the last decade have tertiary-education, both from less developed (five million) and developed countries (2 million). This number is increasing and is becoming more important to countries focusing on a knowledge economy. Innovation, as the OECD argues, might be the one sector that is most strongly affected by highly skilled migration. The rising number of highly skilled migrants is due to more opportunities to study and work abroad, the rising demand of researchers and the policies of countries in order to attract these migrants (Organisation for Economic Co-operation and Development, 2008, p. 17-18).

As the OECD shows, 24,3% of all immigrants living in OECD countries are tertiary-educated (Organisation for Economic Co-operation and Development, 2008, p. 74). This number varies between different states and continents, the latter shown in the figure 1 below. This table makes clear that while in North America almost half of the immigrants are highly skilled, Europe as a region falls behind with less than a quarter. In Oceania this number is round 30%.

The countries of origin are both developed (mostly OECD) and less developed. Figure 2 shows the top ten non-OECD states from which highly skilled migrants emigrated to OECD countries. This figure shows that North American and Asian, followed by migrants from Oceania form the majorities of immigrants in the developed countries. The share of Asians is remarkable as only Japan and South Korea are members of the OECD.

**Percentage of immigrants in OECD countries
with tertiary education**

By region of origin and gender

| Men | Women | Total |

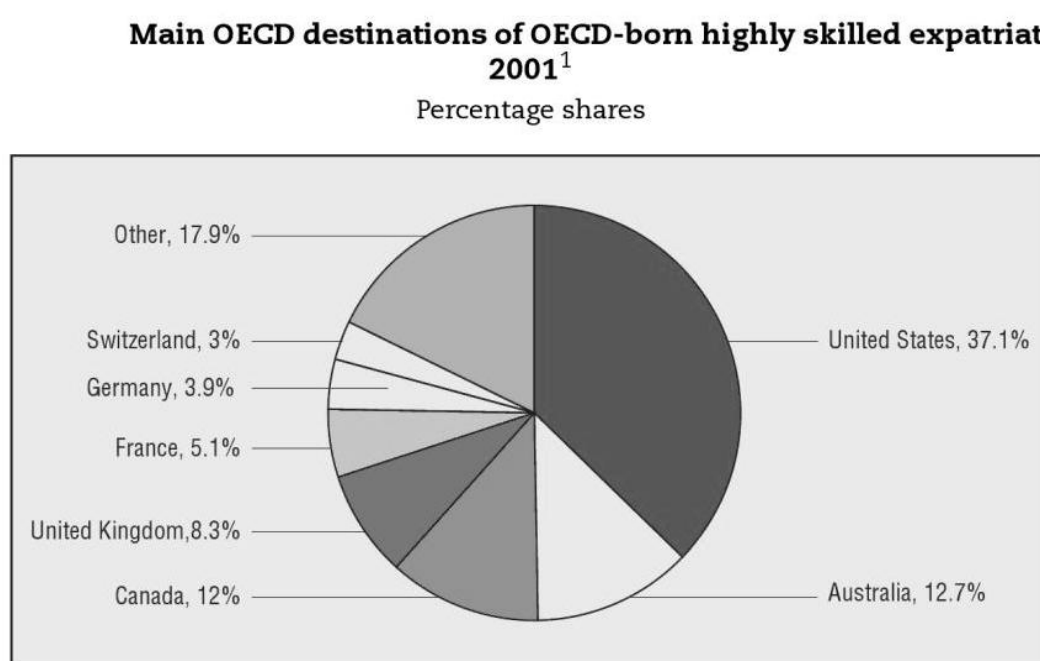**Figure 2 Percentage of immigration in OECD countries with tertiary education
(Organisation for Economic Co-operation and Development, 2008)**

Figure 3 then differentiates the countries of origin of these migrants. Within Asia, India Philippines and China are the main 'exporters' of skilled migrants, with India having around one million highly skilled workers living abroad, just in OECD countries. Conversely, figure 3 shows the main destinations of OECD born highly skilled expatriates. For these migrants, the US in the most important destination Followed by Australia and Canada. The origin of highly skilled migrant from OECD and non-OECD countries combined is shown in figure. It demonstrates the origin of highly skilled migrants in OECD countries, which gives an interesting insight in differences between highly skilled migrant populations of the cases in this research on the basis of their origin. Canada and the US both attract more non-OECD migrants, while Australia attracts more OECD migrants. For European countries such a rigid division

**Foreign born highly skilled expatriates in OECD countries,
by country of origin, 2001[1]**

Top ten non-OECD economies
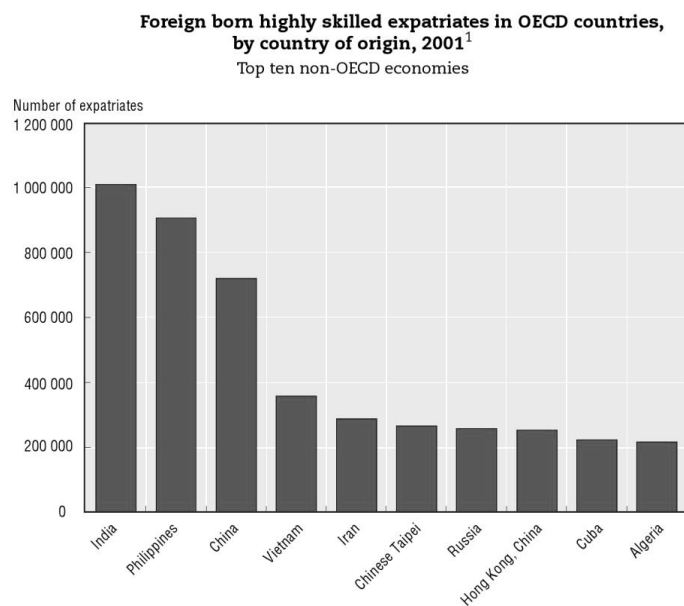
**Figure 3 Foreign born highly skilled expatriates in OECD countries
(Organisation for Economic Co-operation and Development, 2008)**

cannot be made because migrants from non-OECD and OECD backgrounds represent roughly the same share. It should be noted though that these are percentages of the domestic skilled population. The figure also shows that Australia attract the most highly skilled immigrants as percentage of the own highly skilled population of the cases in this research.

In absolute numbers, the US is clearly the main attractor of highly skilled migrants as is shown in figure 5. The roughly 8 million tertiary educated immigrants in the US are almost four times as much as in Canada, with around 2 million. Australia follows closely with around 1,5 million

Main OECD destinations of OECD-born highly skilled expatriates, 2001[1]

Percentage shares

- Other, 17.9%
- Switzerland, 3%
- Germany, 3.9%
- France, 5.1%
- United Kingdom,8.3%
- Canada, 12%
- United States, 37.1%
- Australia, 12.7%

Figure 4 Main OECD destinations of OECD-born highly skilled expatriates (Organisation for Economic Co-operation and Development, 2008)

Highly skilled migrants from OECD and non-OECD countries, by OECD country of residence, 2001[1]

As a percentage of highly skilled natives in the country of residence
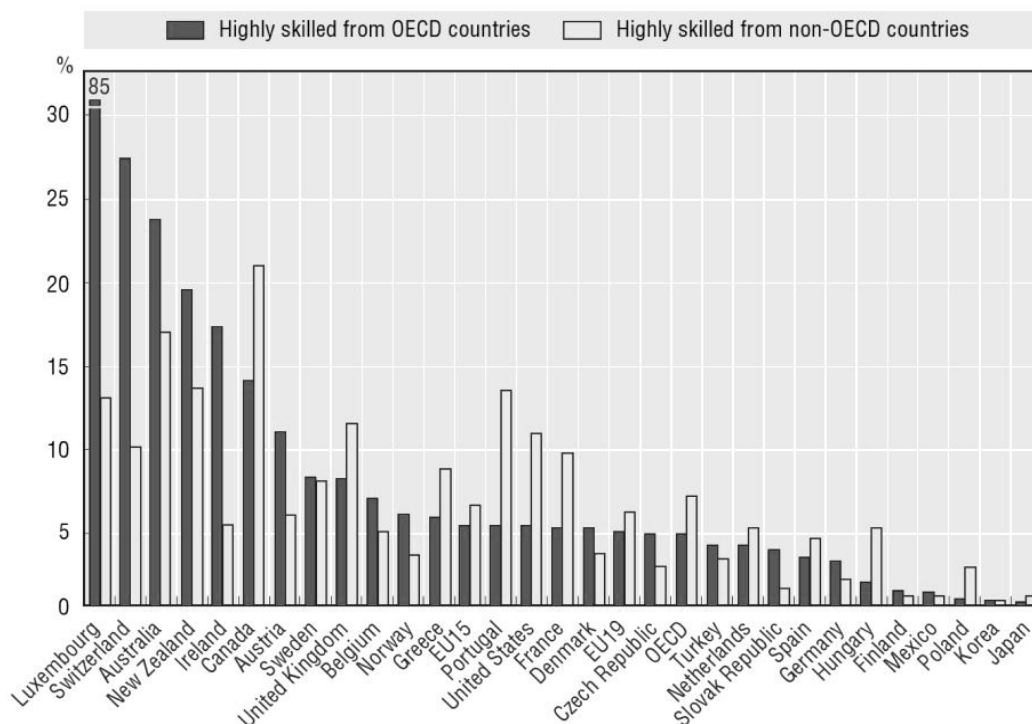
1. 2001, or nearest available year.
Source: OECD Database on Immigrants and Expatriates.

Figure 5 Highly skilled migrants from OECD and non-OECD dountries (Organisation for Economic Co-operation and Development, 2008)

Immigrant and emigrant population 15 years and over with a tertiary education in OECD countries, 2001[1]

Thousands

Figure 6 Immigrant and emigrant population with tertiary education (Organisation for Economic Co-operation and Development, 2008)

1. 2001, or nearest available year.

Source: OECD Database on Immigrants and Expatriates.

Highly skilled migration is a policy field that is generating more interest amongst policy makers, as evidenced by the growing number of programs to attract highly skilled foreign workers. Labor immigration in Canada now makes up for all net labor growth (Prime Minister of Canada, 2002), which indicates the importance of policy makers to think strategically and ethically about the policies that influence these streams of migration and the effect his has on both receiving and sending countries.

In this chapter the rationales and objective of the European Blue Card will be examined and compared to those of the policies of the United States, Canada and Australia. In order to extract the rationales of pursued policies, the introductory path of the migration policies in the different cases are examined, as well as more recent changes in this policy to find its current objectives. The chapter will start off with the introductory path that established the European Blue Card, as well as policies of the other cases. With the use of concepts of discourse analysis, the logic and rationales will be revealed and explicated using texts from policy documents, speeches and its historical context. With the use of theoretical concepts from chapter four, these assumptions and logics can be placed in a wider context. A comparison will be made to see whether the logics behind the policies correspond with each other.

The first four sections try to answer why and by whom the policies to attract highly skilled migrant were developed. In giving a short history of these policies for the different cases and analyzing the policy documents the rationales will be extracted. The original reasons for introducing these policies, along with their related assumptions and policy outcomes over the years make part of the discourses that are dominant in the making of today's policy. By extracting these form the different histories, later in the chapter a comparison can be made between the different cases. The same will be done for the objectives by looking at the current day policies and other official documents such as speeches and strategies.

5.1 Origins of the European Blue Card

The European Blue Card Scheme was implemented in 2011 as the outcome of a long process. The first discussions on a European-wide migration policy started decades ago; though the plan for a harmonized policy specifically focused on highly skilled migrants is much younger. The harmonization of highly skilled migration to EU countries can be placed in a broader strategy of the EU to harmonize migration policy and thus pursue the goals of the Lisbon Treaty that was signed in 2007 (European Union, 2007). The proposal that initiated the European Blue Card is officially known as the proposal for a 'council directive on the entry and residence of third-country nationals for the purposes of highly qualified employment. This proposal 'forms part of the EU efforts to develop a comprehensive immigration policy'. These efforts stem from the Hague program that the European Council published in 2004 (European Commission, 2005b).

The Hague program outlines the priorities of the EU in the fields freedom, security and justice, and has the objective to improve common EU capabilities to guarantee fundamental

rights, minimum procedural safeguards and access to justice. A common approach would help share the burden of refugees and asylum seekers and would increase the effectiveness of migrant labor all over the EU. Specific priorities concerning migration in general en highly skilled migration are 'defining a balanced approach to migration' and 'maximizing the positive impact of immigration' (European Commission, 2005b).

The objectives of the Hague program, in turn, are in accordance with the Lisbon Treaty, which famously described the goal of making Europe 'the most dynamic and competitive knowledge-based economy in the world, capable of sustainable growth with more and better jobs an greater social cohesion by 2010' (European Union, 2007). This treaty also describes that 'the Union shall develop a common immigration policy aimed at ensuring, at all stages the efficient management of migration flow' (European Union, 2007, p. 81). The proposal on highly qualified employment is one of the first attempts to harmonize migration policy in a sector in which agreement is the most likely. Yet, this is not the first time a proposal on harmonizing economic migration was discussed. On the Tampere European Council in 1999 a discussion was held to get member states agree on common rules for economic migration. This discussion led to the initiative for a proposal for a Council Directive, 'on the conditions of entry and residence of third-country nationals for the purpose of paid employment and self-employed economic activities', by the Commission (European Commission, 2001). This proposal was withdrawn in 2006 after, as Guild argues, failing to get sufficient support by member states (Guild, 2007). Its first attempt tried to make a proposal discussing all types of economic migration in one directive. After the withdrawal of this proposal the European Commission chose a sectoral approach in which directives will be proposed for different categories of economic migration: highly qualified workers, seasonal workers, remunerated trainees and intra-corporate transferees. First proposal being the one focusing on highly qualified employment.

The proposal was introduced by President of the European Commission Barroso and European Commissioner for Justice, Freedom and Security, Frattini. On this event Barroso noted that

> 'Europe is an immigration continent — there is no doubt about it. We are attractive to many. But we are not good enough at attracting highly skilled people. Nor are we young or numerous enough to keep the wheels of our societies and economies turning on our own.' (Barroso, 2007).

This first and seemingly simple statement is controversial in current debates, as the subject of migration is increasingly a polarized and politicized many European countries. As Bruquetas et al show, this trend of polarization and politicization can be seen in many European countries (Bruquetas-Callejo, et al., 2007). Barroso goes on by stating the Europe is 'not good enough at attracting highly skilled people', by which he refers to other destinations for migrants that are apparently better at attracting these skilled workers. 'Nor', he goes on ' are we young or numerous enough to keep the wheels of our societies and economies turning on our own'. What follows from this is that if we, by whom he means all EU citizens, want to keep our societies and economies turning, either foreign highly skilled workers or our own young and large workforce are necessary. A minute later: 'At the moment, most highly skilled workers go to the United States, Canada and Australia. Why?' He gives two reasons for this inferior position of European countries. Firstly the 27 'different and sometimes conflicting' procedures of admission would scare of the potential migrants. Secondly, he states 'national immigration policies lack a cross-border dimension' which means if a migrant arrives in a member state of the EU it is difficult to move to another states. This immobility hinders the effective use of the labor force. The European Commission came up with the Blue Card initiative to overcome these problems and to raise the attractiveness of Europe as a destination of highly skilled migrants. 'With the EU Blue Card we send a clear signal: Highly skilled people from all over the world are welcome in the European Union.' However, this EU initiative does not restrict participating states, within the program they will have 'broad flexibility to determine their labour market needs and decide on the number of high-skilled workers they would like to welcome'. Barroso ends his speech with a remark concerning the efforts the plan makes to avoid negative brain drain effects in developing countries, by proposing ethical recruitment standards to 'limit – if not ban' actively recruiting migrants in certain sensitive sectors (Barroso, 2007). From this speech a number of issues arise. One of them is the assumption that there are skills gaps in specific sectors of the economy that cannot be filled with national or EU citizens. In the short term not sufficient people can be educated to pursue this goal, is the logic of the EU, thus migrants must be attracted to contribute. The 'skill gaps' are partly related to the ageing population of European countries, the European Commission has stated that it wants to use migration to 'positively contribute to tackling the effect of this demographic evolution and will prove crucial to satisfying current and future labour market needs and thus ensure economic sustainability and growth' (European Commission, 2005a). Whether migration can be a solution to aging solution is at least questionable.

This proposal, as introduced by Barroso and Frattini follows a simple logic: Europe needs more young skilled workers, more than it can or is willing to train and educate, so these

workers should be looked for outside the borders of the EU countries. Therefore an EU-wide approach would be most beneficial. As Guild (2007) showed, in the proposal it was not quite clear whether this proposal would replace all national legislation on the attraction of highly skilled migration, or that it would be used next to those policies. It seemed that the Commission was aiming for a comprehensive and exclusive strategy that would nullify national policies, in stating that the 'EU's main attractiveness .. thus to grow professionally … can be implemented only if there is a common system for admitting such workers' (European Commission, 2007, p. 7). Yet, in the proposal the abolishing of national policies was never explicitly mentioned. A possibility is that the Commission was deliberately vague, because it knew this is a very sensitive subject and member states would not agree if it explicitly required them to break down their own policies for attracting highly skilled migrants.

The proposal was discussed by a number of EU organs. The different opinions published, stemming from discussions between different EU actors, touch upon important and controversial issues. Also these will highlight the supposedly benefits of the proposal.

The reaction of the member states seems to be the most crucial, as they have to accommodate for the newly designed policies. It should be noted however that member states are often not represented as a unified actor with just one opinion and that preferences are influence by domestic interest groups form policy and business backgrounds. As Cerna (2010) states, temporal immigration policy is one of those subjects that some regard to be very much influenced by national interest groups, following the works of Meyers (2000), among others . However for this research we will see the member state as a unitary actor for it is not the nation state preference but the evolving of the directive for attracting highly skilled migrants is at stake here.

Several member states reacted fiercely in the Council on the proposal by the Commission. In total fourteen member states 'entered general scrutiny reservations on the proposal' for several different reasons. Germany made clear that it did not want to attract many high skilled workers due to the high unemployment rate in its own country. Besides, it could not foresee how many immigrants it would be able to incorporate and need in the future. Furthermore, the Germans are convinced that immigration policy should be an issues dealt with by the member states, not by the EU (Spiegel Online, 2007). For policy makers in Germany, priority is to focus on the domestic labor force instead of attracting foreign workers (Jacoby, 2011). Germany and the Netherlands together states that they want the Blue Card Directive to operate next to national schemes and that member states 'should be

allowed to maintain national schemes, resulting in the issue of a national residence permit/card for highly skilled third-country nationals'. Therefore, as the Commission explains 'the co-existence of national arrangement with the Blue Card Scheme set is not excluded by the proposal' (Council of European Union, 2008).

What seems to be inconsistent is that several member states, for instance Germany and Austria, have transitional regulations to deal with the large migration streams of workers from the state that acceded the EU in 2004 and 2007. Several states can restrict workers from these countries access. These workers thus do not have the full freedom of movement within EU states until possible 2014, while the third-country nationals that would be attracted with the Blue Card would have those rights. This means that while non-European highly skilled migrants can get a work permit in for instance Germany, a Czech citizen could not cannot get this permit. This unfair exclusion of Eastern European workers was raised by Bulgaria in the Council. (Council of European Union, 2008).

Furthermore, the admission criteria triggered a heated discussion among the member states. What exactly means of highly qualified employment was a subject of much debate. Several delegations wanted to put more emphasis on education instead of professional experience while other had the inverse preference. There was a discussion on how to prove professional qualifications. In compromise the council proposed to give more freedom of judgment to the member states on these points. The salary threshold was a motive for another discussion. In the proposal the salary threshold was set on three times the national minimum income, which Germany viewed as too low and proposed a threshold of two times the average income because German legislation does not provide for the criterion of a national salary threshold. Greece proposed a different criterion that the salary should meet the gross salary earned in the specific job type the applicant would work in. The Council pointed out that member states could always choose to increase the threshold but not lower it (Council of European Union, 2008). In the final directive a compromise was reached which states that the gross annual salary 'shall not be inferior to a relevant salary threshold defined and published for that purpose by member states, which shall be at least 1,5 times the average gross annual salary in the Member state concerned. Again this compromise give room for more freedom of judgment to member states (European Commission, 2009). The assumption that work should meet salary requirements higher than average to be considered highly skilled is not substantiated in the proposal. This assumption will be examined further in chapter seven.

On the rights and benefits for the migrants there was also discussion, especially regarding family rights and whether the proposal promotes enough flexibility in accommodating for

change in jobs in the first or another member state. Also, the length that a highly skilled migrant is allowed to stay unemployed before the Blue Card is withdrawn, was a subject which highlighted the fears for the consequences that this could have for the national social security systems (Council of European Union, 2008). In the end rights, the of Blue Card holders were coupled to the period of employment plus a maximum of three months of unemployment, similar to the conditions as described in the proposal (European Commission, 2009).

As expected member states reacted profoundly against the vague definition of the scope of the scheme. As stated above, the proposal was not clear about whether it provided for an exclusive system of entry for the highly skilled or a system next to the existing other 27 systems, a highly sensitive subject, as it touches on the national sovereignty in regulating migration on national level. Germany, the Netherlands and Finland wanted and assumed that the scheme would exist next to the national schemes, and the Council affirms that this option is not excluded by the proposal. Here the Council and member states made room for the coexistence of the national schemes next the Blue Card scheme by affirming 'This means that the member states could continue to admit, under national schemes, applicants who do not fulfill all the entry criteria as set out by Articles 5 and 6 and accordingly issue them with national permits' (Council of European Union, 2008). This has important consequences for the effectiveness of the Blue Card Directive (Eisele, 2010; Gümüs, 2010), as it questions the added value of yet another program on top of national immigration programs.

The member states in the Council provided the most important responses to the plan, since they have to comply with the regulation set in the directive. Other EU institutions are merely consulted for their opinion. They have no direct influence over the directive. Among them the European Parliament, the Committee of the Regions and the European Economic and Social Committee.

The reaction of most of the European Parliament (EP) was overall positive. In an explanatory statement complementing its report on the directive, the rapporteur for the EP 'stresses the need for a comprehensive and coherent overall approach to European immigration policy' (European Parliament, 2008, p. 34). In line with the Commission, but not with the Council, it seems that the majority of the EP is in favor of an exclusive Blue Card Directive, instead of a scheme vis-à-vis national schemes. Much criticism was received on the criteria for entry. A majority of the EP held the opinion that an applicant should have at least five years professional experience or a university qualification, both in the sector concerned. Furthermore the applicant should earn at least 1,7 times the national average wage (Eisele,

2010). Also the Parliament suggested to make amendments in the directive to better tackle the brain drain problem, since, according to the Committee of Development, the Directive 'could run against the Policy Coherence for Development framework set up in 2006' (European Parliament, 2008, p. 60). For the rapporteur, the added value of the Blue Card, in comparison to national schemes is that intra-European mobility will be guaranteed, and thus no further restrictions should hinder the mobility of Blue Card holders. The parliament voted on the Directive with a majority in favor and a great deal of abstentions. Eisele (2010) considers the high number of abstentions as a reflection of the differences in opinion described above.

The Committee of the Regions welcomed the initiative and believes there is indeed a need for measures that make the EU more attractive to migration flows of qualified and highly qualified workers and suggests the terms 'qualified' and 'highly qualified' should be further defined and should include requirements on education, work experience, language skills 'and other relevant factors'. It asks the Commission to 'work on an effective method to compile and present statistics in this area, as it is necessary to track the need for qualified labor. It sees an important role for local and regional authorities in deciding on the volume of admissions of migrants for highly qualified job vacancies. Further, the Committee states that the entry conditions regarding members of the families of highly qualified workers can be a 'decisive element in recruiting highly qualified personnel', as this is 'illustrated by the experience of other countries such as Australia, Canada and the United States'. Furthermore it is concerned that the proposal, as planned, may 'intensify brain drain concerns' and therefore asks the Commission to analyze brain drain and the effects the proposed plan has on the countries of origin, promote brain circulation and reduce the brain drain to a minimum (Committee of the Regions, 2008).

The European Economic and Social Committee wrote in its opinion that it is a fierce proponent of European-wide immigration legislation. Besides, it expressed the view that 'Europeans will need new economic migrants to contribute to social and economic development' and moreover 'the demographic situation indicates that the Lisbon Strategy could fall apart is we do not change immigration policies. Active policies for the admission of both highly qualified and low qualified workers are needed.' In another remark the committee states that the legislation should comply with the Charter of Fundamental Rights and anti-discrimination legislation. It is states that the proposal does not comply with the latter in making a distinction between those migrants under and above the age of 30, with younger applicants offered a more flexible system. Furthermore they would like to see the proposal include refugees and asylum seekers, which is, in the proposal not the case, as the

decision was made to divide the different sectors. Lastly, they stress, on the same line as the Committee of the Regions, that the proposal should include more efforts to avoid brain drain effects (European Economic and Social Committee, 2007).

In looking at the introductory discussions about the Blue Card Scheme, two rationales behind the plan are exposed. The logic behind the Blue Card Directive, following the EU Commission is, firstly that the economic market and its businesses demand economic migrants to fill their perceived skill gaps. Secondly, the EU is short of highly skilled workers among its own citizens, so foreign workers must be attracted. Thirdly harmonization of migration policies on an EU level is needed to increase the attractiveness of the region as a destination for highly skilled workers and keep up with its competitors, because of the fierce competition that is perceived by all actors in their policy documents.

These rationales in turn are products of broader EU plans as written down in the Lisbon Strategy. EU member states agreed in Lisbon on the objective of 'becoming the most competitive and dynamic knowledge-based economy in the world, capable of sustainable growth with more and better jobs a greater social cohesion by 2010'. In the Hague program member states recognized that 'legal migration will play an important role in enhancing the knowledge-based economy in Europe, advancing economic development, and thus contributing to the implementation of the Lisbon Strategy'.

The aforementioned documents, supplemented by several communication memo's, are used to identify key theses in the discourse. Discourse analysis tries to look into the type of identity that is constructed through language, as well as to make transparent how the discourse creates consensus, acceptance and legitimacy of the presented ideas. By coding these documents, several themes stand out.

The first is the 'need' for highly skilled migrants. Barroso states that 'it is no secret that our demographics work against the Union, our economies and the internal market are dependent on a skilled mobile workforce' (Barroso, 2007). In the Proposal for the Council Directive, the section General Context starts with 'With regard to economic immigration, the current situation and prospects of the EU labour markets can be broadly described as a 'need' scenario (European Commission, 2007). If the demographics work against 'the Union', highly skilled immigrants work in favor of 'the Union'. Sketching this scenario in which

Europe is highly dependent of foreign skilled workers, the image is shaped in which more skilled workers is absolutely vital for the survival of the Union.

These highly skilled migrants are thus perceive as 'needed' for European economies. Why? Because the Lisbon Strategy has creates guidelines that favor more growth and jobs: *'Measures to attract and retain highly qualified third-country workers as part of an approach based on the needs of member states should be seen in the broader context established by the Lisbon Strategy and by the Commission Communication of 11 December 2007 on the integrated guidelines for growth and jobs'* (European Commission, 2009). By referring to other documents it becomes clear that the discourses on migration issues, as placed within, and are subordinate, to general discourses about economic growth and competitiveness of the EU within the world.

The 'need' argument is used to 'manufacture consensus', as Van Dijk explained (Van Dijk, 1993). By stating that Europe is in a 'need scenario' this acts as a legitimization of the policy as well as acceptance. If economic growth is the main driver for this migration policy, other rationales behind migration policy, such a humanitarian reasons (mainly for refugees) or the right to family reunification (as is in family reunification) are inferior to the economic benefits skilled migrants could yield.

Remarkable is the identity Barroso tries to create by stating the *'Europe is an immigration continent, there's no doubt about it' (Barroso, 2007)*. This identity of Europe, as Barroso sketches also serves as a legitimization of the policies, along the 'need' scenario. A Wodak stated, Europe wants to make meaning of Europe by shaping an identity, and drawing borders is interconnected with this identity (Wodak & Chilton, 2005). By first stating that *'Europe is an immigration continent'* and later in the speech that: *'I am not announcing today that we are opening the doors to 20 million high-skilled workers! The Blue Card is not a "blank cheque"* (Barroso, 2007), Barroso shows that although he wants to create a pro-immigration identity, he is at the same time drawing borders by excluding many. This last remark shows that the EU is trying to exercise power by controlling the actions of others by limiting them access. The migration policy discourse assumes this kind of control over migration trends. The role of power then, in this discourse is very big. The importance of power in discourses has been pointed out by Van Dijk (Van Dijk, 1993).

If this discourse is compared to the theoretical debates as set out in chapter four several insights can be gained. Firstly the migration discourse in the EU assumes to have quite large influence over controlling migration, while incorporating the 'needs', or rather demands of employers in the different member states. This view incorporates elements of both

institutional and 'domestic interest'- approach. In assuming governmental organization have great influence over controlling migration, the EU shows a institutional approach to migration. This approach finds that administrations can have a large influence over migration and shape their policies accordingly, not taking into account to a large extent the partisan and interest groups influences. Of course, as Guild shows, policy makers realize this group is the most favored group of migrants, and as a consequence, it will be the easiest to reach agreement on. She then sees this as a possible starting point for further migration policy harmonization for other groups of migrants as well (Guild, 2007).

As Sassen describes, the relocation of part of state authority to organizations as the EU in the field of migration, has been started with these policy plans, as she predicted in 1999 (Saskia Sassen, 1999). In talking about general migration policy, Sassen observes that migration issues lag behind on other fields of policy and is based on 'older conception about control and regulation', namely the assumption that 'most people in less developed countries want to go to a rich country, as if all immigrants want to become permanent settlers, as if the problem of current immigration policy has to do basically with gaps or failures in enforcement' (Sassen in J. Friedman & Randeria, 2004). This seems to be in line with thinking of migration policy in the EU, as Barroso states that *I am not announcing today that we are opening the doors to 20 million high-skilled workers! The Blue Card is not a "blank cheque"'* (Barroso, 2007). In my opinion this is used as a 'defense', as not to challenge the more anti-immigration sentiments in many states and political parties.

Specific for highly skilled migrants, the Blue Card Scheme aims to *'improve the EU's ability to attract highly qualified workers so as to increase the contribution of legal immigration to enhancing the competitiveness of the EU economy'*. It specifically objectives are to *'effectively and promptly responding to fluctuating demands for highly qualified immigrant labor', 'establish a fast-track admission procedure and by granting them equal social and economic rights as nationals of the host member states in a number of areas'* and finally to 'encourage geographical and circular migration of highly qualified workers' (European Commission, 2009). In offering this group of migrants benefits that are preferential above these of other migrants. This hints at the changing role of citizenship discussion as held in chapter four. By granting them equal social and economic rights as nationals, without granting them citizenship, rights of people are no longer based on nationality, but on a sort of 'postnational regime' as Jacobson hints at (Jacobson, 1996). Yet, Soysal argues that citizenship becomes more and more based on universal personhood (Soysal, 1994). This is not to be seen in this case as the rights are merely offered to the group of highly skilled migrants, an on the basis of their merits. This makes these offered benefits not universal at all but very specific. Also, Jacobson argument that human rights serve as a basis for a postnational regime is not the case here, because

highly skilled migrants are offered a sort of membership of societies, including benefits, yet these are not available to everyone. A change in thinking about citizenship can indeed be seen, but unfortunately this is based on the specific merits of this particular group of migrants, and not on 'universal personhood'.

It is noteworthy that the Blue Card plans leave lots of room for interpretation by the member states, who can use this scheme in correspondence with their own demands in both occupational and numerical preference.

This room for interpretation comes from the second discourse at play in this case, that of the member states. What is striking in the discussion about the policy proposal in the Council with the member states is the focus on maintaining sovereignty over migration issues. This focus, most clearly expressed by the Germans seems to be present among all member states, as a German member of the EP told Spiegel: *'I doubt if it is possible to have standard regulations on issues such as immigration throughout Europe'* (Spiegel Online, 2007). The sensitivity of the subject and the combination of both discourses seems to make it hard to shape an effective policy. Again this sensitivity has to do with member states being anxious to share sovereignty over their borders, as Sassen described, and while it seems that states have confronted 'the contradiction between internationalization and strictly national regimes' (Saskia Sassen, 2006), the room and freedom member states demanded in negotiations makes the policies less effective and less harmonizing. More on the effects of the freedom for the member states will be discussed next chapter.

5.2 H-1B Program in the United States

The migration of highly skilled workers has a long history in the US, which is seen as one of the traditional immigration country. As stated above, the first time skilled migration was seriously addressed was in the 50's and 60's. President Johnson stated that 'from this day forth those wishing to immigrate to America shall be admitted on the basis of their skills and their close relationship to those already here … those who can contribute most to this country, to its growth, to its strength, to its spirit will be the first that are admitted to this land'(Johnson, 1965) . This is a clear sign that the logic is very ego-centric, it is motivated from the self and not the needs of others. When President Johnson talks about skills it becomes clear he talks about skills useful in a market economy as the US, however the specific kind of skills targeted stays implicit.

The rationales for the introduction of the skilled migration policies in the US should be found in this historical context. As Fortney (1972) describes, migration to the United States

distinctly increased after the second World War, at the same time as American science was thriving, attracting scientist and other professionals form mainly Europe. More and more scientist and medical personnel immigrated from Europe. However the percentage of higher skilled migrants was diminishing. It is often said that the migrants of Europeans and, increasingly, Asians and African in this time proved essential for the thriving American science and medical spheres. The first temporary 'highly skilled' visa was created under the Immigration and Nationality Act of 1952 ("Nationality and Immigration Act," 1952), specifically aiming at temporary migrants who have 'no intentions to abandoning' their home countries. It aims for migrants who perform a service of an exceptional nature. Migrants are only allowed if no unemployed American can be found to do this job. These were the H-visa, which were amended in 1965 when the Immigration and Nationality Act came into effect and got removed of the origins-based quotas as non-discriminatory trends became apparent in policy making (Fortney, 1972). The Act placed an overall quota on immigration to the US (120.000 for the Western Hemisphere, 170.000 from the rest of the world) and specifically preferred skilled personnel over other, giving right of admission to those who would be most beneficial for the US economy. US Technical and science spheres were not flourishing as before, and highly skilled migration fluctuated and decreased a bit over time. At this time the discussion about the effect for sending countries, brain drain in particular was held among states. In the years after the Act was implemented around 40.000 'professional, technical and kindred workers' migrated to the US (Fortney, 1972).

The number of immigrants admitted fluctuated over the years. In 1990 a new Immigration Act was signed. In this Act 'Skilled workers' are defined as 'qualified immigrants who are capable, at the time of petitioning for classification under this paragraph, of performing skilled labor, not of a temporary or seasonal nature, for which qualified workers are not available in the United States' ("Immigration and Nationality Act ", 1990). Yet, 'skilled labor' is not further defined and thus it seems, provides grounds for discussion. The temporary skilled workers visa transformed to the (in) famous H-1B visa with this Act. In the Act of 1952 the number of skilled worker visas was unlimited, but due to the rising numbers and more emphasis on protection of domestic workers, the 1990 Act placed a quota of 65.000 H-1B visas per year. This happened after commotion about the migrants coming on this visa came to work in entry jobs on a great scale. This, combined with the yearly rising admissions was seen as a threat to the domestic workforce. Although these perceived threats with the Act of 1990 were meant to clear up, discussions around this topic persist up until today. Two major points of critique appear, firstly several scholars expressed the reliance of the US economy on foreign workers, making the market too vulnerable global migration trends (Lowell, 2000, p. 6). Also the temporal nature of the visa is under a lot of debate, the temporal

visas are written in accordance to guidelines that encourages migrants to return to their home country. Yet, as stated above, both migrants and employers see the temporal visa as a means to entry the country, and application for a permanent green card is a logical next step. It thus rises questions about the use of a temporal visa (Lowell, 2000). The Act of 1990 increased the length of stay under the H-1B visa from five to six years and additionally removed the part 'a residence in a foreign country which he has no intention of abandoning', a sign that can be seen as an encouragement to apply for a permanent visa, a Green Card. This makes this one of the few visas with dual intent, a migrant may intent to stay longer and apply for a permanent visa (Lowell, 2000, p. 7). This is a sign that these migrants are so precious that they deserve preferable conditions over other temporal migrants, who are not allowed to enter the US with a dual intent.

After 1990 the demand for skilled workers slightly grew over the years, and from the second half of the 90's the demand increased each year. Lobbies from big technological businesses tried to get the US government to increase the annual quota for H-1B visa. In an example of this Bill Gates testified for the Congress that the cap needed to rise, because Microsoft was not able to hire sufficient skilled workers (Bangeman, 2006). But, many thought that increasing the cap would make the reliance of the United States on foreign workers even greater, as stated before, and a bill passed by the Senate making amendments to this cap did not pass the House of Representatives in 2006 . Yet, while the numerical cap of 65,000 is still in place, actual admission numbers are much higher. Between 1995 and 2006 these numbers fluctuated between 65,000 and 195,000 (Kerr & Lincoln, 2010). Quite a few of exceptions on the cap are made to make these numbers possible, such as 20,000 applications for a visa by migrants with a master's degree from an American University and H-1B migrants who work for higher education and related non-profit organizations (US Citizenship and Immigration, 2012a).

The main rationale for the H-1B visa is extremely clear: demand by market actors ask for foreign workers to keep the American economy competitive. An objective that leads from this ground is that the US wants to attract roughly between 100,000 and 200,000 skilled migrants. Lowell stresses that this relative low number and the numerical cap is best for the 'long term competitive interest if the US economy', as its still stimulates 'increased training, better wages and working conditions, new technologies or innovative production strategies' (Lowell, 2000, p. 1). The objective is thus to fill short term skills gaps, and not to increase the foreign born worker stock in the long term.

Noteworthy is the growing literature on how the United States are losing the 'global scramble for talent' and how it lacks a clear goal while its competitors shape new policies to

attract the migrant many think are so crucial for the American economy. The notion of Dual intent already makes clear that the migrants under aH-1B visa are very welcome, even if they do not intend to leave after the initial visa duration. As Shachar notes 'Rather than maintain its competitive advantage in attracting skilled workers, the United States has undermined its own incredibly successful and longstanding strategy of recruiting world-class talent. For a country famous for success in integrating brainy emigrants into its domestic industry, universities, entrepreneurial class, and cultural (...) this shift is a very risky move' (Shachar, 2006, p. 199).

Migration discourses in the United States

The discourse to highly skilled migration seems to be a very traditional one because of the long standing policy and few changes. Migration is a crucial subject of the country's history as is demonstrated for example in Kennedy's Nation of Immigrants (Kennedy, 1964). In his speech presenting the reforms in the Nationality and Immigration act of 1965, president Johnson stated that *'the days of unlimited immigration are past, but those who do come will come because of what they are, and not because of the land from which they sprung'* (Johnson, 1965). Its migration past has influenced the immigration system up to this day, as evidenced by the few changes in the legal immigration system. This fits within the 'national identity' approach as discussed in chapter four. In this approach the identity and history of a country drive migration policies.

The quote of President Johnson legitimizes the decision to select certain migrants for coming to the US while banning others on the basis of their capacities, or skills. What these skills entail is not explained, however it is stated that they should contribute to the US economy. This can be seen as a normalized assumption, as if it is the most logical thing that immigration policy is focused on economic benefits and not on the rights of migrants. Today's migration discourse is also focused on the 'needs'. President Obama has stated that he finds the US immigration system 'broken' and that he is *deeply committed to building a new 21st century immigration system that meets our nation's important economic and security needs'* (The White House, 2012). This approach to migration again reflects strongly the 'need' argument, and fits better in the 'domestic interests' approach, with interest groups such as big employers as driving forces as exemplified by the economic 'needs'. The need' acts in favor of more immigration, yet counter forces are visible as well. Security is high on the agenda in immigration policy as Obama demonstrates and anti-immigration lobbies are evident in the US, as is the case in Europe (Castles & Miller, 2009). Freeman argues that there is a gap in immigration preferences between the political elite and the general public. The elites are

often pro-immigration because of the benefits they offer to employers, while the mass of the public does not want to bear the 'costs' (Freeman, 2002).

The US are often described as the traditional and losing actor in the competition of knowledge-workers, something the government is blamed for by employers such as Microsoft. The US is losing the 'competition' because of the increased efforts of other actors to offer the best incentive-package. Additionally, the quota on H-1B visa are considered to be not sufficient to meet businesses demands, market actors argue (Shachar, 2006). Despite of this traditional discourse, American policy makers have not yet experienced enough need for radical change of the system, probably because of the major position the US still plays in attracting the wanted migrants. Yet, the US does extremely well in attracting the migrants it wants and many highly skilled migrants are drawn towards advantages that top universities and the most competitive global corporations in the US have to offer as well as 'an environment, and accompanying public narrative, that accepts and rewards talent regardless of place of birth' (Papademetriou, et al., 2008). Again, dominance of neoliberal thinking is evident in the rationales behind the policies, as was discussed in chapter four by Harvey (2007), who discusses that neoliberalism is the hegemonic discourse within political-economic practices. Migration policy in one of such practices. The state then, within this discourse, has to pursue 'maximization of entrepreneurial freedoms within as institutional framework' (Harvey, 2007).

5.3 Skilled migrants in Canada

As seen in the introductory chapter, the Canadian immigration legislation began to focus on highly skilled migration two years after the American Immigration and Nationality Act of 1965, with the points system. In an effort to make the immigration process 'color blind' potential migrants were judged on a set of criteria including education, age, work experience and occupational demand. This innovative system designed in 1967 and still used up to today, be it in an altered version, gives the Canadian government a mechanism to attract the migrants with needed occupations. Green and Green have analyzed the influence of this point system on the occupational structure of the inflow and concluded that the 1967 system indeed had a 'large, direct effect' (Green & Green, 1995).

As in the United States, this system changed over the years. Before 1967 the migration policy was mainly based on the country of origin of the potential migrant. A set of countries was preferred over others, e.g. the US, the United Kingdom, and France) and not many other requirements were installed. Yet workers from other countries were met with a lot of

requirements and were thus disadvantaged if not banned from entering Canada. In the 50's the list of preferred countries expanded to Southern Europe, which created a large migration flow with mostly unskilled migrants. These immigrants attracted more and more migrants of their home countries, mainly Portugal, Greece and Italy, which was perceived as a growing problem by Canadian policy makers. As a result, migration policy favored the relatives of the migrants already in Canada and refused a lot of other applications. Canada's need for more skilled instead of unskilled migrants anti-discriminatory 'spirit' led to alterations to migration policy which would eventually develop into the points system used up to this day (Green & Green, 1995).

Applicants were no longer favored on the basis of their home country, but on their education, languages, work experience and other skills. This mechanism was created to be anti-discriminatory, though it still disadvantaged migrants form poorer countries. This policy proved to make a change, as it changed the migrant population which became to include more and more Asians and less Europeans as before. The numbers of migrants admitted always depended on domestic demand and fluctuated between 70.000 and 300.000 a year. Although the point system is still in use, its selection criteria have changed over time and are linked to the demands of the domestic economy. From 1974 on, the policy aimed more and more at attracting just those workers who were trained in a specific sector of economy that was in demand that year, refusing entry to workers with those occupations that were not in demand. The system, designed to regulate the occupation and skill of incoming migrants became more flexible, in order to achieve the right occupational balance to overcome skill shortages. Major shifts in migration policy included dropping the levels of immigration to ensure migrants had pre-arranged employment in 1982, the increased focus on family reunification with the inclusion of never married children into the family class policy in 1988 due to a migrants lobby (Green & Green, 1995). The flexible system created in Canada is responsive to market and societal needs and lobbies, based on their own needs and wishes, which makes that skilled migration lies at the heart of Canadian migration policy.

The current system is regulated via the Immigration and Refugee Act of 2001 (Government of Canada, 2001) and still uses a points system that is very flexible in terms of preferential occupations and sectors. In Canada's strategy for 'Achieving Excellence ' is stated that *'immigration has always been a major source of qualified workers for Canada'* (J. C. Prime Minister of Canada, 2001). It emphasizes the increasing competition for skilled workers and stresses that Canada must react to that trend by turning their passive migration policies into pro-active policies in order for Canada to keep up with its 'competitors'. Branding Canada is part

of this pro-active strategy, as are the new regulations in the Immigration and Refugee Act of 2001. It also provides for temporary migration *'to address short-term cyclical skills shortages due to growth in a sector or the introduction of new technologies' (J. C. Prime Minister of Canada, 2001).* A trend, similar with that in the US, is mentioned, namely the less strict regulations form temporary skilled workers to become a permanent resident. A different strategic document from 2002, which together with the first form Canada's Innovation Strategy, emphasizes the importance of knowledge in the economy, foresaw that in 2011 immigration would account for all net labour force grow. The report stresses the importance of skilled migrants even more in the future by saying: 'Immigrants bring with them a diverse set of talents, abilities and skills that help to enrich Canada. Over the next few decades, immigration will play an even greater role. Because of our ageing population and low birth rates, meeting Canada's need for a skilled and adaptable workforce, including enough highly qualified people for key sectors and industries, will require improved efforts to attract and select immigrants with particular skills (Prime Minister of Canada, 2002) As an important part of this strategy Canada sees the need to help migrant achieve their full potential, which asks for a 'broad acceptance of immigrants in the Canadian society'.

Objectives named in migration policy do not include an annual maximum or target number for migrants. Rather, objectives in migration policy (skilled migrants are an integral part of this policy) in the context of skilled migration of a more general nature, among others:

- To permit Canada to pursue the maximum social, cultural and economic benefits of immigration;
- to enrich and strengthen the social and cultural fabric of Canadian society, while respecting the federal, bilingual an multicultural character of Canada;
- to support the development of a strong and prosperous Canadian economy, in which the benefits of immigration ate shared across all regions of Canada;
- to facilitate the entry of visitors, students and temporary workers for purposes such as trade, commerce, tourism, international understanding and cultural, educational and scientific activities;
- Skilled migrants are included in one of the three classes, the economic class, others being the family class and the migrants under the Convention refugee or in similar circumstances (Government of Canada, 2001).

These objectives, plus the fact that a majority of the immigrants are granted a permanent visa reflect that Canada's system is designed to satisfy its need on the long term more than to fill

short term labor shortages. The current discourse is thus very progressive as compared to the US. Skilled migration is found the most important form of migration for Canada.

Discourses in Canadian immigration policy

The effort of Canada to brand itself, which is discussed in Canada's innovation strategy, as a highly innovative region helps to build an identity that is attractive to highly skilled migrants, they reason. *'In the global economy, investors and highly qualified people must be aware that Canada encourages and rewards innovation and risk-taking, they must believe that they can achieve their innovation objectives in Canada.* (J. C. Prime Minister of Canada, 2001)'. This branding and identity building acts both as a legitimization of migration policies and as a rationale behind it. In the same way Wodak describes that Europe tries to create a identity to make meaning of itself, does Canada try to brand this identity, with matching progressive migration policies.

As a part of this branding strategic documents point out that Canada's history is a history of *'adaptation and innovation'*. In the same way they emphasize the migration history of the country, *'Immigration has always been a source of qualified workers for Canada'*. Yet, this trend is challenged, apparently, by the 'competitive market for highly skilled workers', *'Many industrialized countries, particularly the U.S., are implementing deliberate strategies to attract the skills that are in short supply, while "source countries" are beginning to put in place measures to reduce the outflow of their most highly qualified citizens (J. C. Prime Minister of Canada, 2001).* By pointing at a 'growing competition', this acts as legitimization of a very progressive migration policy which faces *'tough international competition for scarce talent' (J. C. Prime Minister of Canada, 2001).*

Furthermore, Canada, along with the other actors, 'needs' the migrants to *'secure the highly qualified people needed to fuel the Canadian economy'*. It thus needs to increase the number of highly skilled migrants immigration permanently to Canada, the document states, to ensure the 'needs' of provinces, territories, municipalities and businesses. Why does Canada need this? Because ultimately, *'effective stewardship and marketplace framework policies, innovation will thrive, bringing with it the solutions to many 21st-century problems and the wealth needed to attain those solutions' (J. C. Prime Minister of Canada, 2001).* What these problems are is not mentioned in the document. This language use is very bold, without properly justifying the true reason for pursues policies. This is a good example of trying to normalize assumptions, in this case the assumption that more highly skilled migrants are absolutely needed for the Canadian society.

Rationales in Canadian migration policy are obvious. For decades, migration policy has been one of the greatest factors in economic growth and the share of highly skilled workers in the total migration is very high. The national identity and domestic interest approach fits best these findings. Historical accounts are presented to substantiate progressive policies, Canada has been actively recruiting highly skilled migrants since decades, though, the Prime Minister emphasizes, Canada's approach was conceived in a different era, and must shift *'from a passive to a proactive approach'.* The 'needs' of businesses that are emphasized in the strategic documents and cooperation between governments an market actors (J. C. Prime Minister of Canada, 2001) leads to think that interest groups have considerable influence over migration policies. Whitaker confirms this view. He describes that interest groups, both of businesses and of migrant and ethnic populations have had a large impact on migration policy in Canada (Whitaker, 1991). The Canadian states acts and thinks almost like a company, selecting the workers it needs. Next chapter will elaborate further on this trend.

5.4 Skilled migrants in Australia

Australia has been targeted skilled migrants since the Migration Act of 1958. After the Second World War, many migrants were attracted to contribute to the growing economy. Rapidly the migrant population of Australia grew and in 1981, 21% of the Australian population was foreign born (Cobb-Clark & Connolly, 1997). As anti-discrimination trends changed migration policies in other countries already in the 60's, Australia abolished its White Australia Policy only in 1972. Originated from 1901, policies tried to exclude Aborigines and non-Europeans. Finally in 1972, with their major Migration Act of 1958 in place for more than two decades, the policies finally lost their discriminatory character, or at least most of it as some would argue (Jayaraman, 2000). Several authors have marked other, more recent changes in the Australian migration system. In the 80's and 90's, the focus of Australian migration policy was humanitarian a family reunification and the intake of skilled migrants decreased. In the 90's there was a renewed interest in attracting skilled migrants. Along with this renewed interest, discussions arose about the costs of migration for the welfare state and the adaption of migrants in the Australian society. With the Howard government coming into power, the migration system of Australia was reviewed to a large extent. It put more emphasis on skilled migrants and increased restriction for other migrants (Cobb-Clark & Connolly, 1997). Hawthorne has described that the major review of Australia's Skilled migration program is a result of 'consistently inferior market labour outcomes for professions from non-speaking background source countries'. The review of the system was meant to decrease the costs of this program for the welfare state and increasing the benefits the migrants contribute to the economy. The review included

mandatory English test for all potential migrants, stricter qualification screening and incentives for foreign students under the Skilled Migration. These changes improved the 'labour market outcomes', by decreasing unemployment under migrants, increasing levels of salaries. In the years after the review the number of skilled migrants rose from , around 35,000 just after the reform in 1997 to around 61,000 last year, while the number of visas under the family stream decreased over the years (Hawthorne, 2005).

In the current system, highly skilled migrant can enter Australia in a number of ways. Both permanent and temporal visa are available. In the permanent (general) Skilled Migration stream, potential migrants can apply for different categories: Independent, Sponsored, Regional Sponsored, Recognised Graduate, there is a Business Skills stream, an Employer Sponsored stream, with categories for Employer Nomination Scheme, Regional Sponsored Migration Scheme and labour agreements and a stream for migrants with 'distinguished talent'. The visa streams above make up the majority of migrants, with 67.4 percent of the total migration in the year 2010-2011 (Department of Immigration and Citizenship, 2011b). Next to these permanent visas, there is a migration stream via the Temporary Business Visa. As is the case in other countries, migrants often obtain this temporary visa and them apply for or convert to a permanent visa.

 The selection for the General Skilled Migration takes place in line with points system. In this system, potential migrants are screened on their language skills, education, experience, age and so on. Points are assigned for, among others, language ability, employment, educational qualifications, partner skills, furthermore applicants must demonstrate good health and 'must be of good character' to enter Australia. Migrants applying in other categories are required to have a good working knowledge of English (usually tested with an IELTS test) and other, more basic requirements, depending on the sort of visa. The point system used in Australia is roughly based on the points system that Canada employs. The system has 'taken the best from the points rating system such as that used by Canada' (Shachar, 2006, p. 177).

Immigration discourse in Australia

While the focus of Australia's policy has shifted over the year, about half of the total migrants are skilled workers, a very high percentage. In recent reforms of the migration system, Australia chooses to 'select for success' and this clearly paid off. Current objectives in the policy are to fill short term skills shortages in a number of ways, and temporary visa are now far more popular as before (Hugo, 2004). The very detailed system with all its different categories seems to be well suited to attract the migrants Australia wants for now. The

federal structure of Australia seems to contribute very positively to this, as potential migrants are linked to regions with certain demands in the Regional Sponsored category, and others are directly recruited by employers via the Employer Sponsored migration category. The main rationale is thus the demand driven attraction of migrants, often by regional actors or employers, to ensure that the right skills are drawn contribute to the Australian economy. In this way, the domestic politics approach fits best these trends. Australia pursues an active migration policy by organizing job fairs together with employers (Department of Immigration and Citizenship). This great influence that businesses seem to have over the migration policy, as they are involved in the policy making process, makes them drivers of migration policy. The domestic politics approach emphasizes this influence next to partisan politics.

This makes that here, once more the 'need' argument is very present in the Australian discourse. Employers need more skilled workers, so the government actively recruits them. This makes that the Australian government acts almost as an employer and decides what its economy 'needs'. By acting as a sort of employer, Australia legitimizes its policies by stating that skilled migrants are essential for its local and regional economies. In a speech, the minister of Immigration and Citizenship, Chris Bowen, expresses that '*Treasury estimates that business investment as a proportion of GDP will reach its highest level since records were kept. In order to facilitate this growth, we need skilled migration. But there are other important arguments for skilled migration. Not the least, the need to deal with our long-term intergenerational challenges*'. So growth is needed, thus skilled migrants are needed, not in the least because of the decreasing working population as caused by ageing of the population. He goes on and states that '*Our economy is the envy of advanced countries throughout the world. Skilled migrants make an immediate contribution to Australia by bringing their experience, skills and education with them. Their attributes build participation and productivity and they help to balance what is otherwise an ageing population*' (Bowen, 2012). Ageing population and the need to sustain economic growth are used to legitimize the migration policies. Stating that their economy is the '*envy of advanced countries throughout the world*' also acts a s sort of legitimization, as if to say that all countries would pursue the same policies if they could. Sustaining growth is one of the normalized assumptions in today's thinking about politics. Anything to keep the economy growing is positive, while asking no or too little questions about the effects these policies have on social or cultural domains. The changed discourse, from a focus on family reunification to actively attracting skilled migrants is very recent. A more open approach to migration, however very selective, demonstrates this change.

5.5 Comparison

As said, in the EU there seem to prevail two kinds of discourses or rationales, those of the European institutes, who see EU-wide migration policy as a necessary response to changing migration processes, and that of the member states, who overall see less need for shared migration policy. As most of the reactions of German officials made clear, the perceived need for an EU wide approach on migration issues is not as big on the national level. As Germany's former minister of Education and Research said *'Every member state in the EU will decide on its own regulations for the immigration of highly qualified workers'* (Bangeman, 2006). Similar critical responses and the fact that states were not prepared to implement the Blue Card as an exclusive mechanism (next to own schemes to attract highly skilled migrants) support that this view was widely shared among states. As Parkes and Angenendt show, member states have asked for more freedom to set quotas etc, and have resisted a more common approach (Parkes & Angenendt, 2010). Reasons for this resistance seem to come from the fear of handing over sovereignty to higher authorities (Saskia Sassen, 1999) and the feeling that they have to employ and protect the domestic workforce (Spiegel Online, 2007). The Commission on the other hand has another view, as evidenced by the opening remarks of Barroso's speech for the introduction of the Blue Card: 'immigration is one facet of globalization which demands a European rather than a national response to be effective' (Barroso, 2007). These two logics are exactly in line with what Sassen described in her article on the changing policy landscape for regulating migration, where she states that the EU is an example for a case in which the member states seem to confront the contradiction between international economic landscape and national policy 'frameworks' (Saskia Sassen, 2006). Already in 1999 she stated that 'there is a growing recognition for the need for an EU-wide immigration policy, something denied for a long time by individual states'. In 2007 this reluctance was still visible as shown by the reactions of for instance Germany, however final agreement of the EU Blue Card was reached, although the original plan was watered down quite a lot (Eisele, 2010).

If we put these discourses next to Sassens work, it is visible that member states have indeed acknowledges some benefits of regulating migration on a regional scale, yet the logic that the EU follows is very much inspired by the policies of other states because of the perceived competition. This makes that where Sassen would expect and hoped for a more regional approach to migration policies, this happened only on paper and not in practice due to the freedoms offered to the member states. member states have asked for these freedoms, securing their sovereignty over migration issues. I think that the EU, in its logic of setting up

the Blue Card, has missed a chance to create a truly contemporary and more just policy, as a result of reluctant member states.

Striking however, is the very positive reception of the EU Blue Card by business actors, as Gümüs points out. The reason for this positive response is the 'strong basis for greater competitiveness with the US and other leading economies '(Gümüs, 2010, p. 448). A parallel between this reaction and demands from US market actors for more H-1B visas, as exemplified by Bill Gates testifying for Congress that a higher cap on H-1B visas is needed (Bangeman, 2006). US governmental discourse on highly skilled migration has a traditional character and did not change much for decades. In the US, still migrants are selected 'on the basis of their skills'. However, many of them are in the US on a temporary basis on an H-1B visa, a longstanding visa that is popular with large business owners in the information technology sector. Exactly those actors point out that the current immigration system falls short to recognize current processes and market demands. Several migration scholars have acknowledged the threat of decreasing dominance for the US, including Papademetriou et al (2008) and Shachar (2006) due to their approach, that would be too traditional and not aggressive enough. It would be 'creaky and inefficient, and full of contradictory goals'. They point out that the US immigration system is outdated an 'can no longer guarantee that the United States will attract the kind of permanent and temporary foreign workers is needs now and in the future. The system has become a bureaucratic nightmare and is only haphazardly related to broad U.S. interests' (Papademetriou and Yale-Loehr in Shachar, 2006, p. 196). These sentiments derive from the traditional US immigration discourse that is based more on family reunification than on the attraction of skills and is less open for skilled migrants than for instance Canada. Large business owners have criticized the American government for not being open enough to foreign skilled workers.

The latter sees attracting skilled migration as one of their main policy goals. Compared to other actors they act more like a company who tries to recruit actively the skilled workers it wants. In the Canadian discourse, even more present than in other systems, that are demand driven, the economic dominance of migration policy is evident. Rather than humanitarian reasons (refugees) or family reunification, Canada puts its economic interests up front. In one of the documents in which Canada promotes its innovation strategy it writes: 'Immigration has long helped to build and define Canada. In addition to promoting economic growth, Canada's immigration policy serves a variety of objectives, including family reunification, humanitarian assistance, and social and cultural diversity' (Prime Minister of Canada, 2002). By using the word 'additionally', it becomes clear that economic growth is the main driver behind Canadian immigration policy, and not family reunification such as in the US, nor

humanitarian assistance. Again, an economic dominance in migration policy can be seen, as in the other cases. The desirability of this dominance is at least questionable and will be criticized in chapter seven.

Australia uses a comparable logic to Canada's putting skilled migration at the top of their priority list. Different is the novelty of this logic, which has been more recently implemented in Australia's immigration policy. It seems however that certain trends favor more aggressive migration policies. Papademetriou et al describe five trends that can explain the more aggressive take on attracting talent: 1) increasing quest for competitive advantage, 'which fuels a sometimes reckless 'just-in-time' approach to skills', 2)resistant education systems that delivers workers that do not align with competitive global firms, 3) many firms rather procure talent than growing it themselves, 4) aging and declining fertility, and 5) societies reward legal and financial skills more than skills in other sciences, making it more attractive (amongst others, by higher salaries) than more technology related subjects (Papademetriou, et al., 2008). These trends are crucial to understanding why developed countries think they need more talented people to keep their economies growing.

As we then compare the EU to the other cases we see that the logic behind the plans uses the same 'normalized assumptions'. Wylie described that the goal of CDA is to describe these normalized assumptions. If the EU follows the same logic as the other cases, it is not capable of offering a better answer to contemporary migration trends as Sassen expected and hoped for. Caused by the reluctance of member states to hand over sovereignty to the EU, I think this is a missed chance for the EU and its member states. Before concluding this chapter I discuss the overall discourse that is shared among the cases and make explicit the assumptions that are evident in the discourse.

Though the discourses differ a bit, they follow the same overall logic. In this logic the control over migration is the exclusive domain of the states. States (and the EU) perceive they are in competition with each other for the same migrants, and thus have to offer higher and higher incentives for the migrants to come to their countries (Shachar, 2006). In all the discourses, the net economic benefit of the highly skilled migrants plays a central role. The migrants attracted can come from all over the world, and an increasing competition is visible in the policies. However if this competition indeed takes place is a second issue. Policies describe the same motivators for attracting talent. These motivators, in turn, are based on the same assumptions. The 'overall' discourse can be called the 'global race for talent'-discourse, and relies on four assumptions:
- the 'globality' of the race or scramble;

- the ongoing 'competition' for the same migrants;
- the 'need' for highly skilled migrants;
- the economic dominance in the field of migration.

These assumptions are subject to criticism in chapter seven that tries to deconstruct the overall discourse, as well as EU's take on it.

Key features in discourses	EU Blue Card	US H-1B and Employer based Green Card	Canada Skilled permanent and temporary migrants	Australia General Skilled Migration
Rationales and objectives	- Labor market demand for more highly skilled workers - Shortages in EU for such workers - Harmonization of migration policies to raise attractiveness of Europe	- Traditional recipient of highly skilled migrants - Migrants who can contribute to economy are accepted	- Migration as major driving force economic growth since decades - Only migrants who offer enough net economic benefit are accepted	- Select for success, with success - complex system to respond to market pressures quickly

Different backgrounds of policy and different rationales behind their strategies makes that the policies of the examined cases also differ in their workings. In this chapter, the similarities and differences of the policies are assessed by looking at both the selection criteria and the incentives offered to potential migrants. Selection is essential to a policy that attracts exactly those migrants it wants, but is also subject to a lot of controversy as proven in previous chapter. Is it fair to select only those migrants that offer 'net benefit' to the country? In this rapidly changing policy field these strictly national and economic motives reflect in the selection criteria. This chapter will focus on exactly what selection mechanisms and criteria the migrants have to comply with in order to obtain certain highly skilled visas. It will become clear how open or restricted the cases are in regard to highly skilled migration, and how they select their potential migrants 'for success'. Secondly the benefits that those visa-holders enjoy will be examined and compared. Again these observations will lead to discourses in which policymakers make decisions will be investigated, and its main assumptions critically assessed. Hereby theoretical concepts will be used to place the observations in wider discussion. Analysis of the different strategies and comparison between them will yield critique on the programs and on the EU's position within this field, both from practical and ethical stances.

6.1 Selection and Incentives in the EU Blue Card

Selection process

The EU Blue Card follows the logic of a demand driven system. In this system, the employer plays a crucial role, as it is his role to sponsor the applicant by granting him or her a contract or job offer. Thus only with the help or support from the employer can an applicant be granted a visa in these programs (Chaloff & Lemaitre, 2009). It selects immigrants that employers in Europe need and comes to their help, by selecting those highly skilled migrants that European businesses need. The EU and US use such a demand driven system, in comparison to the other two cases in this research who, as will be examined, use a supply driven system. In order to obtain EU Blue Card, a job offer or contract in a highly specialized field is one of the most important criteria. The total set of criteria that potential migrants must meet to qualify for a Blue Card, as described in the Council Directive, requires the applicant to (European Commission, 2009):

- Be in possession of a valid work contract or binding job offer, from a business within the EU, of at least one year;

- Be able to present documents required by National Law to exercise a regulated profession (in work of job offer or contract);
- Or, for unregulated professions, documents showing higher professional qualifications (in works of job offer or contract);
- Be able to present a valid travel document or application for visa;
- Have evidence of sickness insurance coverage;
- Not pose a threat to public policy, public security of public health.
- Be offered, in the job offer or work contract a minimum annual salary as determined by each member state, with a minimum of 1,5 times the average gross annual salary in a Member state;

These general conditions are developed EU wide, but make room for member state influence. member states can choose to ease the salary condition for certain professions, under the categories for managers (1) and 'professionals' (2) under the International Standard Classification for Occupations (International Labour Office, 2008). Under these categories professions belong such as medical and administrative managers, scientist and engineers. A member state can choose to handle a higher salary threshold, based on profession or age. Furthermore, they can autonomously decide on the number of migrants they will accept, the period of validity of the EU Blue Card (between one and four year). They are also responsible for recognition for foreign diplomas. This flexibility makes sure the EU Blue Cards can be used to respond to market pressures and fill skills gaps. Consequently it gives the both Member state and employer a crucial role (European Commission, 2009). In theory this means that member states could handle a very low quota and thus let not in any migrants under the Blue Card Scheme.

Member states face restrictions on active recruitment when the applicants live in developing countries and work in a sector which is suffering from a lack of personnel. Instead, 'ethical recruitment policies' should be used in those vulnerable sectors as so to promote circular and temporary migration, 'in order to turn 'brain drain' into 'brain gain'' (European Commission, 2009, p. 13). Early reactions on the Blue Card proposal included furious answers from developing-country leaders anticipating on major brain-drain from their countries to the EU because of the Blue Card. More on this subject next chapter, when discussing the (possible) outcomes of highly skilled migration policies.

In the process of applying for a Blue Card, no proof that the foreign worker is needed and that the position cannot be filled by a domestic worker is required. Some have argued this is a threat to the domestic workforce and many German first responses to the Blue Card plans

expressed these fears (Spiegel Online, 2007). There might not be an explicit protection of the domestic workforce, but the member states will always be able to set the quota and are thus basically in charge of all admissions, a feature that can make the system either more flexible or less effective depending on the position the member states take.

Incentives offered to Blue Card holders

If obtained, a Blue Card acts as a residence and work permit, valid for a period up to five years. In the first two years, the migrants' job has to be in line with the admission criteria, after this time these criteria might be weakened slightly. This means that the first eighteen months must be spend in the one state in which the migrant applied, after which he or she may move to another member state, as a way to promote circular migration and to get the talent where it is most demanded by employer. The EU Blue Card holder enjoys equal treatment as nationals of member states as regards to working conditions, freedoms such as association and affiliation etc; equal access to social security; pensions; education and vocational training; access to goods and services in a similar way as nationals have (European Commission, 2009, Article 14).

Furthermore a period of three months is granted to find work in case of unemployment. Attractive to the migrants are the rules on family. Family members, including the sponsor's spouse , their children, including adopted children of either one of the two who are dependent on them (European Commission, 2003), also get a residence and work permit. Residence is restricted to the first member state, after 18 months, the family can move to another member state of the EU. Also explicitly mentioned is the possibility for Blue Card holders to apply for a long term residence status, 'to encourage their circular migration' (European Commission, 2009, p. 19).

Migration discourse in EU Blue Card

Selection for the Blue Card happens on the basis of a set of criteria. The most prominent features are a job offer in a specialty field and a salary 1,5 times the average. This demand-driven system gives employers the chance to attract the workers it want. This makes that the system can react quickly to market demands, not in the least by offering a 'fast-track admission procedure'. Advantages to such a system include the assurance that actual skill gaps exists, the immediate labor integration and a low risk of posing financial burden on the society (Chaloff & Lemaitre, 2009). By offering temporary visas and not permanent the EU can respond quicker to fill skill gaps. Member states of the EU that cooperate under the EU Blue Card can set their own quotas and thus restrict employers in their attempts to attract the 'needed' workers. Concepts that characterize the benefits of these migrants are the fast-

track procedure, the temporal visa and restricted rights in case of unemployment. The duration of stay is very much restricted and seems to be geared towards resolved short term All these features add up to a discourse in which the effects on national economies are the starting points. A contribution to the economy seems to be the only value the policy makers account to the migrants. If I test this against that two axes of Ruhs and Chang, the Blue Card can be considered as being very much 'consequentialistic. This is to say that they put their own interests up front. Furthermore the Blue Card can be described as being 'nationalistic'. Talking about the EU as being nationalistic is of course a bit misplaced, so a better term would probably be regionalistic. The EU policies take into account the effects it has on the economies of member states and not the effect it has on other states, with the exception of the handling of brain drain. Here EU policy makers have thought about the consequences of their policies on other economies. More on the handling of brain drain in chapter seven.

6.2 Selection criteria and incentives of American H-1B visa and employer based green card

Selection in the United States

As the H-1B is another demand driven program, selection is also based on fixed criteria, which are quite like those of the EU Blue Card. The H-1B program requires the applicant to have a job offer or contract from a company established in the US for a specialty profession. The (future) employer must sponsor the visa request. The specialty professions include occupations such as scientists, medical professionals and engineers. (US Citizenship and Immigration Services, 2012). The total set of criteria for applying for a temporary H-1B visa is:

- The applicant should have completed a US or foreign Bachelor's or higher degree;
- The offered job should indeed require a Bachelor's or higher degree, either because it is common in the industry or comes with the complexity of the job;
- The applicant should hold an license, registration of certification which authorizes to practice the specialty occupation, valid in the state where the applicant plans to work;
- The applicant should have education or 'progressively responsible experience 'in the specialty and has recognition of expertise in the specialty through responsible positions. ; (US Citizenship and Immigration, 2012b)

The similarity with the EU Blue Card can be seen instantly. The criteria are quite similar. Specialty occupation is defined as 'an occupation which required theoretical and practical application of a body of highly specialized knowledge in fields of human endeavor including, but not limited to, architecture, engineering, mathematics, physical sciences, social

sciences, medicine and health, education business specialties, accounting, law, theology, and the arts, and which requires the attainment of a bachelor's degree or highly in a specific specialty, or is equivalent, as a minimum for entry into the occupation in the United States'(Federal Register, 2012, Section 214). This definition, in line with, although maybe a bit wider as the definition given to the notion of highly skilled employment in the Council Directive of the EU. Different though is that the employer who hires H-1B migrants, is required to demonstrate that the jobs cannot be filled with domestic workers and that they have tried to recruit those before trying to get workers from abroad. Therefore, the employer has to attest that he or she could not find any qualified US worker to do the job by filling in a Labor Condition Application. 'Complaints', it states 'alleging failure to offer employment to an equally of better qualified U.S. worker or an employer's misrepresentation regarding such offer' may be filed by the U.S. Department of Justice (U.S. Department of Labor). A better protection of the domestic workforce is thus insured in these selection criteria, something that lacks in the European case.

Similar conditions are put in place for migrants that applied for a green card on employment basis. The applicant must have a job that cannot be filled by domestic workers, and the working conditions and salary must be similarly to domestic workers in the same jobs (Chaloff & Lemaitre, 2009).

Incentives of American Visas

When obtained, an H-1B Visa acts as a temporary work and residence permit for so called non-immigrants for an initial period of three years and can be extended up to six years. (A related visa, L1 visas, for long term temporary stay, which is mostly granted to employees of US businesses in other countries, can give a holder the right to stay up to seven years). Other rights that H-1B visa holders enjoy are mostly the same as those of permanent residents be it temporarily, such as the right to Social Security, and Medicare (US Citizenship and Immigration, 2012c). In the same Labor Conditions Application as mentioned before, the employer is forced to attest that the visa holder receives the same wage as similar qualified other workers and that the working conditions are similar to those of other employed workers, in order to protect foreign workers for exploitation and low wages (U.S. Department of Labor). The H-1B visa is created with a dual intent, it does not require the potential holder to come without the intention to stay in the US. Other than most types of visa, the holders may apply for a Green Card for permanent residence within the US. The H-1B visa allows holder to travel outside the US, and to change employers, as long as the new employer is willing to become the holder's new sponsor for the visa. Immediate family members of the H-1B visa holder may also remain is the US as long as the H-1B visa is valid,

under a H4 Dependent visa, including children less than 21 years. They are not allowed to work within the US, as opposed to partners of EU Blue Card holders. They can attend school and get their driver license (US Citizenship and Immigration, 2012c).

The Green Card grants the immigrant with a permanent residence and work permit. The person can work wherever he or she wants (some jogs are limited to US citizens only) and is protected by all laws of the United States, state of residence and local jurisdiction. Similar treatments as citizens apply in cases of social security, medical care, insurances, taxes etc (US Citizenship and Immigration, 2010).

Discourse in US migration policies

The migration system in the US includes both temporary and permanent migration. Both are demand driven and require job offers of US employers. Education and the right occupation are also central in the selection process. The prevailing discourse, once again, can be characterized as consequentialist and nationalist. The effects on the US economy are central to the selection of the 'right' migrants. Both H-1B and Green Card policies does not seem to be bothered by the effects these policies have on noncitizens and sending countries. As was shown above, migrants admitted to the US will be admitted on the basis of their skills and the contribution to the economy. The economic focus is, once again, clearly visible in the selection.

American immigration discourses can be seen as very much consequentialistic, as the main concern is the outcome for their own economy. For decades this was a main focus of American immigration policy, as evidenced by president Johnson, when he states that *'those who can contribute most to this country, to its growth, to its strength, to its spirit'* are the ones that he want to admit to the US. This also makes it a very consequentialistic approach to managing immigration. This kind of rhetoric is used up until today, as Obama expresses that the US needs a new immigration system that 'meets our nation's economic and security needs'.

6.3 Selection and incentives in Canada

Selecting mechanisms in Canada

As shown in the chapter above, the largest part of Canada's migration system is focuses on economic migrants and attracting highly skilled migrants, far more than the US system, which puts more focus on family reunification. This emphasis is reflected in the ways in which Canada selects its (permanent) immigrants. More emphasis is put on the skills of the applicant, less on the job offer or contract by the employer. Central to the point system that is

put in place to select the migrants, is their education, work experience, language knowledge and other assets. Canada's migration system is a supply or immigrant driven system. All potential economic immigrants that want to settle permanently to Canada are subjected to the points test, a category that today makes up for almost 70 percent of all migration into Canada (69,3 % in 2010)(Citizenship and Immigration Canada, 2011b).

In the point system as it is used today for the acceptance of permanent immigrants, a total of 100 points can be gained. Although the structure of the point test has not changed a lot since its birth, the pass mark can change and the job occupations that are mostly in demand can be awarded with higher points, adjusting it to the current skill gaps (Citizenship and Immigration Canada, 2010a).

The maximum points in a category can be obtained if the potential migrant has the highest skills/abilities in a category. In the education category, 25 points are awarded to those with a PhD, or Master's level degree and at least 17 years of full time study. Two of more university degrees at the Bachelor's level and at least 15 years of full-time study are awarded with 22 points, and so on, until the least points in this category possible, zero points for secondary school diploma or less. In the other categories a similar logic is followed, awarding points for those who have more work experience (15 points for one year, 21 points for four years or more), who have an preferable age (between 21 and 49 is awarded with 10 points, minus two for each two years younger than 21 or older than 49). In the adaptability category emphasis is put on the accompanying spouse or partner and his/her history in Canada.

Furthermore, to gain a permanent residence visa, a minimum of 10,168 Canadian Dollars (for an individual) or arranged employment is required as proof of funds. Also one must not have family with serious health problems in the family and one cannot be convicted of a criminal offence.

Factor 1: Education	Points
Master's or PhD AND at least 17 years of full-time or full-time equivalent study	25
Two or more university degrees at the Bachelor's level AND at least 15 years of full-time or full-time equivalent study	22
A three-year diploma, trade certificate or apprenticeship AND at least 15 years of full-time or full-time equivalent study	22
A university degree of two years or more at the Bachelor's level, AND at least 14 years of full-time or full-time equivalent study	20
A two-year diploma, trade certificate or apprenticeship AND at least 14 years of full-time	20

Factor 1: Education	Points
or full-time equivalent study	
A one-year university degree at the Bachelor's level AND at least 13 years of full-time or full-time equivalent study	15
A one-year diploma, trade certificate or apprenticeship AND at least 13 years of full-time or full-time equivalent study	15
A one year diploma, trade certificate or apprenticeship AND at least 12 years of full-time or full-time equivalent study	12
Secondary school (also called high school)	5
Factor 2: Languages	**Points**
Proficient in both English and French	24
Proficient in first language (either English or French)	≥ 16
Proficient in second language (either English of French)	≥ 8
Factor 3: Experience	**Points**
1 year	15
2 years	17
3 years	19
4 years	21
Factor 4: Age	**Points**
16 or under	0
17	2
18	4
19	6
20	8
21-49	10
50	8
51	6
52	4
53	2
54 and over	0
Factor 5: Arranged employment	**Points**
If you are currently working in Canada on a work permit and you have a permanent resident visa or are offered a permanent job	10
If you are currently working in Canada in a job that is confirmed by Human Resources and	10

Factor 1: Education	Points
Skills Development Canada (HRSDC) and you have a permanent resident visa or are offered a permanent job	
If you do not currently have a work permit and you do not intend to work in Canada before you have been issued a permanent resident visa and have a full-time job offer confirmed by HRSDC or are offered a permanent job or you meet all required Canadian licensing or regulatory standards associated with the job.	10
Factor 6: Adaptability criteria	**Points**
Accompanying Spouse or common-law partner's level of education	3 − 5
Previous study in Canada (of you or spouse of at least two years)	5
Previous work in Canada (you or your spouse for at least one year full-time)	5
Arranged employment; received points under Factor 5 Arranged Employment	5
Relatives in Canada (of you or spouse)	5
Total points	**100**
Current Pass Mark	**67**

(Citizenship and Immigration Canada, 2010a)

For each category an applicant classifies for one option under each category (except for the language category in which testing is a bit more complex and one can accumulate point up to a maximum of 24 points) with the all the maximum points together adding up to 100 points. The current pass mark is set at 67 (Citizenship and Immigration Canada, 2010a). This point system in the basic feature of Canadian immigration policy, other than the selection policies of the EU and US that were discussed, which are specifically designed for the highly skilled. For this system it is clear that the system is immigrant or supply driven, it focuses on what a potential migrant can offer rather than what specific needs of Canada on the short term. The question that arises is whether this system generates different immigrants. It is often said that the Canada, because of the point system, attracts way more highly skilled migrants than other migration countries do. If this is indeed (still) the case will be discussed in chapter 7 on the outcomes of the pursued policies.

Temporarily, as of 1 July 20102, minimum requirements have to be met: either the applicant should have a valid job offer of arranged employment or are enrolled in a PhD program in a Canadian educational institution (Citizenship and Immigration Canada, 2012b).

Canada uses a points system in order to promote transparency. Potential migrants and other can directly see on what grounds people are accepted or not. It is thus more transparent than

for instance the criteria and quota that EU member states set that can be seen as more subjective. It is furthermore anti-racist, and shows that the government is investing in the economic benefits of migrants (Yale-Loehr & Hoashi-Erhardt, 2001), an asset, as probably considered by most of the public opinion who tend to be more and more negative about migration. However it discriminates on other grounds, such as age and education.

Next to the points test for permanent residents, the Canadian government also offers visa for Temporary Foreign Workers. For this category, the Canadian employer which is offering you a job should get confirmation that he is allowed to hire a foreign worker for the job from the national labor office, Human Resources Development Canada (Citizenship and Immigration Canada, 2010b).They try to make sure that the temporary worker do not have an negative impact on the job opportunities of the domestic workers. This office is able to respond quickly to market demands, as it uses a list of occupations that suffer from skill gaps and need foreign workers. This list is created in collaboration with governments and industry leaders. Furthermore the temporal worker has to comply with the standard criteria of entering Canada (Citizenship and Immigration Canada, 2010b). The temporary permits are usually valid for one year and can be extended multiple times if the employment is for more than one year (Christian2000). Temporary workers have similar rights to citizens in the protection of their rights as employees. Temporary residents can apply for permanent residence within Canada on the basis of their temporary residence permit (Citizenship and Immigration Canada, 2012b). In comparison to the points system, the temporary residence permit for temporary foreign workers is thus clearly employer driven and seems to be able to respond very quickly to market demands.

Incentives as a permanent and temporal resident in Canada

The benefits of permanent residence in Canada are quite similar to those of Canadian citizens. Holders of a permanent residence card can live, work and study anywhere in Canada, they receive most of the social benefits, health care coverage as citizens. They can also apply for Canadian citizenship and must pay the same taxes as citizens. Limitations are to run for political office, hold certain jobs that are for citizens-only, and they can be deported after conviction of a serious criminal offence (Citizenship and Immigration Canada, 2011a). Those who hold a permanent residence card can sponsor their immediate family to become a permanent resident too (Citizenship and Immigration Canada, 2012a).

These rights that permanent residents benefit are similar to those of permanent resident in other states, but of course very different from the right that temporary visa holders enjoy. Temporary visa holders may work and live in Canada as long as their visa is valid with a

maximum of four years (Citizenship and Immigration Canada, 2011c). Temporary workers may bring direct family if they meet the criteria for temporary migrants. They may not work in Canada, unless they obtain a work-visa for themselves, or interestingly, if the partner works in a highly skilled job (type of work that usually requires at least a college degree), the partner may be eligible to obtain an open work visa on the basis of the first visa . This favorable situation is thus directly linked to the highly skilled employment of the original (highly skilled) temporary workers, who benefit more from this regulation than other workers.

Canadian immigration discourse

The point system with its emphasis on age, language skills, education and work experience is the basis for Canada's selection system. This points based system follows a somewhat different rationale compared to the two demand driven systems found in the EU and US. In this supply-driven system, the state, Canada's takes the place of the employer in selecting the migrants 'for success'. If not the employer, the state decides what its economy and its market actors need.

The reason for this choice for the state selecting the migrants is related to the history of Canada's migration policy. Canada has long attracted migrants for broader purposes than filling acute labor shortages (Chaloff & Lemaitre, 2009). Of course the fact that it concerns mainly permanent visas also counts up to the selection by the state, as they take into account broader concerns than employers would do. A specific aim of the Canadian government is then also to attract migrants that both contribute to the economy, but also, that are likely to integrate in the Canadian labor market and society. As Canada's government states in a strategic document, key determinants for successful integration include factors like language fluency, higher levels of education ('mean better performance in the labor market', prior linkages to Canada, recognition of foreign qualifications, labor market information, Canadian work experience and public and employer attitudes ('positive attitudes are key to promoting rapid integration'). Selecting on those factors is thus important for Canada, as *'ensuring that newcomers to Canada are integrated into the society is essential if Canada is to benefit from their full potential'* (Prime Minister of Canada, 2002, p. 51). This statement clearly identifies the nationalist and consequentialist focus of Canada's immigration discourse. The state-led selection makes sure Canada selects the 'right' migrants for the state for a longer time span and for more general labor force consideration instead of acute needs for specific occupations by employers.

Selection mechanisms

As discussed in the previous chapter, there are numerous ways to enter Australia as a highly skilled migrant. In this chapter only the policies and programs that are specifically designed to attract highly skilled migrants are discussed, in order to be able to make a sound comparison later to the other cases in this research. For Australia this implies only the General Skilled Migration program is included here. Subclasses of visas that are covered by the GSM are the following: 175 (Skilled Permanent) 176 (Skilled Sponsored Permanent), 475 (Skilled – Regional Sponsored Provisional), 476 (Skilled Recognised Graduate Temporary), 485 (Skilled Graduate Temporary), 487 (Skilled Regional Sponsored Provisional), 495 (Skilled – Independent Regional Provisional), 496 (Skilled Designated Area Sponsored Provisional), 885 (Skilled Independent Residence), 886 (Skilled Sponsored Residence), 887 (Skilled Regional Residence).

For a number of subclasses (475, 487, 175, 176, 885, 886 visas), Australia uses a point system quite similar to the Canadian one to screen their potential immigrants for their skills. Points can be gained, in similar categories as in Canada's system and additional requirements must be met by every applicant to have a chance. The threshold requirements are the following: The applicant must

- be under 50 years of age at the time of applying for a visa;
- meet the threshold English language requirement of competent English;
- nominate and hold a skilled assessment for an occupation on the Skilled Occupation List at the time of lodging their application;
- Provide evidence of recent skilled employment in a skilled occupation of have recently completed the Australian Study requirement (Department of Immigration and Citizenship, 2011d).

After these requirements are met, the applicant should also obtain enough point to pass the point system. This system is composed of the following aspects:

Factor 1: Age	Points
18-24	25
25-32	30
33-39	25
40-44	15
45-49	0
Factor 2: Proficiency in English	**Points**
Competent English (IELTS 6)	0
Proficient English (IELTS 7)	10
Superior English (IELTS 8)	20
Factor 3: Skilled Employment (max 20 points in combination)	**Points**
One year in Australia	5
Three years in Australia	10
Five years in Australia	15
Eight years in Australia	20
Three years overseas	5
Five years overseas	10
Eight years overseas	15
Factor 4: Qualifications	**Points**
Australian Diploma or trade qualification or other qualification recognized by a relevant Assessing Authority	10
At least a Bachelor degree	15
Doctorate	20
Factor 5: Australian study requirement	**Points**
Minimum of two years full-time	5
Factor 6: Designated Language	**Points**
NAATI accreditation	5
Factor 7: Professional Year	**Points**
Completion of a recognized Professional Year	5
Factor 8: Partner skills	**Points**
Primary applicants partner meets threshold requirements for skilled migration visa	5
Factor 9: Nomination by state/territory government (for specific visa)	**Points**
Nomination by a state or territory government under a state migration plan	5
Factor 10: Designated area sponsorship or nominated by state/territory government (for specific visas)	**Points**
Sponsorship by an eligible relative living in a designated area or nomination by a state or	10

territory government under a state migration plan	
Factor 11: Study in a regional Area	**Points**
Only for sponsored visas	5
Total points	**145**
Current Pass Mark	65

(Department of Immigration and Citizenship, 2011d)

The current pass mark is set at 65 points. The point system has been subject to change over the years. The latest change was in 2011 when more focus was put on better English skills, higher level qualifications and 'better targeted at age ranges'. The maximum age was raised from 45 to 50, indicating it wanted to attract a younger crowd. In earlier versions of the point system, points were given to specific occupations which were highly in demand, but should be on the Skilled Occupation List. Additional requirements may apply to these visa, for instance being sponsored by an Australian relative or nomination by a state or territory government agency as the names of the visa imply (Department of Immigration and Citizenship, 2011a).

Other visas to enter Australia in the General Skilled Migration Program use criteria without a point system. These criteria depend on the different visas. Subclass 476, which regulates visa for Recognised Graduate only has two criteria: the applicant must be under 31, must have completed a qualification at a recognized university (by the Australian government) in a field in demand in Australia. For the 485 visa for Skilled Graduate one must be under 50 years of age, must have completed a qualification as a result of at least two years study in Australia within the last six months and one must have the skills, attributes and qualification the meet the Australian standard for an occupation on the Skilled Occupation List. The Skilled – Regional 887 visa, is a permanent visa that can be applied for only by the holders of certain temporary visa (495,496,475,487,bridging visa), as long as they are living in Australia for two years and have worked for a t least one year (Department of Immigration and Citizenship, 2012b).

Rights and benefits for migrants in Australia

These discussed visas and its subclasses grant the holders of either a temporary, provisional or a permanent (residence) visa. The temporary visas are the 485 (Skilled Graduate), 476 (Recognised Graduate), 487 (Skilled Regional Sponsored) and 475 (Skilled – Regional Sponsored). The latter two to let a migrant stay up to three years, and the visas for graduates give room for 18 months.

A visa that is valid up to three years let the migrant live and work in a 'specified regional area' in Australia, only in the region which sponsors the migrant. It supports an accompanying secondary applicant to work and study in the same area. The information websites for the visas mentions that in the 18 months of the graduate visas, holders may apply for permanent General Skilled Migration visas. In these 18 months, the holders may work, travel, study or undertake further professional studies, but do not necessarily have to work in a specialty occupation, as is the case with other temporal visas (Department of Immigration and Citizenship, 2011c).

The residence visas allow migrants to settle and work in Australia permanently. With this visa the migrants can study, receive subsidized healthcare, access certain (not all) security payments, sponsor other people for permanent residence and makes migrants eligible for Australian citizenship. A permanent Australian visa can be the first step to gain the status of Australian citizenship as these migrants are allowed and expected to apply for this. This visa comes with the most expanded set of rights, which are very similar to those of Australian citizens. Same as citizens, these permanent residents have right to most of the same medical and social security benefits. Additionally they have the same right as citizens to live, work and study in New Zealand. Limitations of this visa include certain types of jobs, as in governmental work or the army, which requires workers to be citizens. Typically this visa is for valid for five years, after which residents may extend for living in Australia longer (Department of Immigration and Citizenship, 2011c).

Discourse in Australian migration

Australia uses both a set of requirements on education, occupation and age in combination with a points test. The system is for the greater part supply driven, as job offer is not necessary for most visas. Key concepts important for Australia's discourse on highly skilled migration are the very strict selection methods, its active recruitment by organizing jobs called 'Skills Australia Needs Events'. Actively promoting migration options for skilled workers is done by both employers and governments on these fairs (Department of Immigration and Citizenship). Its supply driven system incorporates mechanisms from demand-driven systems such as the Skilled Occupation List, and minimum criteria on the basis of education and occupation. Remarkable is the strict minimum regulation on age, anyone above 50 years old cannot apply for a skilled visa. This seems to have to do with the contributions the migrant can contribute to the economy, and a 50-year old only has around 15 years to contribute, while younger workers can contribute more years. This can be seen as discrimination on the basis of age, I argue later in chapter seven. Consequentialist and strictly nationalist positions are put forward in these selection criteria and benefits.

After describing these workings of the policies and indicating key features, in the next section I make a comparison between the four cases. In comparing the selection criteria, a rough sketch of which migrant exactly are wanted can be drawn. The implications this has for the effectiveness, its advantages and disadvantages, as well as their ethical stances are compared to make clear the role of the EU in this.

Selection criteria	EU Blue Card	US (H1-B)	Canada (permanent)	Australia (GSM)
Job offer	Required offer in specialty occupation	Required offer in specialty occupation	Counts for additional points (10%)	Counts for additional points (+/- 7%)
Age	No requirements	No requirements	No criteria, up 10 % for those between 21-49	Must be under 50, up to 20 % for those between 25-32
Salary	Minimum 1,5 times average salary in state	No requirements	No requirements	No requirements
Education	Minimum tertiary degree	Minimum tertiary degree	No minimum requirement, up to 25 % for doctorate	No minimum, up to 14 % for Master or higher degree
Adaptability	-	-	Up to 10% for spouse living in Canada, precious study or work in Canada	3% for partner skills.

Starting with the Blue Card, EU institutions see a highly qualified worker as someone whose occupation is a specialty occupation, who earns at least 1,5 times the average income in the country. A job offer is required in order to obtain a Blue Card, as well as sickness insurance. As said selection of migrants implicates some sort of differentiation. In the EU this is on the ground of their education and occupation. These features are often not seen as discriminatory. Focus is thus on experience and education. These criteria are very similar to those of the United States, who emphasize experience by asking the applicant to present evidence of his or her expertise in the specialty field.

Canada's selection mechanism presents other angles and criteria. In Canada age matters, the most points (10) are to be gained for 21-49 year olds and no points for those above 54. This focus makes it harder for older migrants to come to Canada under a skills-visa. Yet the age criterion is not as important as in Australia, where no worker above 50 is even considered for a visa. Also under 50, Australia put more emphasis on age, as the maximum is 25 points, around 20 percent of the total possible points (depending on the visa, between 120 and 110 points,) whereas in Canada the age factor counts for 10 percent of the total 100 percent. As Chaloff and Lemaitre show, age is more important in cases where permanent migration is at stake (Chaloff & Lemaitre, 2009). This trend is clearly visible, as Canada and Australia both focus more on age than the other cases, and those are the only two cases in which permanent visas are offered. In the US case, the Green Card does not require the migrant to be a specific age, as it is also used for non-economic migrants. Selecting migrants on the basis is discriminatory and in my eyes unjustifiable. While the EU offers a 'mild' form of discrimination, by loosen its salary threshold for those under 30, Canada and Australia go further and go as far as restricting access on the basis of age.

If the states acts as a market actor by selecting the migrants it wants, it often takes into account factors that employers would. However, in my opinion this is not the role a state should play. If combined with Sassen remarks on deregulation and privatization, the state acts in a way as if the migration policy was privatized, however the actual regulation is still in the hand of the states (Saskia Sassen, 1999). A de-facto privatization has then taken place, the sort of deregulation that is undesirable. This is where a problem of supply-driven systems emerges as states are not, and should not acts like employers, as they have the duty to protect the rights of migrants.

While Canada sets no minimum criteria regarding skills, age or experience, Australia sets a number of minimum criteria. Visas under GSM require potential migrants to be under 50 years, meet the threshold of English language requirements and evidence of recent skilled employment. Canada in turn has a higher pass mark in percentage of the total points possible. A study for the Australian department of Immigration and Multicultural and Indigenous Affairs shows that the overall criteria in Australia are stricter than in Canada. The minimum requirements of age and language proficiency proof to make a large difference in the outcome and profile of migrants. The language requirement, among other factors such as cultural familiarity, results in a larger inflow of English speaking migrants in comparison to Canada. Skilled workers from the United Kingdom and India often choose Australia as

their destination. The age requirement (under 50) leads to a more concentrated groups of migrants in terms of age (Richardson & Lester, 2004).

Canada's system includes points for 'adaptability', a feature none of the other cases include. In this adaptability the likelihood of a successful integration are tested by testing the accompanying spouse, whether the applicant has a history in Canada (either work or study) and whether he or she has relatives in Canada. The points show 'that you or your dependants can adapt to living in Canada'. This factor makes up ten percent of the total points possible (Citizenship and Immigration Canada, 2010a).

A main criterion that every case includes is the level of education of the applicant. For the EU the Directive states: 'any diploma, certificate or other evidence of formal qualifications issues by a competent authority attesting the successful completion of a post-secondary higher education programme' (European Commission, 2009). This means at least a Bachelor degree from a recognized university that takes at least three years to finish. The US H-1B visa also requires at least a Bachelor's degree. Canada and Australia do not set minimum criteria to the education of an applicant. In the Canadian case up to 25 points are awarded to those with a Master's or PhD degree. The least points (5) are given to those who only finished high school. Though as a result of the importance given to education, 25 percent, it will be quite hard to score enough points without any more education than high school. In Australia, less emphasis is put on education, with a PhD scoring 20, a Bachelors degree 15 and other diplomas (apprenticeship) scoring 10 point the education factor makes up only 14 percent of the total points possible.

The main selection criterion in each system is the job offer or field the applicant is working in. The job or field should be considered specific for highly skilled/qualified workers. Some countries have a list of occupations that are considered a 'specialty occupation', such as the US, who include a whole range of sectors and do not exclude other fields. In the EU 'highly qualified employment' refers back to 'highly education qualification', which requires at least three years of study. The Blue Card Directive thus gives a very vague definition of this term, that can possibly include many occupations, to satisfy the demands of the member states, and that allows responses to market trends more easily (Council of European Union, 2008). These responses to market pressures seem crucial in all the cases. In the EU, regulations on salary threshold can be eased in the case of professionals working in group 1 (managers) and 2 (professionals) of the ISCO (European Commission, 2009). In Australia a list is created of occupations that are the most in demand, only professionals working in those sectors comply with the basic requirements for a visa under the General Skilled Migration program.

This Skilled Occupations List changes every year and includes around 180 occupation (Department of Immigration and Citizenship, 2012a). In the case of Canada, permanent migration under the economic stream (skilled and professionals) does not require a specialty occupation. Under the Temporary Foreign Worker Program, an applicant needs a job offer, just as in the H-1B visa category, but no specific occupations are required. This difference can be an effect of the more supply-driven system that Canada uses. The occupational preference is closely related to the protection of the domestic workforce. According to Chaloff and Lemaitre (2009) in supply driven systems, only less or indirect measures can be taken to make sure the domestic workforce gets 'first pick' in job offers, to make sure that the attraction of migrants does not lead to more unemployment under own citizens. In contrast, demand driven systems, often use direct mechanisms to protect national workers, occupational shortages lists and an employment test, in which it is made sure no national is eligible for, or willing to take the job. This distinction is not always accurate today, as the EU does not has any mechanisms for such purpose and Australia does handle a shortage list for occupations. The distinction however touches on important options policy makers have in these migration systems.

As Shachar notices, next to employment and development opportunities, potential migrants search for a 'new home country that will permit them and their families to enjoy the security and prosperity that is attached to membership in a stable, democratic, and affluent polity' (Shachar, 2006, p. 164). This has everything to do with the incentives offered to migrants. A division can be found between permanent and temporary visas. Canada and Australia on the one had offer permanent visas (plus the US Green Card) and EU, US and on some visas Australia offering only temporary residence. Canada tries to attract skilled migrants by offering permanent residence and prospect on citizenship after three years of residence. Also Australia and the US (under H-1B) offer visas with explicit 'dual intent' and thus offering these migrant a preferential treatment. Permanent residency and citizenship are thus sought after features a potential migrant looks for in a potential destination. The preferential treatment of the highly skilled is outcomes of the high value that is accounted to their skills. In order to attract these, states will go far in offering incentive, what Shachar calls the 'citizenship-for-talent exchange'.

If migrants are indeed attracted to states which offer them the best 'incentives package', citizenship, or at least permanent residence becomes a tool for states to attract the migrants it wants. This will lead to smaller states trying to 'outbid' the larger states, offering greater incentives (Shachar, 2006). This, in turn, gives rise to an increased difference in the way lower and higher skilled migrants are treated by states. This trend, again shows the

economic dominance of the neoliberal vision that has its effects of migration policy. As Harvey describes, 'neoliberalism has become a hegemonic discourse with pervasive effects on ways of though and political economic practices to the point where it is now part of the commonsense way we interpret, live in, and understand the world' (Harvey, 2007). The desirability of this trend is discussed in next chapter that critically evaluates the discourses and assumptions in highly skilled migration policies.

In looking at the concepts of citizenship, Soysal and Jacobson both argue that the concept of citizenship is changing. While Soysal argues that citizenship is based increasingly on universal personhood (Soysal, 1994), Jacobson speaks of a 'postnational regime' which regulates the membership of migrants in a state, giving them e 'international legal personality' which , following Jacobson, exceed citizenship, and gains importance (Jacobson, 1996). By offering these migrants similar economic and social rights as citizens without offering them citizenship, the membership in a society becomes more important. This is evidenced by Barroso who states that 'there is a rights-gap between legal immigrants and EU citizens. This is incompatible with our value of equal treatment. It hampers integration n social cohesion' (Barroso, 2007). It shows that Soysal and Jacobson are right in stating that membership and benefits are no longer related to being a citizen in a state. Yet it does not at all evidence that there is a sort of universal basis for granting these rights and benefits, as the EU remains its exclusive character by keeping out unwanted migrants and denying them those rights and benefits. It seems as if though this new form of citizenship relies on either being born in an affluent state or having those skills that will give you access to membership. If so, the selection criteria are important to put under scrutiny, testing their justifiability, which I do in the next chapter.

The difference in demand or supply driven systems lead to different effects and different concerns for policy makers. Demand driven systems, EU's Blue Card and H-1B visa, make sure that the immigrant gets immediate access to the labor market. In such systems, the state delegates the task of selecting the right migrants to employers. This nullifies the chance on unemployment upon arrival . It also makes sure only those migrants who are wanted are attracted, keeping the links between migrants and market actors smaller. Yet these systems also have disadvantages. Chaloff and Lemaitre mention two. Firstly, employers do not consider the long term consequences of the selection they make. Therefore, they may not take into account the language skills or future employability. A second concern is that of moral hazard. Employers may easily select the 'wrong' candidate, who turns out to be not suitable for the job, as a consequence of an careless selection process (Chaloff & Lemaitre,

2009). Minor safeguards for this problem are built in in the EU Blue Card and H-1B card, because employers are not allowed to fire the migrant worker in the first three months

Supply driven systems on the other hand know different concerns. In systems in which the migrant is not obliged to present a job offer, the migrant worker knows a larger and larger risk of unemployment . Furthermore, it is becoming harder for policy makers to predict future success in the migrants. As Chaloff and Lemaitre show, language skills, prior job offers and educational qualification in the state itself are main predictors of success. The cumbersome procedures that is needed to screen the immigrants may delay their admissions, as verification of certain documents lasts up to several months (Chaloff & Lemaitre, 2009). In this type of system, the state takes over the role of the employers, and selects the migrants, they think their economy need. This is often, and especially in history, placed in a broader context of population objectives that aimed for a population that has a high level of 'highly skilled' or tertiary educated inhabitants. This can be seen as a restriction on the freedom on people's mobility in maintaining a more planned approach to migration. This is in stark contrast with the increasing freedom of movement of for instance money and information that comes with the globalization processes. A migration policy that reacts to these trends, would in my opinion aim for larger freedoms for people as well (for practical reasons in today's capitalism within the framework of demand and supply).

The key concepts found in the policies in this chapter differ more from each other than they did in the last chapter. However the general 'global race for talent' discourse that was found in chapter five can still be applied to all the cases. Assumptions made in selection of migrants, such as younger migrants are better for the economy, and so are higher educated, higher earning ones, prove the consequentialism, egocentrism and dominance of the neoliberal discourse in states as if they are companies. The key signifiers in the selection and benefits offered to migrants will be added to the found concepts in chapter four to make up the complete set of concepts that determines the four different discourses. These are then subject to critical evaluation in the next chapter, including deconstruction and ethical evaluation of the held assumptions within these discourses.

Key features in discourses	EU Blue Card	US H-1B and Employer based Green Card	Canada Skilled permanent and temporary migrants	Australia General Skilled Migration
Rationales and objectives	- Labor market demand for more highly skilled workers - Shortages in EU	- Traditional recipient of highly skilled migrants - Migrants who can contribute to	- Migration as major driving force economic growth since decades - Only migrants	- Select for success, with success - complex system to respond to market pressures

Selection and Benefits	- Demand driven selection, job offer needed - Freedom member states in selection - Temporary visas only	- Demand driven selection, job offer needed - Cap on number of migrants - both temporary and permanent visas	- Supply driven, state selects migrants - Selection on basis age / language skills / education / work experience - Mainly permanent visas	- Demand driven, incorporates features of supply driven - Very strict selection on age and language skills, in combination active recruitment - Both temporary and permanent visas

Last two chapters investigated and compared discourses present in the cases concerning highly skilled migration. This chapter will critically evaluate these discourses, using both CDA and theoretical concepts that incorporate critical approaches. In this chapter, more than in others, the normative aspect of the used methods is highlighted. First, the found discourses are subject to deconstruction, the global apartheid approach and ethical evaluation with the use of the matrix provided by Ruhs and Chang. The main assumptions held in the discourses are critically assessed. The second part handles on the specific role the EU takes in the policy field of highly skilled migration. This section will include practical arguments for the effectiveness of the Blue Card as well as a analysis of the discourse held in the EU placed in the larger picture.

7.1 Deconstructing the 'global race for talent'-discourse

As described in chapter five, the rationales behind the policies are very much in line with each other. All of the actors name the increasing competition in their policy or strategic documents. In a sense they all share the same 'global race for talent'-discourse. This section will aim to deconstruct this general discourse. While discourses differ slightly over the different cases the basic assumptions are shared among the cases. These assumptions are 1) that this race for talented migrants is global in its nature, 2) that there is an ongoing competition for the same migrants and 3) that there is a 'need' for highly skilled migrants.

Firstly the assumption of the 'globality' of the competition can be questioned. As Friedman writes about the increasing competition: 'No, not everyone has access yet to this new platform, this new playing field. No, when I say the world is being flattened, I don't mean we are all becoming equal. What I do mean is that more people in more places now have the power to access the flat-world platform – to connect, complete, collaborate, and, unfortunately, destroy – than ever before' (T. L. Friedman, 2006, p.205-206). It can be said that policies specifically aiming at the highly skilled are only focused on elite groups. The competition cannot be called global at all. It is mainly the developed countries that want talent from emerging countries such as India and China, as seen in the figures in chapter two. The fact that indeed many do not have access to this 'competition' and it is focused on a little group of people from a selected set of countries, as evidence in chapter two, makes it a very limited search and not a global one.

Secondly the fact that states see the attraction of highly skilled migrants as a competition for the available 'pool of migrants'. This implies that a group of migrants is willing to go to any developed state and will choose the one with the best incentives and thus the best rights for the migrants and their families. As Papademetriou et al state, this analogy of a race implies a 'sort of head-to-head competition for talented foreigners' (2008, p. 3). They state that there is no evidence of such a head-to-head race, as professionals are often not competitive applicants 'because the selection criteria vary significantly'. Also, it seems more like the states and companies are competing for 'generic skills at a discount', as foreign workers often receive a smaller salary than domestic workers, even though it is officially not allowed. In conclusion it can be said that states are more competing for university educated foreigners who are willing to work for less, because companies want them to do so. This point is consistent with Robert Reich's critique on today's state of capitalism, or what he calls *Supercapitalism*. He describes the process of democracy becoming under the increasing influence of business actors and less of that of the voters. Due to the increased competition in the global economy investors and consumers, and their interests have become more important than citizens and their rights (Reich, 2008).

Thirdly the 'need' for highly skilled migrants is a feature of the discourse that is highly visible in all cases, as in every case and every policy document the 'skill gaps' and 'labour shortages' are mentioned. What Castles and Miller points out in their famous book 'The Age of Migration', is that we should not forget that this need is socially constructed. We do not need, in order to survive or in any other absolute term more highly skilled workers. It would probably be beneficiary for our economies, but there is no absolute need for these migrants per se. While Castles and Miller focus on low-skilled workers in their reasoning, the same can be argued for highly-skilled workers. The need is socially constructed by objectives states set themselves (2009, p. 222), such as the main objective of the Lisbon treaty of becoming the most competitive and dynamic knowledge-based economy in the world within ten years. We should then keep in mind that there is only a need for more highly skilled migrants as long as economic growth and innovation are the main goals of all policy. This seems to be the case in EU policy. The European Commission has stated that it wants to use migration to 'positively contribute to tackling the effect of this demographic evolution and will prove crucial to satisfying current and future labour market needs and thus ensure economic sustainability and growth' (European Commission, 2005a). This emphasizes the economic dominance in the field of migration for the EU. Additionally, as Castles and Miller point out, migration is by far not a sufficient source for overcoming ageing problems, as the amount of migrants needed to do so would be extremely large. If this 'need' for migrants is not an objective fact, it can, more accurately, be seen as a demand, 'put forward by powerful

economic and political interests', to which states and the EU try to respond by introducing policy to attract skilled migrants (Castles & Miller, 2009, p. 222). Again the influence of business actors in policy making becomes clear, putting forwards their economic interests. The role of business in this should not be overlooked. States give in the 'needs' of these businesses, while 'some have suggested that, in many cases, the alleged 'need' for foreign workers is really only a reflection for employers' preferences for cheap labor' (Ruhs & Chang, 2004).

Fourthly, by putting economic drivers at the basis, and not for humanitarian nor social reasons, the migration policies to attract highly skilled migrants have ultimately egoistic drivers, where own interests are dominant, and not those of the migrants. Benefits of migrants are secured in order to attract those to their economies, not to make their lives easier for their own sake. As Carrera points out, with distinguishing highly skilled from other potential migrants, it is only seen as an 'economic unit' to be used by the state (Carrera, 2007). Thus, he argues, the policy, (EU policy on highly skilled), puts migrants in a very vulnerable position, where policy 'will not follow a rights-based approach, but one in which the financial needs of the state will prevail' (Carrera, 2007, p. 13). This logic is visible in all the cases in this research. In this logic, the states see migration as their exclusionary domain and the logic implies that states argue they have much control over migration. Though, as Sassen reminds us, some parts of this exclusive authority are being relocated to both supranational and market actors. Again here, she notices 'the growing power of the logic of the global capital market over national economic policy' (Saskia Sassen, 2006, p. 40).

Fifthly, terminology is very important in framing the subject. the world 'talent' is very often heard in talking about highly skilled migrants, such as in Canada's innovation strategy (J. C. Prime Minister of Canada, 2001) and lots of academic literature (Beechler & Woodward, 2009; Collett, 2008; Hart, 2006; Kapur & McHale, 2005; Organisation for Economic Co-operation and Development, 2008; Papademetriou, et al., 2008; Reiners, 2010; Shachar, 2006). Here, clearly can be seen how a discourse works in influencing policies, by a shared and coconstructed understanding of phenomena. As Blommeart showed, this discourse, of competition is socially constitutive as well as socially conditioned (Blommaert, 2005). Though the word talent here applies only to a very restricted concept of highly educated trained people, mostly in specialty occupations. Talents that have to do with social or creative characteristics of people are not discussed. It is thus only highly educated people that are wanted, not the best artists or prominent members of civil societies. (though as a exception, Australia accepts Fashion models under a General Skilled Migration visa). Other terms such as a 'scramble' or 'war' or 'race' for talent give distinct meanings to the processes

in attraction of highly educated or trained foreign workers. This framing of discourses in this case is crucial as it influences policies. As Papademetriou et al. show, the framing of this 'global race for talent' can have far reaching effect. 'Such a characterization, however, may be both misleading and misguided. It is also intended more to generate excitement (and thus force as specific government response) than to inform and lead to a reasoned discussion about the elements of competitiveness and how to pursue then in an intelligent, integrated, and self-sustaining manner' (Papademetriou, et al., 2008, p. 3). As Van Dijk expressed, discourse manufactures the consensus and acceptance that seems natural. By referring to strong terms such as war and race, the image of a though policy landscape is created, in which states are each other's rivals. In policy documents they point at the others as a sort of threat, as if they 'steal' its other's high potentials. So while it may seem natural to policy makers to use this kind of terminology, it shapes policy by pushing states towards more active and aggressive policies. The framing of the debate in policy circles has thus caused states to shape their policies as if they are indeed in a 'war' or at least 'race' against other states, which may not be the case. For instance Australia has another 'pool of migrants' from which they get their migrants than for instance European States, as seen in chapter two. The interests of cases may not overlap in attracting the specific individual migrants, nor migration groups.

Critical evaluation of policy choices for a global apartheid perspective

With immigration debate being polarized and are placed in an increasingly negative sphere the attraction of specifically those highly skilled migrants seems to be contradictory. This is evidenced by a rich body of literature handling with the 'fortress Europe'. In general authors argue that the EU is making it harder for migrants to come into their territory, making Europe a fortress. As Van Houtum shows, the selection of migrants on the basis of their origin is organized through an 'apartheid regime' (van Houtum, 2010). With the exception made for the highly skilled, the EU is turning more into a sort of gated community, Van Houtum and Pijpers argue. By granting membership of the EU, through the Blue Card in this case, the EU offers these migrants a preferential position, 'a comfortable position on the Internal Market, because true job competitors are denied access and talented outsiders are conditionally channeled through or turned a blind eye in order to make up for an incompleteness, a lack, an insatiable desire for more unity and comfort' (Van Houtum & Pijpers, 2007, p. 302).

This preferential treatment of highly skilled on the basis of their age, education and work experience is of course a form of differentiation. Some differentiation however is justifiable and other is not, when a cause of the differentiation is unjust this can be seen as

discrimination. What is clear that this 'attraction' is a process in which the distinction between the 'haves and have-nots' grows wider and wider. When seeing things form a global apartheid perspective, some highly skilled from the 'poor south' may profit from these kinds of policies, but it will be the elite class in those countries that will be able to emigrate due to the costs of emigration, education criteria and work experience. In general inequality will thus be sustained and increased with these discrimination policies.

The global apartheid approach to globalization processes can offer some more interesting insights on the 'global scramble for talent'-discourse. In this light I want to highlight two points. Firstly that poorer states will not be able to compete with the more developed states when in this 'competition'. States take the notion of this competition as basis for their policies. As Shachar has showed, smaller economies (than the US) have to offer incentive-packages in order to keep up with the developed states in attracting highly skilled migrants (Shachar, 2006). These incentive packages have to be offered to make up for their relative less developed economies and the related benefits that migrants are attracted to. Poorer states have fewer benefits to offer to migrants . This triggers that migrants are more willingly to leave developing countries and that developing countries can, by no means, compete with developing states (Shachar, 2006). In this way, increasing international migration leads to an increasing inequality between states. The poorer lose skilled workers and are not able to attract them for themselves. A Dalby explained, national states retain their decision making capacity but they are powerless on their own in a highly interconnected new global order (1998), and this could be even more true for lesser developed states.

A second issue that arises when looking at the 'global race for talent'-discourse from the perspective of global apartheid is the issue of brain drain. Developed states attract skilled workers from developing countries that may be necessary for the development of those states, or are simply needed to guarantee enough doctors and nurses to help the sick. Brain drain is a highly debated issue in the discussion leading up to the Blue Card. The way the Directive handles with the effect it has on the sending countries has led to many discussions. In the directive it is mentioned that 'member states should refrain from pursuing active recruitment in developing countries in sectors suffering from a lack of personnel. Ethical recruitment policies and principles applicable to public and private sector employers should be developed in key sectors, for example the health sector… as well as other measures that would minimise negative and maximise positive impacts of highly skilled immigration on developing countries in order to turn 'brain drain' into 'brain gain''(European Commission, 2009). However, few agree that these are adequate measures to reduce brain drain. In the discussion among member states for example Germany noted that the Council Directive was

able to threaten the development process of developing states such as China, India, South Africa and Vietnam. These countries try hard to better educate their population and improve workplaces, and the 'poaching' of these migrants would nullify the development efforts (Gümüs, 2010). The fact that the exclusion of some occupations for the sake of reducing brain drain is outsources to member states and not regulated centrally by the Commission makes control over it harder. Hence, it is questionable whether the measures taken to prevent brain drain are sufficient, as this is only marginally addressed in the Directive (Eisele, 2010).

Reactions from leader of developing countries underpin this opinion in their first reaction to the Blue Card scheme. South Africa's health minister states that 'we cannot afford schemes that seek to cream the very limited health skills we still have in developing countries'. A Moroccan law professor went even further by expressing that 'This is a new form of colonisation, of discrimination, and it will be very hard to find support for it among southern countries'(Kubosova, 2007).

Kancs and Ciaian point out that the current implementation of the Blue Card reduces human capital in less developed countries that send migrants. Furthermore, the Blue Card has a negative impact on knowledge capital. They fear that without further policy restrictions, the Blue Card 'fades the developing country growth prospects away'. Therefore, they argue, the introduction of the Blue Card in its current form is not coherent with EU's developing policies (D. a. Kancs & Ciaian, 2010), just as Germany feared. However, these statements are contradicted by other scholars, such as (2005) and (2004). It is not within the scope of this research to extensively discuss the effects of the pursued policies, but rather the underlying discourses that shaped these policies. Important than is here to notice is the nationalist approach that seems to guide the policies, a notion further investigated in the next paragraph.

Ethical evaluation on the basis of the framework of Ruhs and Chang

If these policies are compared to the matrix developed by Ruhs and Chang we see that all states use selection mechanisms which suit themselves best. Labor migration is solely used as a way of gaining for the own economy. Reasoning does not start from the migrants' perspective but the own perspective. A consequentialist mindset (in comparison to a more rights based) is thus visible in all four cases. In this consequentialist reasoning, policy makers make policy choices 'by an assessment of their impact on … economic efficiency, distribution, and national identity' (Ruhs & Chang, 2004, p. 86). Apparently, these impacts are clearly more important than the rights of the potential migrants. Yet, measures to protect

the migrant workers for exploitation by employers are often implemented in the policies. These include wage criteria and employer to make clear they treat the foreign workers the similar to domestic workers. This testifies that policy makers have thought about the rights of migrant workers at least for this part of the policy. The preferential treatment that highly skilled migrants get in the case of the EU (fast-track procedure), US (dual intent under H-1B possible) could be seen as more rights for these migrants, however, this is purely consequentialist thinking, as these measures are taken not for the sake of the migrant, but for the results these have on the own economies.

As seen, all the cases take the consequences for their own economies as standard, not the consequences for others. The positioning of all cases, as seen in the similarity of the rationales in the previous chapter, can be classified as predominantly consequentialist nationalism. This variant focuses on migrant workers contributing to the economy without making too much cost.

An exemption is the safeguards against brain drain as are included in the EU Blue Card policies. These take the impact on the sending countries into account and try to minimize the negative effects their policies have on those states. Maximizing the positive effects and promoting brain circulation, or brain gain, is another side of this effort. Yet, many have argued that these measures are far from accurate to seriously address the brain drain the Blue Card could cause (Eisele, 2010; D. a. Kancs & Ciaian, 2010).

The consequentialist nationalist position the cases take, is in my opinion, along with Ruhs and Chang, undesirable, considering that more moderate stance in these matters would promote the rights of the workers and noncitizens more and pay more attention to the effects on sending countries. The interest of migrants should be promoted more, Ruhs and Chang argue, as migrants whose interests are better protected are less likely to land in criminality or costs for the states, and secondly because as most states are both receiving and sending states, promotion of migrants rights would in the end benefit their own citizens. If implemented, Ruhs and Chang argue, more moderate stances would 'generate more tangible and sustainable benefits for migration workers and the sending countries than current and past programs have done' (Ruhs & Chang, 2004, p. 98).

The question than rises why states do not adopt a more moderate stance. One answer could be that the 'increasing competition' forces them to adopt more competitive policies. Both the EU and Canada have indeed mentioned the competition as a reason to adopt more competitive policies (Barroso, 2007; Prime Minister of Canada, 2002). Another is the

dominance of the neoliberal discourse over all policy fields, as demonstrated by Harvey (2007). Yet another explanation is one that Ruhs and Chang give: 'public opinion often demands even fewer rights for their workers than policymakers are willing to offer' (Ruhs & Chang, 2004, p. 87). Whatever answer or combination of answers is closest to the truth does not matter too much. What does matter is that an open discussion on the ethical effect of immigration policies could lead to a more moderate approach. The reluctance of states today to explicit justify the ethics behind their migration policies makes such a discussion harder and makes coming to a more moderate approach harder. The lack of discussion makes that alternative approaches to the ethics of migration are not even considered by policy makers. This is, I think, a missed opportunity to create a more just and sustainable approach to migration.

7.2 EU Blue Card in the wider global scramble for talent-discourse

The policy discourse as carried out by EU institutions follows a rationale consisting of three steps, 1) Market actors (employers) demand more highly skilled workers, 2) the EU is short of highly skilled personnel and thus has to attracts these from outside the EU, and 3) in order to compete the EU has to raise it attractiveness and this can be done by harmonizing migration policies of the member states. The reason that EU policy makers want to meet market demands is the objective asset out in the Lisbon treaty of 2007: becoming the most competitive knowledge driven economy (European Union, 2007).

The selection in the EU Blue Card happens on the basis of a job offer as presented by an employer within the EU. Furthermore the applicant has to fulfill additional requirements, such as earning a higher than average salary, having at least a tertiary education and a profession in a specialty occupation. The system is demand driven as is tries to reacts immediately to market demands by offering a fast-track admission procedure that leads to a temporary visa, if successful. Important is the freedom of the member states to shape the policies by adjusting salary levels, duration of the visa and quotas on numbers of admissions. The discourse can additionally be described as nationalistic and consequentialistic as understood in terms of Ruhs's and Chang's ethical evaluation. While a more cosmopolitan and more rights based approach may serve as an ideal for some (I can imagine Carens would agree with this) this would not be a realistic approach, as he describes (Carens, 1996). Yet a more moderate stance on the two axes would be preferable. If not states try to pursue moral principles, who will in today's world? But, the state pursuing moral principles for everyone also has moral obligations towards its own citizens, which may conflict with cosmopolitan rights.

This complete set of choices and assumptions form the discourse that has shaped the policy leading up to the Blue Card. The effectiveness of the policy cannot yet be measures, as numbers on the admissions will only be available from 2013 onwards. Though several predictions on the effectiveness can be made by closely examination the workings of the policy.

As is shown in the chapter on the strategies of the different policies, the member states get a lot of freedom in implementing the Council Directive. This freedom of member states causes the most criticism on the plans. This freedom implies that it is up to the member states to set the quota on admissions under the Blue Card Program. This can be a problem for the success of the Blue Card, because of the unpopularity of the plan under member states. In the discussions leading up to the final Directive, Germany 's initial stance was that the state cannot take in large number of migrants because of the effect that will have on the long term. Austria has cautioned not to produce new unwanted flows of migrants and the Dutch reaction on the scheme expressed doubts about the added value of an EU wide program. The Netherlands, among other EU member states (Germany, France, Ireland and the United Kingdom) already developed their own programs for attracting highly skilled migrants. In these cases, the European Blue Card will be a strategy parallel to domestic programs, causing more concerns about the effectiveness of the program. Other member states expressed similar concerns or had problems accepting specific sections of the plan. For the Denmark, United Kingdom and Ireland (all three also have their own programs specifically aimed at highly skilled migration) the concerns with the program or the incompatibility of the Blue Card with the national program were reason to totally opt out of the initiative (Gümüs, 2010).

The fact that several European states have own programs to attract highly skilled migrants could reduce the commitment of states to admission Blue Cards. This is helped by the fact that the member states can set their own quotas on the number of admissions. At the moment, at least ten states have policies in place specifically aimed at highly skilled migrants (Guild, 2007). The Blue Card only acts as a parallel strategy next to domestic policies, the added value of the program can indeed be questioned (Eisele, 2010; Gümüs, 2010). This will depend on the quota states set on Blue Card admission.

Other critique on the Blue Card refers to other means of reaching the needed skilled workers without attracting new foreigners. Papademetriou et al, and Parkes and Angenendt point out the potential in domestic workers and migrant population already in Europe. This potential

should be further invested in by training and integration in the labor market to reach their full potential. Such an alternative approach could serve to make better use of the workforce already available to the member states.

The discourse that is evident in the EU does not differ fundamentally from those of the other actors. Compared with the US, the EU is fairly new to the talent attraction business. The US has a comparative advantage over the EU (and the other cases) in being the number one destination for highly skilled migrants. Benefits of the US over the EU include more competitive global firms, more top universities and a larger immigrant population. The environment and public narrative help in this as well, as talented foreign workers are accepted and appreciated 'regardless of place of birth' (Papademetriou, et al., 2008). Compared to Canada, EU's discourse on the attraction of the highly skilled is more modest in its scope and selection procedures. In Canada the attraction of highly skilled migrants is one of the main policy goals as these migrants are seen as the main diver for economic growth. Yet, the basic assumptions that underlie the policies of both cases are the same. The main difference is the fact that the Canadian state selects most migrants themselves, rather than leave this to the employers who need foreign workers. A similar comparison can be for Australia. With it even stricter selection criteria, incorporating both employer based mechanisms (job offer is needed) as state based mechanisms (one must be under 50 years old, high education qualifications).

Selection for migrants in the Blue Card program discriminates on the basis of skills, as it only aims for highly skilled workers. It further discriminates (although less so than for instance Australia) on the basis of age, as younger workers enjoy looser regulations regarding salary thresholds. As Kancks and Ciaian show, with the possibility of revoking the Blue Card in the case of unemployment it uses a double selection mechanism. First, it attracts only the most skilled workers, and only those who perform well are allowed to stay, the rest is send 'home' (D. Kancs & Ciaian, 2007).

While the EU Blue Card has quite a few predicted restrictions negatively influencing the effectiveness of the program, the discourse that motivated policy makers to come up with this plan does not fundamentally differ from the discourses as found in the other cases, making it (predictably) not optimal efficient, nor a significant improvement (more accurately responding to contemporary migration trends) in thinking about attraction skilled migrants.

I started this thesis with a quote of Franco Frattini, European Commissioner for Justice, Freedom and Security who states that: 'we have to shift our traditional ways of thinking of migration as a world of loss and sorrow. Let us be realistic in a visionary way'. According to the commissioner, immigration today has to be seen as enrichment. In this research I investigated whether the discourses that underlie policies that created the EU Blue Card are indeed based on novel ideas. A historical review of highly skilled migration showed the increasing interference of European states in attracting highly skilled migrants. The EU wants to profit even more from highly skilled migration and made plans to introduce an instrument that harmonizes migration policies of EU member states in order to increase the attractiveness of the EU countries.

Different strands of theory offer different insights in the role the state plays in controlling and influencing migration streams and policy. Within the globalization theory the role of the state is drastically changing due to globalization processes. Deregulation has given rise to the role of regional institutions such as the EU. However, migration seems to be the field that does not change as much as other fields such as the free movement of capital and information (Saskia Sassen, 2006). Sassen expects an innovative response of regional actors to contemporary trends in international migration. In a more favorable approach, receiving and sending states cooperate more closely to design sustainable policies that are in advantages of both parties. Here again, a new approach and as a consequence, a different discourse is expected from a harmonized EU policy plan.

The discourse that underlies policies establishing does not follow a new logic. The main rationales can be divided into three steps 1) Market actors demand more highly skilled workers, 2) the EU has a deficit of skilled workers and as a consequence has to attract these workers from elsewhere and 3) that harmonization of the different policies in the EU is needed to increase the attractiveness needed to lure those migrants. These steps fit in the larger objective that EU policy makers have set themselves with the Lisbon strategy of making the EU the largest and most competitive knowledge based economy on the world. This logic is very much in line with those of the other major actors in the policy field of highly skilled migration, the US, Canada and Australia. However the logics differ slightly, the basic assumptions are shared among all cases. All actors perceive an ongoing 'global competition for talent' based on three assumptions. Firstly, that this 'competition' is global in nature. Secondly that states compete for the same migrants and thirdly the states' 'need' for those migrants. The hegemonic discourse of neoliberalism, which has penetrated migration policy, can explain the first and third assumptions. Neoliberal thinking focuses on getting

markets and states more competitive, which defines the needs states have. Yet it should be noted that this need is of course socially constructed as the importance of the notion is defined through a neoliberal lens. Alternative approaches are often not even considered amongst policy makers.

The first main findings in this thesis is that the framing of the 'global race for talent'–discourse, as shared by all of the cases, leads to more extreme (nationalist and consequentialist) policies, while evidence does not suggest that this is an accurate response to the contemporary trends in international migration. The nationalist and consequentialist logic that is triggered by this discourse pushes states to neglect the effect that their policies have on noncitizens or foreigners and sending countries. More consideration for these groups would create a more balanced, justifiable and sustainable basis for migration

It should be noted that the actors in this research are not victims of this discourse, but co constructors and the ones who spread and upheld this discourse. Consequently it can be said that the EU failed to present a new discourse or logic to provide a novel and more just approach to migration trends. The predictions of authors in globalization theory that the role of the state fundamentally changes under the increasing power of regional actors, does not hold for highly skilled migration. Sasses stated that states have come to recognize that economic internationalization pushes them towards more regional approach, and thereby handing over sovereignty on migration issues to regional actors. However, member states of the EU have demanded freedoms in the policy plans, which negatively affects the effectiveness of the Blue Card considerably. The fear of handing over sovereignty is then still clearly visible within the EU. The discourses hold a strong nationalistic, or 'regionalistic' approach, incompatible with a truly global approach to migration.

The second main finding than is that EU's discourse on migration copies the approaches adopted by actors such as the US. EU's approach has considerable predicted restrictions for the effectiveness due to the freedom member states get. This causes questioning of the added value of the Blue Card scheme. Additionally the EU has neglected its responsibility to implement adequate measures to prevent brain drain in developing sending countries. By pointing out that EU states are in competition with those states and the interference of the EU as a state-like actor, rather than providing novel solutions, the EU has missed the opportunity to introduce a new way of thinking about migration. They have failed to adequately see migration as an 'enrichment and inescapable phenomenon' for everyone involved, including sending countries and those who do not get access to residence or citizenship in European states.

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