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Cooperative competition in international relations: a coopetition theory of EU highly skilled migration policy

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Abstract

This paper applies the strategic theory of coopetition to the development of an EU policy for highly skilled migration. Coopetition theory derives from business strategy literature where it is used to analyse relations between multinational enterprises that engage in simultaneous cooperation and competition, for example by sharing some product development costs, while remaining commercial rivals.

The first part of the paper introduces coopetition theory and discusses the assumption that in international relations states often behave like enterprises that simultaneously compete and cooperate. Subsequently the paper discusses to what extent cooperation between EU member states in the field of highly skilled migration policy can be viewed as a game of cooperative competition. The paper argues that individual states can be viewed as multinational companies with a global reach competing with other states to attract highly skilled migrants with competitive conditions that regulate the access to domestic labour markets. Simultaneously, under conditions of strong interdependence, states are driven not only by the need for strategic flexibility (competition), but also by the need of cost and risk sharing (cooperation).

The paper illustrates the analysis with evidence from the negotiation and implementation of the Blue Card directive, which was adopted in May 2009. The paper discusses strategic positions of individual member states during the negotiations as well as the compliance problems that are apparent after the transposition phase ended in June 2011.
Introduction

The establishment of an internal labour market within the European Union (EU) has progressed significantly over the past decades, extending rights to EU workers to take up residence and seek employment in another member state. Yet, while such free movement provisions are an essential part of a larger Single Market project, EU labour markets remain far from completely integrated and EU workers are reluctant to changing their respective countries of residence. According to the European Commission report of 2008 (IZA, NIRAS Consultants, AMS April 2008, p. 3), cross-border mobility rate in the EU amounts to merely 0.2% annually – insufficient to remove geographic imbalances of employment rates and industrial development. In these conditions, a well designed common migration policy aiming at attracting highly skilled workers from third countries, could become an instrument facilitating the redistribution of skills and labour according to current requirements in different regions of the Union.

The observable shortcomings of the Single Market project in case of EU workers’ mobility can lead to the conclusion that without the imports of external professionals it will not be possible to balance the shortages on the national labour markets. EU member states have several times expressed the willingness of working together to achieve this aim – for instance by creating the Blue Card directive – although in practice they do not use the potential of the supranational dimension of policies. The efforts to cooperate in the creation of a common policy, have up until now, proven too weak to construct an important legislative tool allowing workers from outside to come to Europe. At the same time, EU member states do not compete actively for those workers who already now can exercise their free movement within the continent. It is therefore interesting to discuss, why EU member states make cooperative attempts if their behaviours are driven by national interests – and whether there really exists fierce competition between them. The central question of this research paper is: why do states cooperate with each other on highly-skilled migration policy, given that there is competition between states to attract highly-skilled workers? In other words, this paper aims to investigate the limits of cooperation and competition in the field of EU highly-skilled migration policy.

This paper draws on the premise that EU member states, as constituent units of the European Union, have a double role of policy-makers and policy-implementors. The European Commission has the power of legislative initiative and the European Parliament acts as the co-legislator in most of the EU legislation. It is however the Council, where the member states voice their positions and governments commit to applying the new legal framework – “EU governments are formally the ‘Masters of the Treaties’” (Beach 2005, p. 1). Keeping that in mind, it is also true that the European Commission and the European Parliament have their own agendas, which do not necessarily mirror
the priorities of EU member states. In this paper however, it is assumed that it is the member states that have the most significant influence on the final shape of directives (especially in case of the Blue Card directive which was adopted through the consultation procedure) and on the allocation of power in the Union. The working hypothesis of this paper is that neither regulatory competition theory, nor the regulatory cooperation theories can fully explain the patterns of behaviours of EU member states and the outcome of their interactions would always be a mix of cooperation and competition.

High-skilled migration policy is a particular subcategory of the legal migration policy area – it aims to attract the desired migrants, and not to simply remain permissive or even restrictive. Since it does not involve burden sharing (the case of a common asylum policy), it is more difficult to draw potential benefits of rendering it a common policy. There are several reasons for member states to cooperate: first of all, the existence of positive cross-border externalities created by the migrants – similar to those observed in the field of research and development. Secondly, the immediate access to all EU labour markets, which could serve as an incentive for high-skilled workers to come to work in Europe. Finally, a common EU entry and residence system would “provide much greater visibility, predictability, and transparency” (von Weizsäcker 2006, pp. 27-28). Such outcomes could however only be realised if the states decided to fully cooperate and to abandon national policies. At the current state of play, member states have a strong preference for retaining autonomy in their labour migration policies, as those include both the access to the countries and to their social systems. Meanwhile, a common policy implies sharing these competences with other member states, which leads to incoherence and possible inefficiencies.

This explorative paper, aiming to probe the coopetition model in relations between the EU member states on the basis of one case study – the Blue Card directive, is structured as follows. Its first part discusses the concept of regulatory coopetition, as a combination of regulatory competition and cooperation. The second describes the dynamics of the creation of EU policies for high skilled workers. These theoretic deliberations are subsequently illustrated with examples from the negotiations and implementation of the Blue Card directive.
To what extent can international cooperation on migration policy be considered as a form of regulatory competition? In his seminal paper “A Pure Theory of Local Expenditures” Charles M. Tiebout presented the concept of consumer-voters and in a way equated laws with commodities. According to him, consumer-voters would move to the region where the combination of revenue and expenditure would best suit their preferences – and the wider the choice of regions (communities), the more fine-tuned can the realisation of the preferences be (Tiebout 1965, p. 418). In the interpretation of Jordana and Levi-Faur, the “departure point of this theory is that governments compete for factors of production – and also to attract habitants – when they regulate” (Jordana and Levi-Faur 2004, p. 18). Baldwin and Cave underline that “[r]egulatory competition is the competitive adjustment of rules, processes, or enforcement regimes in order to secure an advantage” (Baldwin and Cave 1999, p. 180).

According to the theoretical model, regulatory competition leads to several benefits on the level of policy making. First of all, consumer voters are given a choice of regulation available in different jurisdictions. This means that they may choose their place of residence on the basis of the most suitable legal framework. Secondly, thanks to the fact that the adjustment of legislation is performed on the basis of the local conditions, laws are also simplified and controlled locally. This, in turn, helps to avoid regulatory failure, as less harmful compromise is involved, and leads to innovation thanks to experiments undertaken to please the voters (Baldwin and Cave 1999, pp. 182-183).

There are a number of conditions for regulatory competition to occur: freedom of movement, information and enforcement of the regulations. Freedom of movement is necessary to exercise the consumer-voters’ right to choose the preferred regional system. Furthermore, perfect information is a fundamental condition of liberal markets, needed to ensure the rationality of choice. Finally, enforcement of regulations means that the decisions made would be based on the reasonable expectation of rule of law.

Regulatory competition was first conceived to explain the rationale for decentralising policies in federal states, while the EU integration logic is the opposite: independent states voluntarily give up their sovereignty and shift the decision-making to the supranational, centralised level. For this reason, regulatory competition cannot fully explain the phenomenon of creation of highly skilled migration policies in the EU member states. One of its serious shortcomings in the area of migration policies is the fact that migrants are not commodities and, even if given the possibility, do not move on the labour market in such a way that the latter could reach an equilibrium. Linked to this, their decisions, although potentially rational, are based on a multitude of factors – also those that are
outside of the powers of the policy makers. Regulatory competition thus ignores the competitive advantages of countries, which are impossible to outweigh using solely legislation.

In the context of the European Union, regulatory competition can occur only in as far as markets and information systems are integrated – hence, a large degree of cooperation of member states is required. Mobility of EU citizens is already possible, however not achieved in practice. Yet, there is no mobility of third-country nationals within the EU, which precludes regulatory competition in their case. In order to thrive from the latter, “the lower-level regulation must not generate significant externalities and borders must remain open for the free movement of capital and labour” (Geradin and McCaherty 2004, p. 92). Meanwhile, negative externalities are created because there is no mutual recognition of admission decisions, including the decisions on the recognition of qualifications, which means that for a qualified migrant the decision to move from one EU member state to another is almost as burdensome as coming from outside the EU. This results in “lock-ins” of foreign workers who instead of following the labour market needs, choose and stay in the countries with the lowest barriers of entry.

The decisions to centralise the policies are based on the assumptions that centralisation “permits the Community to internalize significant spillovers by redistributing risk across regions” (Geradin and McCaherty 2004, p. 91). In case of the EU this means that, under the assumption that workers would follow job offers and move around Europe, the Union would be able to optimise the use of available labour force, through redistributing workers according to the market needs. Moreover, in the absence of physical borders between the Union members, there is a common interest in efficient entry management of all persons – whether they are workers or not. The phenomenon of cooperation between countries is however not self-explanatory and neither pure competition nor pure cooperation could address all problems related to the skill shortages in different regions of Europe. Hollifield wrote in 1992 that “[l]iberal states have had few incentives to cooperate in controlling migration, because states and employers were able to obtain foreign labor without international cooperation” (Hollifield 1992, p. 569). In the times of demographic deficit and increasing importance of knowledge-based economy, employers are faced with shortages of appropriate skills. What is more, globalisation, which leads to concentration and consolidation of markets and capital, requires countries to be more responsive to the needs of multinational corporations. However, whereas it is in the interest of some countries to gather as many high-skilled workers as possible, other might be reluctant to giving them access to the national labour market. Even when working under the assumption that high-skilled migrants are high-profile professionals who would always prefer to comply with the national laws, it is understandable that member states can fear the inflow of unwanted foreigners, especially in the conditions of economic downturn.
Barbou des Places and Oger suggest that member states are not genuinely interested in having a harmonised policy. Instead, they rather take advantage the possibility of playing the game on two levels of governance and they instrumentalise the EU level playing field by introducing their national priorities to the supranational policies and, at the same time, justifying some changes in the national laws by the influence of the EU (Barbou des Places and Oger 2005).

**Competition and cooperation: towards a theory of coopetition in international migration policy**

Coopetition, a neologism coined from the words cooperation and competition, is a term that has numerous interpretations. For instance, Hamel, Doz and Prahalad defined it as cooperative relationships among firms that have converging strategic goals, while having diverging competitive goals (Hamel, Doz and Prahalad 1989, p. 135). Lado, Boyd and Hanlon, on the other hand, base their definition on the concept of “syncretic rent-seeking behaviour” that describes how firms achieve a dynamic balance between competitive and cooperative strategies (Lado, Boyd and Hanlon 1997, p. 111). Further, Dagnino and Padula stress the interactions between companies that are based on a “partially convergent interest structure” (Padula and Dagnino 2007, p. 37). Bengtsson and Kock (Bengtsson and Kock 2000, p. 412), as well as Luo (who elevates it to the multinational level), describe coopetition as simply concurrent cooperation and competition. While Esty, Geradin and McCaherty seem to base their research on the latter assumption, in this paper it is mostly the definition by Nalebuff and Brandenburger that is further employed.

Being natural competitors, companies often have to cooperate in order to win a bigger market, or finance research and innovation – “[l]ook for complementary opportunities as well as competitive threats” (Branderberger and Nalebuff 1996, p. 32). The coopetition model outlines the conditions of cooperation in the competitive setting by adopting the assumption that the actors’ behaviours are driven by their bargaining power. The basic idea of coopetition is therefore that alliances increase one’s welfare, but one has to remain alert to situations where other players become stronger. The model as presented by Nalebuff and Brandenburger has the power to explain how companies react to the pressures from the external actors and how they adjust their cooperative and competitive strategies to the existing conditions.

In the coopetition model, four groups of actors enter into relations with a given company: customers, suppliers, competitors and complementors. Depending on the value they add to the circuit, they can impose certain conditions on the balance within the relations. Competitors are naturally those who fight for their share of the same market, so are interested in the same customers. Complementors are the organisations that make the product of a company more valuable to its customers – for
instance, contact lenses producers would not exist without the liquid solutions’ suppliers and vice versa. The power of customers and suppliers is less clear. Depending on the situation on the market, customers can be price takers or givers – in the conditions of supply shortage, they are more reliant on the company and will pay more for a desired good. Otherwise, customers might find themselves in the position of power, dictating the companies what and at what prices they should offer. Creating added value ultimately means being able to get a bigger portion of the total value created – having a higher bargaining power.

As argued previously regulatory competition theory cannot entirely explain the phenomenon of the highly skilled migration policy building. On the one hand, it is impossible to remain solely competitive in the situation where an increasing number of policy areas are linked. On the other hand, the cooperation approach (functional spillovers) ignores the rationale of state sovereignty and the role of national stakeholders in the policy making. In the context of a EU high-skilled migration policy a coopetition model can address the shortcomings of both theories by combing their strengths. While the literature on regulatory coopetition is rather limited, cooperation and competition are tackled abundantly.

Why should one consider the highly skilled migration policy from the coopetition and game theoretical perspective? The EU is a very special example of an increasingly interdependent network of states. Not only do the member states become more connected, but also various policy areas increasingly overlap, causing functional spillovers. The establishment and then reinforcement of the European Single Market, followed by the harmonisation of laws that facilitate the movement and retention of workers’ rights, inevitably led to pressures to undertake common action in relation to external actors. At the same time, the 27 EU member states are very divergent: linguistically, culturally, politically, not to mention the size of their labour markets, territories and economies. The EU perspective, however, allows to see the correlations, potential risks’ redistribution and common interest versus the rest of the world that those segmented markets experience. Thanks to the harmonization of regulations, under-regulation is prevented and opening of markets is facilitated (Esty and Geradin, pp. 235-237). In these circumstances, game theory can explain the relations between countries – because it “is particularly effective when there are many interdependent factors and no decision can be made in isolation from a host of other decisions” (Branderburger and Nalebuff 1996, p. 7).

The coopetition model was developed to explain relations between companies, but with some limits, such as the lack of quantifiable indicators of the strategies’ efficiencies, it can also be deployed in relations between states. While the latter are not unitary actors and their decision-making is much
more complex than even in the biggest corporation (and includes not only a wide variety of powerful stakeholders, but also uncertain property rights and protection of future positions), one could assume that to a given EU member state, other MS are both complementors and competitors. All EU member states additionally compete with other countries trying to attract high-skilled migrants, like USA, Canada or Australia. Member states are complementors since they create more value in connection: for certain migrants it is much more attractive to go to Poland when they know that they can exercise freedom of movement within the EU like EU citizens or even later move to Germany or Spain. Freeman identifies three types of receiving countries: settler societies, postcolonial/guestworker and new countries of immigration. Concentrating on the internationalisation of asylum policies, he hypothesises that elevating the immigration decision-making to a supranational forum would be in particular decisive for the last category of countries (Freeman 1995, p. 893). It seems that, according to the coopetition model, also in case of highly skilled migration, the most likely to be aligned with the EU-level policy are those member states, whose added value is the lowest. However, it should be borne in mind that the added value concept is considered in relation to all actors involved in the game. Hence, seemingly economically comparable countries might assume divergent positions in the EU negotiations and in creating the national policies.

Similarly, the complementarity of member states is not linked exclusively to the increased attractiveness of member states as a group. For many reasons – such as the need of satisfying the anti-immigration electorates, changing future demographic predictions or even administrative capacity restrictions – member states cannot absorb all migrants that their economies might need in a given moment. In a way, the cooperation element could equip them with the possibility of natural redistribution of workers, depending on the market forces. In case of highly skilled migrants the situation is not to be compared with this of asylum seekers, who are supposed to be fairly distributed among EU member states (burden sharing). Each country will aim to capture the most attractive migrants, therefore the competition element will be inherent in this relation, rendering it impossible for EU member states to be solely cooperative in this case.

According to Elspeth Guild, the Blue Card directive “heralds the allocation of different rights to third country national workers depending on their value to the EU labour market” (Guild 2011, p. 216). The notion of value is crucial for this research paper which is founded on the assumption that highly skilled migrants are desired in Europe and that different participants of the EU labour market have varied bargaining power, according to the value they can contribute to the system. As Guild mentions, high-skilled workers are “classified as desirable”, so “there is an assumption that there is competition among states to encourage the individual to move to their country”. Furthermore, she
enumerates the potential policy elements that could be used to attract migrants; among them “good conditions of entry, family reunification, labour market access, social conditions and access to social benefits” (Guild 2011, p. 217).

High-skilled migrants can be compared to customers from the classical business coopetition model. They create value to member states by ploughing their skills and experience in the European industry and research. However, their value is diminished by the fact that despite their qualifications they can be perceived by EU citizens as a potential burden. Even in case of high-skilled professionals, the EU encourages temporary and circular migration. Planning settlement is not an issue that EU member states would discuss on the supranational forum – except for using the long-term resident status as a potential tool of staying, but only at the request of the migrant, and not by the initiative of the member state. As underlined in an OECD report, “mobility becomes more “sticky” as people advance in their careers and lives, thus reducing mobility (and the propensity to return) for individuals over time” (OECD 2008, p. 51). While it would be envisaged that the high-flyers are retained to boost EU’s industries, research and services, their conditions of entry and stay in member states are still principally tackled by national legislation.

In the coopetition model for highly skilled migration, companies, employers, labour unions and electorates constitute the group of suppliers. They feed in the system their divergent preferences for the shape of policy and depending on their position in the country’s economy and politics, they can have more or less bargaining power. For instance, in the countries where trade unions are strong, there might be more reluctance to opening the labour market to foreigners. Where the markets are more liberal, however, the decision making process might be more influenced by business representatives, who will push for more availability of skilled (or unskilled) workforce. This part of the model refers to client politics as developed by Freeman and linked to the “societal desires” which push the policy makers to refine the “regulatory requirements and approaches” and adopting “more efficient laws and enhances social welfare” (Geradin and McCaherty 2004, p. 95). According to Cerna, the variations in the high-skilled immigration policies can be explained by the coalitions of actors with different preferences, which are “mediated by labour market organization and the electoral system” (Cerna 2009, p. 145). In the coopetition model, those considerations are taken into account in the suppliers category.

As member states might not share the same incentives to attract migrants (even those highly skilled), it is unreasonable for them to transfer the entire competence to the EU level. For this reason, the common policy at its current state is weak and member states reserve the rights to have their individual policies. Some scholars doubt to what extent EU member states at all can manage to
develop common policies in the migration policy domain. For instance, Gümüs underlines that “if countries in fact have diverging labour market needs, then it seems that one high-skilled immigration programme will be unable to cater effectively for the whole of the common market” (Gümüs 2010; see also Freeman 1995, p. 881). Some others, like Boeles et al., claim that member states have “genuinely wished to cooperate in immigration measures but still showed great reluctance to give up national sovereignty in favour of Community competence. This reluctance was the main cause of the phenomenon of ‘intergovernmental cooperation’, i.e. cooperation between EC Member States outside the scope of the European Community” (Boeles, et al. 2009, p. 41).

In the game theoretical model of coopetition a question is raised on “how much the other players are willing to pay to have you in the game” (Nalebuff and Brandenburger, p. 46). Reiterating this question in the field of highly skilled migration policy, one would ask why should one member state want other member states to join the scheme and what costs would that entail. It can be assumed that some countries would be attractive to migrants on their own, while others benefit from cooperation. The issue therefore is, what kind of concessions should the latter make to convince the former to take part in the common policy and why would they be ready to pay a price for it. It has to be however borne in mind that as policies are not created in vacuum, the concessions can be also made in areas that are outside the scope of the present research.

**EU highly-skilled migration policy: applying the coopetition model**

The Treaty of Amsterdam was the first step from pure intergovernmentalism to more community competence in the area of migration. Subsequently, the European Council in Tampere in 1999 marked the initiation of a discussion on a common policy on legal migration, however the goals it set were soon deemed too ambitious (International Organization for Migration and European Parliament 2009, p. 20). In other words, the passage from intergovernmentalism to community competence achieved through the adoption of the Treaty of Amsterdam was not yet complete. Instead of following a plan to gradually harmonise the policies, member states agreed to use the open method of coordination (OMC) in the area of migration (Shaw 2011, p. 71). The OMC’s logic of peer pressure seemed for some time the most appropriate – and served as a “competitiveness-fostering exercise” (Shaw 2011, p. 60).

As a result of the member states’ reluctance to shift more competence to the EU, the Commission had to withdraw its 2001 proposal of a *Directive on the conditions of admission and stay of third-
country workers\(^1\). Proposed to 15 EU member states – hence not raising the contentious issue of free movement of workers from the so called New Member States – and in the times of economic bloom and low unemployment, the Commission’s initiative aimed at uniformisation of management of labour migration. At the time the EU was seemingly changing its image from the “Fortress Europe” to a place more open to legal migration (Zaiceva and Zimmermann 2008, p. 2). However, the proposal was presented in July, two months before the 9/11 attacks in the US, which have given rise to anti-immigrant sentiments and securitisation in the Western world.

The proposal left no space for the member states for attracting third-country nationals through different migration schemes. In 2003 Germany criticised it on the account of not addressing the demographic shortages, but rather allowing the “entry and residence in the European Union, with a view to exercising an economic activity, (...) only (...) when there are gaps to be filled and under the conditions that it establishes” (Council of the European Union 2003, p. 2). In other words, the directive was not driven by a forward-looking vision and did not address the future needs for specific skills and other challenges of international industrial competition. Germany also raised reservations to the article dealing with more favourable provisions created or maintained in the absence of Community law, and insisted to include highly qualified workers in the list of exceptional cases (Council of the European Union 2003, p. 8). To this end, Austria wanted to make the list open ended, to be able to adjust its policies according to its specific market needs. As it can be seen, on the one hand, there was the growing ascertainment that the labour migration issue cannot be left to the EU; and on the other hand, some states wanted to pursue a more liberal approach to migrant workers, especially those with appropriate qualifications. Moreover, it was pointed out that EU-wide labour market tests were at the time insufficiently effective, since the EURES network responsible for matching EU labour markets’ demand and supply, only covered 15% of European vacancies (Council of the European Union 2003, p. 17). Interestingly, as seen in figure 1, from 2001 on, public attitudes towards supranationalisation of the migration policy were becoming more favourable. As the survey did not distinguish between different kinds of migration, one of the possible explanations of the increased support for EU action could be linked to the fact that in the citizens’ perspective the cooperation in the field of migration would imply better border management.

The Council Legal Service assessed that the 2001 proposal as presented by the Commission would have to be split into two separate acts in order to accommodate the possible opt-outs of Denmark, Ireland and the UK (Council of the European Union 2002, p. 5). Indeed, in 2005 the Commission decided to split its initial proposal that was supposed to regulate the entry of all kinds of TCN workers and self-employed, and chose a sectoral approach instead. In its Policy Plan on Legal Migration it identified four kinds of workers for whom it designed individual directives – among them the Blue Card Directive, specifically targeting high-skilled workers.

According to Barbou des Places and Oger, the sectoral approach encountered less reluctance of member states as it is easier to reach consensus on isolated cases. Moreover, “by issuing a separate regulation for high skilled workers, States keep the capacity to grant (...) [highly skilled workers] a favourable status with the aim to attract them, without being forced to generalise this favourable treatment to other economic migrants” (Barbou des Places and Oger 2005, p. 374). The probable strategic intent of the European Commission was to initiate functionalist spillovers to finally achieve a fully fledged EU migration policy.
The Blue Card directive negotiations and implementation

As was discussed previously, the basic assumption of the coopetition model is that states that can create the most value (welfare gains) will be the most reluctant to cooperate in the creation of a common policy. Van Riemsdijk observes that “[m]ember states backed the Blue Card proposal if they did not have a skilled migration policy or a restrictive policy or/and if they were little successful in attracting skilled migrants” (van Riemsdijk 2012). Her observations thus conform with the conclusions of the current paper in the sense that countries which are generally attractive to migrants have more bargaining power, while those which create less value to migrants, could find it more beneficial to cooperate.

Despite the lessons learned, the initial Blue Card directive proposal of the Commission was rather bold in its ambitions – most importantly, it aimed to create a “common fast-track and flexible procedure for the admission” (European Commission 2007, p. 2). However, as it was negotiated in the Council of 27 members, out of which ten were not yet granted full freedom of movement for their citizens within the EU, it created serious tensions and fears of discrimination. The outcome is a directive which is not very generous as far as admission and rights for TCNs are concerned – most importantly, the salary threshold set at 1.5 average national salary is in many cases difficult to achieve by professionals without substantial work experience, who by definition are more mobile than their older colleagues. This effect is reinforced by the economic downturn and the growing unemployment of EU nationals – which was not yet fully (if at all) anticipated back in 2007.

In the introduction to the Blue Card directive proposal, the European Commission numbered the reasons for which the subsidiarity principle is not breached – a practical explanation for the shortcomings of regulatory competition. First of all, the Commission claimed that if “Member States act alone, they may not be able to face international competition for highly qualified third-country workers” and that different admission systems could lead to “distortions in immigrants’ choices, and (...) would over-complicate the re-allocation of the necessary labour force as needs change on labour markets, with the possibility of losing a highly qualified workforce already present in the EU” (European Commission 2007, p. 7). Moreover, the Commission stressed the increased attractiveness of an EU market composed of 27 member states as opposed to single countries. It did also admit that the member states will be responsible “to determine the numbers of economic immigrants entering the EU in order to seek work” (European Commission 2007, p. 7) and will have enough leeway to implement the directive according to local conditions. One of the important alterations that the negotiations brought about to the initial proposal is the abandonment of the idea of making the Blue Card directive the sole entry channel for high-skilled workers. This created the possibility of more
generous (with less demanding entry requirements and more rights assigned to the migrants) conditions offered by member states (Guild 2007), which allows for explicit competition for high-skilled migrants. Additionally, the final version of the Blue Card directive does not establish minimal standards of entry, but rather sets a level playing field and this, according to Elspeth Guild, is its main weakness (Guild 2011, p. 222). As a result, the Blue Card directive is neither a strong cooperative tool, nor an instrument enhancing competition between EU member states.

The UK can serve as a distinct case of a country creating significant added value — English has become an academic and corporate *lingua franca*, making the UK a very attractive destination for highly skilled migrants (see also von Weizsäcker 2006, p. 19). Moreover, the UK has an advantage of drawing high-flyers and international corporations thanks to the London metropolis. Being in the situation where the supply of high-skilled workers exceeds the demand for them, this member state creates more value than other players (especially other member states and the highly skilled migrants themselves), therefore has a high bargaining power. As a result, it can well afford not opting in the Blue Card Directive — and decide to remain purely competitive, without any element of cooperation. What is more, as argued before, keeping a national policy allows for a greater flexibility in responding to the social moods. In the UK the new conservative-liberal government made a promise to curb down immigration, and since it was impossible to reduce the humanitarian and family migration, tighter quotas were imposed on the skilled workers (Travis 2010).

During the Blue Card directive negotiations, it were the German and the Dutch delegations that proposed to introduce the articles on the more favourable provisions granted by member states (Council of the European Union 2008a, p. 3) — coincidentally, the countries which had put in place their own systems of attracting high-skilled workers and are among the strongest EU economies. Moreover, in the second reading in the Council, when the proposal still assumed that highly qualified workers fulfilling all the criteria set by the directive could only enter the EU labour markets via this directive (and not any other national scheme), Germany wanted to set the salary threshold at twice the average national salary (Council of the European Union 2008b, p. 13), which would effectively diminish the scale of potential migration. It can be seen that this country wanted to be able to maintain the flexibility of its national system of admission, while averting the perceived dangers of a common immigration policy.

Also in the implementation phase one could observe the attitudes of member states to the Blue Card directive. Initially, six countries out of 24 (Sweden, Portugal, Poland, Malta, Italy and Germany) were prompted by the European Commission, which issued a reasoned opinion on the infringements (European Commission 2011). Half a year later, three more followed for Austria, Cyprus and Greece
(European Commission 2012). While it can be claimed that member states find it difficult to implement the directive on time, one could also perceive them as a deliberate action aimed at weakening the common policy. It remains to be seen, which countries will go through the next steps of the infringement procedure undertaken by the Commission. The Blue Card was implemented in Germany in May 2012 (Presse- und Informationsamt der Bundesregierung 2012), however other countries are still lagging behind. Further conclusions will be possible to draw at the later stage, when the Commission will act in front of the European Court of Justice against the non-implementing member states.

As can be observed in the current state of play, the spillover dynamics assumed by the European integration theories are not automatic. In parallel, EU member states do not pursue purely competitive policies, but engage in some forms of cooperation. This raises the question whether a common market for highly skilled migrants will ever develop and if yes, in which form.


**Conclusions**

This paper considered the problem of the incoherent actions of the EU member states in the field of high-skilled migration policies in the European Union from the regulatory coopetition perspective. The employed model explains why EU member states cooperate to create a common migration policy for high-skilled workers if they are driven by national self-interest.

The Treaty of Lisbon could become a breakthrough in the area of migration, as for yet another time the EU member states committed to creating a common migration policy and gave the EU more competence in this field. Article 67 of the Treaty on European Union proclaims the constitution of “an area of freedom, security and justice”, it is however underlined that this should be done with respect for “different legal systems and traditions of the Member States”. Following this rationale, directives aiming at attracting high-skilled migrants are shaped by member states that have different preferences and targets – depending on their migration histories, economies, etc. In effect, they are likely to be agreed on a lowest common denominator. Moreover, the current political and economic climate in the EU do not encourage tighter cooperation – as mentioned by Espinoza and Moraes, “the political obstacles to greater cooperation remain high and have arguably grown higher in the face of the economic crisis and austerity packages introduced by many governments across Europe” (Espinoza and Moraes 2012, p. 184). Moravcsik in his recent article, while being generally enthusiastic about the EU integration, foresees that “(...) the crisis does signal that the process of European integration is reaching a natural plateau, at least for the foreseeable future, based on a pragmatic division between national policy and supranational policy. The movement toward the “ever-closer union” of which the EU’s founding fathers dreamed when they signed the Treaty of Rome in 1957 will have to stop at some point; there will never be an all-encompassing European federal state” (Moravscik 2012, p. 68).

The tentative findings of the application of the coopetition model to the case of EU highly-skilled migration policy is that in the EU context the expected outcome of national strategies would be a mix between cooperation and competition, where the equilibrium adopted by each state would fluctuate in time and adjust to the internal and external conditions. According to the coopetition model, the variance in behaviours of member states – ranging from more cooperative to more competitive – depends on their bargaining power. The paper was developed on the working hypothesis that economically stronger member states will be more likely to concentrate on their national migration priorities and pursue their own high-skilled migration policies, while those more reliant on foreign industries and services will rather align their actions to the policy set on the supranational level. Moreover, as the labour market conditions change with time, some countries prefer to ensure
enough leeway to be able to easily switch from the EU- to the national policy and vice versa, making the relations between the EU member states very dynamic. The systematic assessment of scope conditions for cooperation and competition is foreseen as the next step for fine-tuning the coopetition model as applied to relations between EU member states.
References


