SKILLED WORKERS LEAVING FOR THE EUROPEAN UNION
Possible Impacts of the EU Blue Card Directive on Developing Countries of Origin through Migration of Skilled Workers - An Assessment Based on the Case of the Malian System for Higher Education

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Abstract
The purpose of this thesis is to assess the future impacts of the EU Blue Card Directive on developing countries of origin. This question is addressed in two steps. Firstly, the thesis investigates the present impacts of skilled migration in Mali, which is a developing country with significant migration flows into the European Union. This investigation is focused on the impacts on the Malian system for higher education, and based on the findings on a field study carried out for the purposes of this essay. Secondly, it is investigated how the Blue Card Directive may influence the flows of skilled migration, and what the consequences will be in countries of origin.

In the following it will be argued that the combined effect of skilled migration on the Malian system for higher education today is positive, but that this may change for the worse, if migration flows out of the country increases. It will further be argued that the EU Blue Card Directive is not likely to increase the size of skilled migration significantly, but that it may increase migration in certain sensitive sectors and shift migration flows as regards country of destination. It will also be argued that the Blue Card Directive is likely to promote visits home and raise return rates among skilled migrants in the Union.

Regarding the consequences for developing countries of origin, it will firstly be argued that the Blue Card Directive may shift the balance in countries like Mali, making negative impacts of skilled migration outweigh the positive effects. The impacts in the specifically sensitive sectors, such as education and health care are stressed as particularly troublesome. At the same time, it will be argued that the Directive may increase the expected return on education in the countries of origin. The Directive will further be argued to have both positive and negative possible effects on the role that skilled migrants play for those in their country of origin while they are abroad and as regards sociopolitical aspects.

The slight increase in return rates among migrants in the EU will be pointed out as positive, as will the fact that the Blue Card promotes more and longer visits home. However, it will also be argued that the Directive may lead to increased brain waste and violations of migrant workers rights, which is highly problematic.

Finally, it will be argued that the high level of flexibility of the Blue Card will make it harder for developing countries to predict the future demand of labour in the EU, and thus undermine developing countries' strategies for handling the outflow of skilled workers.
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Amanda Björklund
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<tr>
<td><strong>AufenthG</strong></td>
<td>Aufenthgesetz</td>
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<tr>
<td><strong>BeschV</strong></td>
<td>Beschäftigungsverordnung</td>
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<tr>
<td><strong>CEPS</strong></td>
<td>Centre for European Policy Studies</td>
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<td><strong>CESEDA</strong></td>
<td>Code de l'entrée et du séjour des étrangers et du droit d'asile</td>
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<td><strong>CFREU</strong></td>
<td>Charter of Fundamental Rights of the European Union</td>
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<td><strong>CIGEM</strong></td>
<td>Migration Information and Management Center; Mali</td>
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<td><strong>EU</strong></td>
<td>European Union</td>
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<td><strong>ICMV</strong></td>
<td>International Convention on Migrant Workers and Members of Their Families</td>
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<td><strong>ILO</strong></td>
<td>International Labour Organisation</td>
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<td><strong>ILO Convention No. 97</strong></td>
<td>Convention concerning Migration for Employment</td>
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<td><strong>ILO Convention No. 143</strong></td>
<td>Convention concerning Migrations in Abusive Conditions and the Promotion of Equality of Opportunity and Treatment of Migrant Workers</td>
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<td><strong>IOM</strong></td>
<td>International Organization for Migration</td>
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<td><strong>MMEIA</strong></td>
<td>Ministère des Maliens de l’Extérieur et de l’Intégration Africaine</td>
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<tr>
<td><strong>OECD</strong></td>
<td>Organisation for Economic Co-operation and Development</td>
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<td><strong>UN</strong></td>
<td>United Nations</td>
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<tr>
<td><strong>TOKTEN</strong></td>
<td>Transfer of Knowledge Through Expatriate Nationals</td>
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<tr>
<td><strong>TEC</strong></td>
<td>Treaty Establishing the European Community</td>
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<td><strong>TFEU</strong></td>
<td>Treaty on the Functioning of the European Union</td>
</tr>
<tr>
<td><strong>UNDP</strong></td>
<td>United Nations Development Programme</td>
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<tr>
<td><strong>UNESCO</strong></td>
<td>United Nations Educational, Scientific and Cultural Organization</td>
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<tr>
<td><strong>UtL</strong></td>
<td>Utlänningslag</td>
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1 INTRODUCTION

In May 2008 the EU adopted the Blue Card Directive\(^1\), a measure aimed at facilitating the entry of highly skilled migrants into the Union, with a view to counteract the EU's future lack of labour and skills through the increased entry of skilled workers from outside its borders. Europe is experiencing a growing shortage of highly-qualified workers in fields such as engineering and informatics, and there is an important future demographic problem, which originates from people growing older, as well as too few babies being born throughout the Union. Arguably, without any countermeasures, Europe's social systems would not be sustainable in the twenty-first century\(^2\).

At the same time, voices have been raised that an increased migration of highly skilled workers into the EU will be detrimental for many of the developing countries from which these migrants will come. However, research on the impacts of highly skilled migration on countries of origin is not unanimous. Although this discourse departed from a view that skilled migration leads to a depletion of the work forces of developing countries through the removal of key individuals, researchers have later been of the opinion that skilled migration also has positive impacts that balance out the negatives. The prospect of migration has thus been argued to increase the gross amount of human capital in sending countries. The migrants' propensity to benefit their countries of origin from abroad, through transferring money or knowledge to those that remain there as well as the important roles they might play upon return has also been given much attentive interest. Today the discourse is diversified and the question of how skilled migration affects countries of origin is far from clear cut.

Mali is a developing country with a strong history and important push factors for migration. It is experiencing what could be described as a medium migration rate of skilled workers. Being a previous French colony, Mali has strong ties to France and many of the skilled migrants from the country go to the EU. Mali's system for higher education, the wellspring of the country's future human capital, is crippled from a great lack of human resources. An investigation on how skilled migration is impacting on Malian society may therefore give highly relevant insights on what role the EU Blue Card initiative may come to play in this context. When an important economy such as the EU adopts legislation aimed at increasing immigration of skilled workers, it is important that the impacts on the countries of origin like Mali are investigated.

1.1 Problem and purpose

The purpose of this thesis is to assess the future impacts of the EU Blue Card Directive on developing countries of origin. This question is addressed in two steps. Firstly, the thesis aims at discerning the present impacts of skilled migration in a developing country with such migration flows into the European Union that it is plausible that the new legislation could have impacts there, bearing in mind how these relations might be shifted through the implementation of the Blue Card Directive. Secondly, it aims at investigating how the Blue Card Directive relates to the present impacts of skilled migration on this developing country of origin. This investigation is made through an analysis on how the Blue Card will influence the flow

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\(^1\) The final date for transposition is 19 June 2011.

of skilled migration, and what consequences this influence, and other mechanisms in the Blue Card Directive, will have in countries of origin.

1.2 Delimitations
In the field study conducted for this thesis, the impacts of skilled migration on the Malian system for higher education have been investigated. The impacts on other parts of Malian society have not been investigated. Also, the study is limited to the impacts on the University of Bamako. There are other institutions for tertiary education in Mali, both governmental and private, but the limited time of the study has not permitted an investigation of the impacts on all these. The University of Bamako is Mali’s only public university, and the country’s main provider of human capital formation. I have therefore estimated that the impacts of skilled migration on the University of Bamako are representative for the entire Malian system for higher education. The choice to direct the study to the system of higher education and to the specific case of the University of Bamako is motivated by the close links between the University and the migration of skilled Malians. An important share of skilled migrants from Mali has studied there and it is the work place of a large number of returned migrants. The choice is also motivated by the manifest lack of human resources at the University as well as the fact that it is the main institution concerned with the education of the future generations of skilled Malians.

I have chosen to include migrants in tertiary education, e.g. university students pursuing education abroad, in the study. This choice is foremost motivated by the importance I believe this group has in the context of skilled migration in Mali. A significant share of tertiary educated Malian migrants, probably the majority, first departed on migration in order to pursue education abroad. In my opinion, the migration of university students pursuing education abroad cannot be discerned from the notion of skilled migration if one fully wants to understand its implications in the Malian context. Docquier and Marfouk, on their part, have motivated their choice to include migrants in tertiary education in their research on skilled migration with, inter alia, the facts that: the numbers used if migrants in tertiary education are included are comparable to traditional statistics on international migration, which includes all migrants whatever their age of entry; that it is impossible to quantify the share of these young immigrants who were partly educated in their birth country and/or who arrived with foreign fellowships, and that young immigrants who spent part of their primary or secondary schooling in the origin country, or who got foreign schooling fellowships induced fiscal loss for their origin country.3

1.3 Material and method
The work will depart from the legal dogmatic methodology. In this regard, the work will be based on an analysis of the relevant legislation, international conventions, preparatory works, legal doctrine and to a limited extent case law.

Since the work aims to assess the impacts of the Blue Card Directive on developing societies, a contextual approach is also adopted, with, among other, sociological and anthropological aspects. Field work has thus been carried out in Bamako and Paris and the literature on highly skilled migration and on Mali has been used in order to get a more profound and formal picture of skilled migration, its impacts, and the country of Mali.

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The field work was to the greatest extent carried out in Bamako in April and May 2010 and the study is foremost based on interviews of informant character. Such interviews have been carried out with students and teachers, as well as administrative personnel, at the University of Bamako. At each of the University's five faculties and two institutes, at least two students and two teachers where interviewed. Within the University's administration, I interviewed personnel at the principal's office, the department for human resources, the department for external relations, and the program for teacher formation. These interviews, together with three interviews with Malian students at universities in Paris and three interviews with Malian university professors working in Paris, carried out in June 2010, constitute the core of the field study. Steinar Kvale's book on qualitative research interviews was chosen as the theoretical point of departure for the carrying out of the study. The interviews have departed from a semi-structured questionnaire and have been allowed to take a course determined by the person interviewed. I have however steered the conversation so as to touch on a number of focal areas which have been treated in all interviews. All individuals interviewed were promised anonymity and they were informed that their answers would be handled confidentially. It was also iterated that they should feel free to not answer a specific question, and to interrupt the interview whenever they wanted to. The respondents where always informed of the purpose of the interview. A Dictaphone was used to record all interviews except for one. I always asked the respondents if they would feel comfortable with being recorded before turning on the Dictaphone, and when the respondent did not want to be recorded, the answers were written down by hand. If not stated otherwise, information cited in this thesis is derived from these core interviews.

In addition to the above described core study, interviews were also carried out at a number of governmental bodies, namely: the Ministry of Higher Education, the National Direction of Higher Education, the Ministry of Expatriated Malians and African Integration, the General Delegation of Expatriated Malians at the High Council of Expatriated Malians and at the CIGEM. These interviews allowed me to get an insight into Mali's politics and strategies regarding the system for higher education and highly skilled migration, as well as to gather general information regarding the phenomenon of highly skilled migration in Mali. In order to get information from the potential receiving countries, interviews were carried out at the Delegation of the European Union and at the French Office for Immigration and Integration (OFII). Interviews were also carried out with personnel responsible for the Transfer of Knowledge Through Expatriate Nationals (TOKTEN) program. Finally, a series of interviews were carried out with personnel of the International Organization for Migration. These interviews helped me to get an invaluable introduction to the complex reality of migration in the Malian society. The same methodology was used for the carrying out of these interviews as in the core study (informants where promised anonymity, informed that their answers would be handled confidentially and asked whether they allowed me to record their answers, etc.), with the exception that the questionnaire used was specific to every interview, pursuant to the area of expertise of the respondent.

Valuable information and experiences was also gathered through participant observation, foremost at the University of Bamako. Such participant observation is a central method in cultural anthropology which has spread to a number of other research fields, including development research. Through partake in daily activities, and observation of physical structures, social differences and behaviour, this research method provides important information for posing central questions. It is often used as a complement to other research methods, since it

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4 Kvale, Den kvalitativa forskningsintervjun.
provides a tool for enhancing the quality of the obtained information as well as the analysis of the information.\textsuperscript{5} Here it should be pointed out that the teaching personnel at the University of Bamako were on strike during my whole stay in the country. Participation in actual teaching at the University was therefore, regretfully, not possible. During the field study in Bamako, documentary sources were also collected so as to complement the interviews and observations.

\subsection*{1.4 Terminology and definitions}

In this thesis, certain summarizing terms will be used in order to facilitate the reading. Also, the meaning of certain terms used in the thesis may be ambiguous. For the sake of clarity, the specific meanings of these terms are defined below.

The term \textit{brain drain} is generally avoided in this thesis, because it has several different connotations and may cause confusion. When the term is used, this is mostly because cited or the related literature, research or legislative measures refer to this specific term and in these cases it has the meaning intended in the relevant work. In many cases, such as in the Blue Card Directive, the term refers to the negative effects of the migration of skilled workers but in other cases, such as in the work of Beine, Docquier and Rapoport, it refers, roughly, to the migration of skilled workers itself, without any valuation as to whether this is negative or positive.

The term \textit{skilled migrant} refers to a migrant who has completed tertiary education, or who is in tertiary education. Skilled migration means migration of skilled individuals.

The term \textit{skilled worker} refers to a worker with tertiary education.

\textit{Tertiary education} has the same meaning as in the Blue Card Directive, i.e.: a post-secondary higher education programme of at least three years, namely a set of courses provided by an educational establishment recognised as a higher education institution by the State in which it is situated\textsuperscript{6}.

The country in which a migrant is born is generally referred to as the \textit{country of origin} and the country where the migrant is residing during the period away from the country of origin is referred to as the \textit{country of residence} or the \textit{country of destination}.

\subsection*{1.5 Disposition}

In chapter 2 the Blue Card Directive is presented. The background and purpose of the directive is described, together with its legislative context, comprising other EU legislation in the field, national migration legislation in selected Member States as well as international commitments regarding labour migration. This is to lay out a frame-work for the consequent analysis of the content of the directive. Special attention is given to elements of the directive with particular relevance to brain drain matters, which are treated in a separate sub-section at the end of the chapter.

\textit{Chapter 3} provides a broad outline on research and the literature regarding the impacts of skilled migration, or brain drain, in order to give an understanding of what the general percep-


\textsuperscript{6} Article 2 (h), Directive 2009/50/EC.
tions and theories on the phenomenon are. The different theories on specific types of impacts are described in more detail when applied to the Malian context in chapter 4.

Chapter 4 provides an analysis on how skilled migration is presently affecting Mali, with a focus on the Malian system for higher education. First, Mali and its migration patterns are described. Then, the effects that the migration of highly skilled Malians has on the country are analysed in section 4.4. This analysis is focused on the system for higher education and mainly based on the findings of the field study carried out for the purposes of this essay. The analysis is divided into sub-sections, each treating different types of effects, namely: The effects of the absence of skilled Malians, the effects of the prospects of migration, the role of Malians living abroad and the role of returning migrants. The sociopolitical dimension of all these types of impacts is treated separately at the end of the chapter.

The possible impacts of the Blue Card Directive in developing sending countries of skilled migrants are assessed in chapter 5, through investigating how the directive relates to the current impacts of skilled migration on a developing sending country, as they are described in chapter 4. The assessment is made in two steps. First, the future influence of the Blue Card on skilled migration patterns is investigated in section 5.1. Section 5.2 subsequently contains an investigation of what the consequences of this influence will be for the countries of origin. The consequences for the countries of origin of some additional mechanisms of the Blue Card are also investigated here.

Finally, chapter 6 summarises the conclusions made in the thesis.

2 THE BLUE CARD DIRECTIVE

2.1 A brief summary
The Blue Card Directive is designed to facilitate conditions of entry and residence in the EU of third-country citizens for the purpose of highly qualified employment. To that end, the Directive establishes a special residence and work permit called the 'EU Blue Card'. The admission of highly qualified workers is facilitated through harmonising entry and residence conditions throughout the EU and through simplifying and speeding up admission procedures. The legal status of these workers while residing in the EU is improved in the regard that their access to the labour market is facilitated, that they are entitled to a series of socio-economic rights and through favourable conditions for family reunification as well as movement across the EU.7

2.2 Purpose and background
The EU policy on non-EU nationals can be said to be marked by paradox, containing numerous inconsistencies and contradictions.8 Chalmers, Hadjiemmanuil, Monti and Tomkins presents an interesting thought model on how a number of complex and competing pressures within the EU engender this paradox and how the balance between them varies within the different policies adopted in the field of migration. They identify central pressures which have

8 See for example Chalmers, Hadjiemmanuil, Monti, Tomkins, European Union law: text and materials p 605
shaped this regime over time. They consider, first, economic mercantilism, concerned to manage migration in a way that advantages national economies and does not impose burdens on welfare states. Another theme embodies concern of a humanitarian nature. Such concerns, emphasizing the universalism of the human condition, has been invoked to press for lenient immigration policies and to grant more extensive rights to non-EU nationals once they are on the territory of the European Union. Economic mercantilism has framed EU immigration policy to a large extent over a long time and has driven policies regarding labour migration. At times of labour shortage, as in the 1950s, economic concerns have led to measures encouraging labour migration. At other times, they have been a central factor behind restricting movement of non-EU nationals. In the 1950s, it was thus initially envisaged in Article 39 EC, that the right to move freely to work within the EC was available to all. However, no harmonization was made as regards entry of third-country labour migrants and by the end of the 1960s, the European Union was moving to a period of unemployment. Increasingly, third-country nationals were seen as threats to national labour markets and in 1968, legislation confining to right to work within the Union to Community nationals was enacted. Throughout the 1980s and 1990s, Member States developed restrictive immigration laws to foreclose economic immigration and in the mid 1990s, intuitional practice was set out in a Council Resolution iterating the 'Community preference' principle.

By the beginning of the millennium, there were signs that the pendulum was swinging back towards an opening to labour migration. At the Tampere European Council of October 1999, the EU decided to push forward a common immigration policy and since then the Commission has sought agreement on common rules for economic migration. A commission Communication on immigration in 2000 suggested that economic migration could be a means of coping with falling population within the European Union, skills shortages and the lack of a sufficient workforce to pay for the increased cost of pensions. With the Hague Programme, endorsed by the European Council in November 2004, the issue of labour migration was elevated even further on the EU agenda, and increased labour migration to the EU is seen as decisive for the achievement of the Lisbon Strategy's goals. Shortly after the adoption of the Hague Program, this was confirmed in the Commission's Green Paper on an EU Approach to Managing Economic Migration. The Green Paper manifests a shift away from restricting economic migration to managing it, with the Union trying to attract those third-country nationals who will benefit its economy, whilst preventing others from entering. Roughly a year later the Commission followed up the Green Paper with its communication a Policy Plan on Legal Migration, which defined a road-map for the Hague Program's labour migration objectives as well as specifying legislation and other measures that would be proposed by the commission up until the conclusion of Hague in 2010. In the Policy Plan, labour migration is held up as 'crucial to satisfying current and future labour market needs and thus ensure economic sustainability and growth.' Economic migration, if correctly managed, could thus help the

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9 Chalmers, Hadjiemmanuil, Monti, Tomkins p. 611.
10 Supra note 9 pp. 605-606.
11 Article 1, Directive 68/360/EEC on the abolition of restrictions on movement and residence within the Community for workers of Member States and their families.
12 Council Resolution of 20 June 1994 on limitation on admission of third-country nationals to the territory of the Member States for employment.
18 Supra note 17 p. 5.
European Union face its demographic challenges. The European Union is rapidly aging: there will be one retired person for every two workers as early as 2050. And while employment rates rise, it is becoming more difficult to match Europe's growing demand for labour, especially for high-skilled and seasonal workforce. The supply of technological specialists is constantly receding, and the European Union has not proved as successful as the US, Canada, Australia or New Zealand in its effort to attract a share of the large numbers of technicians and engineers trained in emerging economies.\(^{19}\) As for the legislative proposals of the Policy Plan, it foresaw four sectoral directives aimed at simplifying the admission process and conditions for highly skilled labour, seasonal labour, remunerated trainees and intra-corporate transferees, and one general framework directive aimed at instituting a single application procedure for a combined work-residence permit in a Member State for third-country nationals.\(^{20}\)

The proposal for the Blue Card Directive was consequently presented by the European Commission in autumn 2007, during a High Level Conference on Legal Immigration organised by the Portuguese Presidency. It is the first of the four directives to be adopted. In line with its background and context, the general purpose of the Directive is to contribute to addressing labour shortages by fostering the admission and mobility of highly qualified third-country nationals, in order to make the Community more attractive to such workers from around the world.\(^{21}\) By increasing the contribution of legal immigration, the competitiveness of the EU economy is intended to be enhanced.\(^{22}\) The Blue Card Directive is thus the EU's main policy initiative in the global competition for the best, highly mobile brains.\(^{23}\) With reference to the pressures shaping EU migration legislation, economic concerns are obviously the central motive behind the Blue Card Directive. However, it also contains certain elements attempting to address brain drain issues\(^{24}\) which can be said to be motivated by concerns of a humanitarian nature. The increased immigration flows the Directive aims to promote has caused a concern for the effects of these flows on the migrants' home countries and the Directive contain elements attempting to reduce these possibly negative impacts. When informing on the adopted Directive, the Commission even points at limiting brain drain as one of the very aims of the Directive.\(^{25}\)

A possible additional purpose of the Blue Card Directive is to help find agreement on common rules for economic migration in other areas. Almost a decade after the Tampere European Council, little progress has been made on immigrant admission policy and legislation. The Blue Card Directive has been said to begin the process of finalising the measures on labour migration in the EU. By starting with, and finding agreement, on a most favoured group – the highly qualified, presumably, the Commission considers that it can hang the proposals on the other groups on its back.\(^{26}\)

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\(^{21}\) *Supra* note 20 p. 14.

\(^{22}\) *Supra* note 20 p. 2.

\(^{23}\) *Supra* note 19.

\(^{24}\) See section 2.5.3.


2.3 Legislative context

No legislation functions in a vacuum. In order to understand its signification one has to have an idea of its legislative context. This is particularly true for community legislation as its role is affected both by its relation to other community legislation and the law of its member states. Also, community legislation in respect of third-country nationals must comply with fundamental rights and EU principles of law as well as international human rights document. The following sections provide a basis for the analysis of the Blue Card Directive.

2.3.1 Legislative competency and procedure

The central provisions setting out the parameters of community legislative competence on EU law on third-country nationals are Articles 77, 78 and 79 TFEU. Article 77 TFEU is largely about the management of travel. Article 78 and 79 TFEU are more general. They cover, inter alia, asylum policy and more general humanitarian policies towards displaced persons; immigration policy, be it matters of economic migration, family reunion or illegal immigration; and, finally, measures defining the rights on non-EU nationals who are long-term residents on the European Union.

The adoption of the Blue Card Directive was based on points (3)(a) and (4) of the first subparagraph of Article 63 TEC which accorded legislative competency as regards measures on immigration policy within the area of ‘conditions on entry and residence, and standards on procedures for the issue by Member States of long-term visas and residence permits, including those for the purpose of family reunion’, and ‘measures defining the rights and conditions under which nationals of third countries who are legally resident in a Member State may reside in other Member States’, respectively.

Measures under these provisions are to be adopted using the consultation procedure, with a unanimity vote in the Council. Legislation may only be proposed by the Commission.

2.3.2 EU legislation on migration of third-country nationals

To date, four directives have been adopted in the field of legal migration of third-country nationals, that is, citizens of countries outside the EU. As regards admission into the EU, regulations have only been harmonised regarding the entry of researchers, students, unremunerated trainee and volunteers, as well as family members of third-country nationals already residing within the community. Economic migration and the entry of third-country nationals for labour purposes into the European Union were thus still regulated mainly at national level before the adoption of the Blue Card Directive. Both the Directive on the Status of

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27 Ex Articles 62 and 63, TEC.
28 It deals with border controls; formalities which must be carried out before individuals can present themselves at borders, namely visa policy; and freedom of travel within the European Union.
29 The corresponding provisions are now to be found in points (2)(a) and (b) of Article 79 TFEU.
30 Article 67 (1) and (2), TEC.
32 Regarding the definition of third-country nationals, see for example Article 2(a), Directive 2003/86/EC.
35 Directive 2003/86/EC.
Long-Term Residents and the Directive on Family Reunification do, however, have several touching points with the Blue Card Directive. They will therefore be explained briefly below.

2.3.2.1 Directive 2003/109/EC on the status of long-term residents

The Directive on the Status of Long-Term Residents\(^{36}\) is intended for third-country nationals lawfully resident in a Member State.\(^{37}\) The aim of the directive is the integration of long-term residents, which is seen as a key element in promoting economic and social cohesion.\(^{38}\) The directive provides that Member States should grant long-term resident status to those third-country nationals who have resided lawfully for five years.\(^{39}\) The main criterion for acquiring the status of long-term resident is thus the duration of residence, which must be both legal and continuous in order to show that the person has put down roots in the country.\(^{40}\) The issue of lawful residence in the first place is one for the individual Member States, subject to the relevant provisions of international law.\(^{41}\)

Regarding the duration of residence required for the acquisition, temporary absences from the territory of the Member State shall not interrupt the five-year period and shall be taken into account for its calculation, as long as they are shorter than six consecutive months and do not exceed in total 10 months within the five-year period. In addition, Member States may accept that a longer period of absence shall not interrupt the five-year period in cases of specific or exceptional reasons of a temporary nature and in accordance with their national law. In such cases Member States may not take into account the relevant period of absence in the calculation of the five-year period unless it is relating to secondment for employment purposes.\(^{42}\) The majority of the member States agreed that acquisition of the long-term residence status should be conditional on complying with any relevant laws on integration into the Member State of residence.\(^{43}\) Consequently, Article 5(2) permits but does not require Member States to make this a condition of acquiring long-term status. Furthermore, long-term status is subject to the third-country national having both sickness insurance and adequate resources to maintain himself or herself and his or her family without recourse to the social assistance system of the Member State concerned.\(^{44}\)

Once granted long-term resident status, third country-nationals must enjoy equality of treatment with citizens of the Member State in a number of economic and social matters defined by the Directive. These matters include, inter alia: access to employment and self-employed activity (with certain limitations), education and vocational training, recognition of professional qualifications, social security, social assistance and social protection, tax benefits, access to goods and services, freedom of association and affiliation and free access to the entire territory of the Member State concerned.\(^{45}\) Member State may restrict equal treatment in certain cases defined in Article 11 (2), (3) and (4).

\(^{36}\) Directive 2003/109/EC.

\(^{37}\) Article 3(1), Directive 2003/109/EC.

\(^{38}\) European Parliament Legislative Observatory Procedure file, Immigration: third-country nationals legally residents since 5 years, long-term resident status, CNS/2001/0074.

\(^{39}\) Article 4(1), Directive 2003/109/EC.

\(^{40}\) Supra note 36.

\(^{41}\) Steiner, Woods, Twigg-Flesner, EU Law p. 522.

\(^{42}\) Article 4(3), Directive 2003/109/EC.

\(^{43}\) Supra note 39 p. 522.

\(^{44}\) Article 5(1), Directive 2003/109/EC.

\(^{45}\) Article 11(1), Directive 2003/109/EC.
The directive also regulates and facilitates the free movement of long-term residents from the first Member State to another. A long-term resident may thus reside in a second Member State in order to work in an employed or self-employed capacity, to study or to settle without exercising any form of economic activity. When a third-country national intend to settle in a second Member State to work, this member state may refuse right of residence on the basis of their national labour market situation, and may give preference to Union citizen and third-country nationals that already reside on its territory and receive unemployment benefits. Member States may also limit the total number of persons entitled to be granted right of residence, provided that such limitations already existed for the admission of third-country nationals in national law at the time of the adoption of the directive. When residing in a second Member State on the basis of the directive, long-term residents shall enjoy the same treatment that they enjoyed in the Member State in which they acquired the status, with certain possibilities for the second Member State to make delimitations.

When the long-term resident settles in a second Member State, family members that were living with him or her in the first member state shall be allowed to company or join him or her. In the application of the provision, family members include: spouses, minor children of the resident third-country national and of his or her spouse, or minor children where the resident third country national has custody and those children are dependent on him or her. Although acquisition of long-term status is described as permanent, third-country nationals shall no longer be entitled to maintain the status if the acquisition of the status was fraudulent or if there is an expulsion measure (within the terms of Article 12). Neither shall they be entitled to maintain the status if they are absent from the territory of the Community for 12 month (or longer). Member States may, however, provide that absences exceeding 12 consecutive months shall not entail loss of status.

The directive has not been adopted by the United Kingdom, Ireland or Denmark.

2.3.2.2 Directive 2003/86/EC on the right to family reunification

The Directive on Family Reunification aims to determine the conditions under which the family members of a lawfully resident third-country national can also enter that Member State. The directive applies where the third-country national (the sponsor) is residing lawfully in a Member State, is holding a residence permit valid for a year or more and has a reasonable prospect of obtaining permanent residence. Applications can be made for members of the family of the sponsor that are third country nationals of whatever status. The Directive do not apply, inter alia, where the sponsor is applying for recognition of refugee status and the application has not yet given rise to a final decision or is under international protection. Moreover, the directive shall not apply to members of the family of a Union citizen.

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46 Article 14(2), Directive 2003/109/EC.
47 Article 14(3) and (4), Directive 2003/109/EC.
48 Article 21(1) and (2), Directive 2003/109/EC.
49 Article 16(1), Directive 2003/109/EC.
51 Article 8(1), Directive 2003/109/EC.
52 Article 9(1) and (2), Directive 2003/109/EC.
54 Article 3(1) (2) and (3), Directive 2003/86/EC.
The directive identifies the family members who may benefit from the right of family reunification. These shall always include: the sponsors’ spouse, the minor children (including adopted children) of the sponsor and of his or her spouse, and the minor children (including adopted children) of the sponsor or his or her spouse where the sponsor or the spouse has custody and those children are dependent on him or her. The children must not be married. Special and derogatory provisions apply to children over 12 who arrive independently of the rest of the family, in that the Member State may, before authorising his or her reunification with the family, verify whether he or she meets a condition for integration, as well as to children aged 15 and more, in that Member States may request that the application concerning family reunification have to be submitted before the age of 15. If the application is submitted after the age of 15, the Member States which decide to apply this derogation shall authorise the entry and residence of such children on grounds other than family reunification. Both derogations are dependent on that such provisions already existed in national law at the time of the adoption of the directive. Furthermore, the directive permits the Member States to authorise the entry of other categories of close relatives, such as adult unmarried children, where they are objectively unable to provide for their own needs on account of their state of health. The Member States may also authorise family reunification for the unmarried partner, with whom the sponsor is in a duly attested stable long-term relationship, or to whom the sponsor is bound by a registered partnership, as well as for the children of such persons under the same conditions as for spouses. In making this distinction between family members who must be admitted and those who may be admitted, the directive parallels the approach taken with regard to migrant EU nationals, though the list of those family members who must be admitted is shorter than in the case of the EU national.

The right of admission is subject to the requirement that there be adequate housing, as well as conditions relating to income and sickness insurance. These conditions differ from those applied to migrant EU nationals in that the condition regarding housing do not apply EU nationals, for whom economic sufficiency is required only in respect of non-workers. Furthermore, Member States may require third country nationals to comply with integration measures, and the sponsor to have stayed lawfully in their territory for a period not exceeding two years, before having his/her family members join him/her.

The applicant shall be given a decision on the application no later than nine months from the date on which the application was lodged. Where the conditions for family reunification are fulfilled, residence permits for family members shall be granted. The residence permits of family members shall have a duration of at least one year, with possibility of renewal. The duration shall in principle not go beyond the date of expiry of the residence permit held by the sponsor.

As regards right accorded to the sponsor's family members, they shall be entitled, in the same way as the sponsor, to access to, inter alia: education, employment and self-employed activity

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55 Article 4(1), Directive 2003/86/EC.
56 Article 4(1) and (6), Directive 2003/86/EC.
57 Article 4(2)(b), Directive 2003/86/EC.
58 Article 4(3), Directive 2003/86/EC.
59 Article 7(1) Directive 2003/86/EC.
60 Supra note 57 p. 523.
61 Article 7(2) and article 8, Directive 2003/86/EC.
63 Article 13(2) and (3), Directive 2003/86/EC.
and vocational training. Member States may decide the conditions under which family members shall exercise an employed or self-employed activity. Such conditions shall set a time limit which shall in no case exceed 12 months, during which Member States may examine the situation of their labour market before authorising family members to exercise an employed or self-employed activity. Furthermore, after five years of residence in the member state, the spouse or unmarried partner and a child who has reached majority shall be entitled to an autonomous residence permit, independent of that of the sponsor. Similar as the Directive on the Status of Long-Term Residents, the directive has not been adopted by the United Kingdom, Ireland and Denmark.

2.3.3 Legislations on skilled migration in three EU Member States

The legislation regarding labour migration differs widely between member states – skilled migrants attempting to enter community are currently faced with 27 different systems. The remedy of this disparity is one of the purposes of the Blue Card Directive. Many Member States have special legislation in respect of skilled workers and several operate schemes aimed at attracting this group of workers. Others are concerned with the effects skilled immigration might have on the employment situations of their own nationals and accordingly apply regimes that are less favourable for highly qualified immigrants. This chapter will provide a framework for analyzing how the Blue Card Directive relates to existing national legislation by giving an overview on how the area of skilled immigration is treated by France and Germany, which are important countries of destination for skilled Malian migrants, as well as by Sweden. An overview of the main points of this chapter can be found in section 5.1, in the form of a table comparing the main features of the regulations for highly-skilled migrants in France, Germany and Sweden and the Blue Card Directive.

2.3.3.1 France

France has adopted special immigration provisions in respect of highly skilled migrant workers. The residence permit 'Carte Compétences et Talents' can be granted to aliens who, through their skills or talents, are likely to make a significant and lasting contribution to France's economic or national development, or to France's influence, in particular in the intellectual, scientific, cultural, humanitarian or athletic areas, and directly or indirectly, to that of the migrants country of origin. In the application for the residence permit, the migrant must define a specific 'professional project' through which this contribution will be made. The migrant must also possess the capacity of carrying out the project. The professional project can be in the form of a remunerated employment, an entrepreneur project or the exercise of an independent profession (e.g. as a writer or translator). Migrants intending to pursue remunerated employment must be in possession of a work contract which corresponds to the qualifications, experience and educational degrees of the applicant, where applicable. However, the authorities may deviate from the requirement of a work contract in order to facilitate the process.
Foreigners eligible for the permit in order to pursue a remunerated employment are holders of a tertiary degree (at PhD level) and holder of degrees of lower education with additional professional experience of one to four years, in the occupational field for which the application has been made. The required level of education is lowered with the duration of the professional experience, and vice versa. For example, a foreigner holding a bachelor's degree is eligible if he or she also has three years of professional experience. Foreigners with a professional experience of five years and more are eligible regardless of their level of education, provided that they have been remunerated at a level comparable to local highly qualified French workers. As regards salary criterions, there is a differentiation according to age. Applicants of 30 years of age and older must in principle be remunerated at a level comparable to local highly qualified workers. For younger applicants, such remuneration is not a criterion but merely a factor speaking in favour of the granting of a permit.\(^{70}\)

In addition, citizens of countries belonging to the 'Zone de Solidarité Prioritaire', which include around 60 countries\(^{71}\), must unless a bilateral agreement of co-development is signed between France and their country of origin\(^{72}\), commit themselves to return to their country of origin after six years of residence in France.\(^{73}\) Citizens of these countries must also submit the project description for a contribution to a development cooperation or investment program between France and the country of origin, to the authorities of his country of origin within 6 months from being granted a residence permit.\(^{74}\) Migrant workers that are granted the 'Compétences et Talents' permit are not obliged to conclude the French 'Contrat d’accueil et intégration'.\(^{75}\) Other special migration provisions apply to certain groups of highly skilled workers. Thus, tertiary educated foreigners entering France to teach at a university level are eligible for a 'Scientifique' residence permit.\(^{76}\) These rules will, however not be treated further in this rendering. An application for the Compétence et Talents permit can be lodged either from within France of from the country of origin.\(^{77}\)

In contrast with the principle of one-year residence permits normally applied to first entrants,\(^{78}\) the Compétence et Talents permit has a duration of three years. It is renewable, but permits of workers from countries belonging to the Zone de Solidarité Prioritaire may only be renewed once.\(^{79}\) The permit may be renewed for the continuance of the prior professional project, or for a new project, subject to the same conditions as for first entry.\(^{80}\)

The Compétence et Talents permit automatically entitles its holder to take up any professional activity with a connection to the professional project or activity for which the permit was granted.\(^{81}\) For project entailing a remunerated employment, the acquisition of a supplementary work permit is not necessary. Holders of the permit are to be allowed to exercise a 'normal professional mobility', and the authorities are thus not be too strict in their evaluation of what

\(^{70}\) Supra note 68, article 10 and 12.

\(^{71}\) Mainly countries in sub-Saharan Africa, including Mali.

\(^{72}\) Such agreements are presently only concluded with Mali and Senegal.

\(^{73}\) L.315-2, CESEDA.

\(^{74}\) Article R. 315-8, CESEDA.

\(^{75}\) Circulaire relative aux conditions de délivrance de la carte de séjour 'compétences et talents', NOR IM-IG0800017C p. 2.


\(^{77}\) Article 315-3, CESEDA.

\(^{78}\) Supra note 75 p. 2.

\(^{79}\) Article L.315-1, CESEDA.

\(^{80}\) Supra note 75 p. 6.

\(^{81}\) Article L.315-5, CESEDA.
professional activities that have a connection to the professional activity for which the permit has been granted. After five years of continuous residence in France, a holder of a Compétence et Talents permit can acquire a EU long-term resident permit, provided that he or she is in possession of a sickness insurance. Consideration is also taken into his or her intention of durable establishment in France, notably as regards the terms of employment and his or her financial means to sustain him or herself. In the event of expiry of this residence permit, a permanent residence permit may be granted as long as the applicant does not constitute a threat to public order.

The Compétences et talents card permits family reunification as soon as the permit holder enters France, without facing the conditions normally required for reunification (notably sufficient resources and housing requirements). Family members included are the permit holder’s spouse and children under 18 of age which will be granted a temporary 'Vie Privée et Familiale' residence permit, valid for one year and renewable following the validity of the Compétences et Talents permit. This permit allows the spouse to work. The family members are exempt from the obligation to undertake a language and values evaluation and formation prior to the entry in France, which are normally applied in relation to family reunification. Neither are they required to conclude the French 'Contrat d’accueil et intégration'.

Renewal of the Compétences et Talents permit is subject to the realization of the professional project for which it has been granted and that this project allows him to sustain himself. The latter entail that the professional project must confer monthly revenue of at least the French minimal salary times 1.5. A Compétences et Talents permit Grounds is withdrawn if one of the conditions for its approval is no longer met. Additional grounds for withdrawal include, inter alia, conviction for certain crimes and non-remunerated professional activities without authorisation.

2.3.3.2 Germany

In Germany, special immigration rules apply to highly skilled immigrants. In the relevant provision of the Residence Act, the term 'highly qualified' workers is used. There is no general definition of that notion contained in the Residence Act. However, paragraph 2 of Section 19 AufenthG refers to three different categories of persons who generally fall under the heading of highly qualified immigrants. The first category includes scientists and academics with outstanding qualifications. The second category refers to teaching personnel in high-rank positions, meaning tenured professors or academics who are leading scientific projects or research groups. Under category three, specialists and executive personnel are considered to be highly qualified if they have adequate professional experience and a certain minimum of annual income. This income threshold has been set at an amount equal to the contribution assessment ceiling of the general pension insurance (Beitragsbemessungsgrenze der allge-
meinen Rentenversicherung), which was 63,600 euro in 2009. The requirements of Section 19(2) are not cumulative. Consequently, an income that does not lie above the threshold of 63,600 euro cannot be the sole reason for denying a settlement permit. According to the Administrative Court of Stuttgart, sufficient income for highly qualified workers entering under either the first or second categories shall be such that they can provide for their own living expenses.

Persons within the three categories under Paragraph 2 of Section 19 AufenthG can be granted a settlement permit without a prior approval of the Federal Labour Agency, which is necessary in other cases. In principle, highly qualified workers other that those listed in Section 19(2) can also be granted a settlement permit. Yet this can only be allowed in special cases, and requires the approval of the Federal Employment Agency. In addition to being considered a highly qualified worker, there are four general conditions for the granting of a settlement permit. Firstly, there must be a specific job offer. Secondly, there must be reason to assume that the immigrant will become well integrated into German society. Factors in the assessment of integration ability are: age, qualifications and work experience, knowledge of the German language and existing ties to Germany. This requirement is, however, mitigated by the fact that highly qualified workers (and their family members) are not obliged to pass a German language test prior to entry. Thirdly, the immigrant must demonstrate that he can sustain himself without relying on state resources. Lastly, the entry of the person concerned must constitute a 'special case' (in besonderen Fällen) in the sense of paragraph 1 of section 19 AufenthG. In interpreting the notion of a 'special case', the immigrant authorities do not enjoy an unrestricted discretion, but have to pay regard to the increased public interest in the entry of highly qualified immigrants. In order to constitute a 'special case', the residence of the highly skilled immigrant in Germany must be considered to be in the economic or public interest of the country. This will, for example, be the case if the research position was inherently linked to the immigrant’s personal capacities and experience.

Highly qualified workers of certain vocational groups, who do not qualify directly for a settlement permit under section 19 AufenthG, still have the possibility of acquiring a temporary residence permit under section 18 AufenthG. Immigrants entering under section 18 can be subdivided into two groups. The first group includes chief executives, persons working in science, research and development and journalists. Highly skilled workers in the second group include IT-specialists and professional academics, executive personnel and specialists and qualified personnel taking part in international exchange programmes. In respect of the first subgroup under section 18 AufenthG, an approval of the local employment agencies is not necessary prior to entry. For the second subgroup, the local employment agencies have to give their prior approval, after having carried out a labour market test. This test includes an assessment of the potential effect of the recruitment on the employment market and an individual investigation that there are no privileged applicants (i.e. German or EU citizens or other foreigners with a right to employment) available to fill the positions.

92 See the Law for the employment of labour migration (Arbeitsmigrationssteuerungsgesetz).
93 Supra note 91.
94 Sec. 3, Employment Ordinance, (BeschV), Wiesbrock, p. 566.
95 Sec. 18(5) and 19(1), AufenthG, Storr et al., Kommentar zum Zuwanderungsgesetz pp. 114 ff.
96 Wiesbrock p. 566.
97 Sec. 19(1), AufenthG, see also Renner, Ausländerrecht, Kommentar Renner p. 228.
98 Supra note 91.
99 Sec. 4, 5 and 8, BeschV.
100 Sec. 27, 28 and 31 BeschV.
In principle, the regulation does not distinguish between older and younger highly skilled workers. This has been criticized, as the tough entry conditions and high income ceiling make it extremely difficult for young professionals to enter the German labour market. Section 19 AufenthG appears more directed to experienced scientific personnel rather than graduates and young professionals. However, section 16(4) AufenthG makes it possible for foreign students who have successfully completed their studies in Germany to obtain a prolongation of their residence permit to search for a job for a period of one year. Moreover, foreign university graduates with a recognized diploma in the IT sector, as well as foreigners holding a German university degree or graduates of German institutions abroad, with a recognized university degree or vocational qualification obtained in Germany, will be able to take up employment in Germany, even if they do not fulfil the minimum income requirement of Section 19 AufenthG. In respect of the latter two categories, that is, foreigners holding a German degree, the approval of the Federal Employment Agency is not required. As a general rule, the application for a residence permit has to be filed by the applicant worker in his or her country of origin. It is possible to submit an application from within Germany if a visa is not necessary, or if the permit merely has to be renewed. Immigrants only have to file one application to obtain a residence title.103

Highly skilled workers residing in Germany on the basis of Section 19 AufenthG have an unlimited right of residence in Germany. The settlement permit is neither restricted in time nor in scope, allowing the worker to change his employment position of he wishes. Only a few professions are exempt, such as the medical profession and employment in civil services.104 Workers who have entered Germany under the general provision of Section 18, are in a less favourable situation. The first permit granted to migrant workers is mostly limited to a period of one year and tied to occupation in a specific undertaking. For these workers, a loss of employment may have the consequence of a loss of the right to reside in Germany.105 However, an immigrant worker who has lost his job has the right to stay and search for work as long as he or she receives unemployment benefits that are financed by his or her contributions to the Public Employment Insurance (Unemployment Benefit I). Third-country national workers will only be able to benefit from this regime if they have been employed in Germany and subject to social security contributions for at least 360 days the last two years, prior to becoming unemployed. After having resided in Germany for five years, these workers may obtain a settlement permit.106

Family members of highly qualified workers within the meaning of Section 19 AufenthG, are exempt from the requirement of proving a certain degree of German language proficiency before entry, as long as the marriage already existed at the moment the highly qualified worker entered Germany, and that the worker has shifted the central point of his or her life to Germany.107 The incoming family members of highly skilled workers are automatically entitled to take up paid employment, and can obtain an independent right to reside and work after marital cohabitation in Germany for at least two years.108

101 Wiesbrock p. 566.
102 Sec. 27 BechV together with sec. 39(2) No. 1 AufenthG.
103 Sec. 4(2), sec. 18(2) jo. sec. 39 AufenthG.
104 Wiesbrock p.590.
106 Sec. 12,3 Sozialgesetzbuch III and sec. 9, AufenthG.
107 Sec. 30(1), AufenthG.
108 Wiesbrock p. 594.
The settlement permit of a highly skilled immigrant in Germany provides for a high degree of protection against expulsion and can only be revoked under exceptional circumstances. Grounds for expulsion, and therewith termination of the residence permit, are, inter alia, the endangerment of the free democratic basic order or security, belonging to a terrorist organization and conviction to a prison sentence of at least two years. In addition, an immigrant may be expelled for reasons related to public safety and law and order, or other substantial national interests. This includes, in particular, the submission of false or incomplete information in the application procedure for a residence permit, a breach of legal provisions, an endangerment of public health and the claiming of social welfare benefits. After five years of residence, immigrants who are in possession of a settlement permit enjoy special protection from expulsion, and can only be expelled on serious grounds pertaining to public security and law and order.109

For highly qualified workers, having entered under Section 18 AufenthG and therefore not being in possession of a settlement permit, the first permit granted is mostly limited to a period on one year and tied to occupation in a specific undertaking. When the employment activity for this particular undertaking ends, this could lead to the shortening of their residence period by the responsible immigration authorities.110 Moreover, the mere fact of obtaining Unemployment Benefits can lead to a decision that the stay in Germany has to be terminated. A temporary residence permit will also be revoked if the immigrant has been unlawfully employed, or intends to take up employment as a loan worker. Revocation is further possible if the third-country national is employed on less favourable terms than German workers, or on exceptional grounds related to the personal circumstances of the immigrant.111

2.3.3.3 Sweden

Sweden does not have a specific programme for migration of highly skilled workers. The Swedish Aliens Act112 (UtlL) provides for an equal possibility of all migrant workers to obtain a residence permit if they are in possession of an offer of employment from an employer in Sweden, provided that the scope of the employment allows the applicant to sustain him or herself while in the country, and that the terms of employment are equivalent to those provided by a Swedish collective agreement, or to customary terms and conditions for the occupation or industry.113 As regards the minimum income, it is thus merely required that the amount is sufficient to allow the employee to support himself or herself, and that the salary comply with the collective agreement or practice in a certain profession. Furthermore, the recruitment has to be compatible with the principle of Community Preference, which in simple terms, entail that the job vacancy has previously been advertised in Sweden and the EU.114 As appears from the above, it is the individual Swedish employers that have the task of assessing whether the recruitment of foreign workers is necessary. No authority based labour market test is carried out. The Swedish government considers that it is the individual employer that has the best knowledge of the recruitment needs of its business.115 The relevant trade union must however express its opinion on the terms of employment.116 There are no special rules in respect of young highly skilled workers and Swedish immigration law has

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109 Sec. 54, 55 and 56, AufenthG.
110 Sec. 39(4) and 7(2) AufenthG.
111 Sec. 412 jo. 40 AufenthG.
112 Utlänningslag (2005:716)
113 Ch. 5 sec. 10 and Ch. 6 sec. 2(1), UtlL.
114 Ch. 6 sec. 2(2), UtlL. See also Wikrén & Sandesjö, Utlänningslagen med kommentarer pp. 345-346.
116 Ch. 5 sec. 10, UtlL.
been said to make it difficult for graduates to make the transition from university to the workplace, making it unlikely that the country is optimising potential benefits from Swedish-educated foreign students.\(^\text{117}\)

The residence permit and the work permit must generally be obtained in the applicant's country of origin. However, an application can be lodged and approved from within Sweden, if the migrant is applying for a residence permit for the purpose of employment in a sector where it is a high demand for labour, or if he or she has been granted a visa to visit an employer in Sweden, both provided that the application in another country would cause inconvenience to the employer, or other exceptional grounds apply.\(^\text{118}\)

The migrant worker is initially granted a temporary residence permit. The validity of the residence permit mirrors the work permit, which is initially valid for a period of two years or for the period of employment.\(^\text{119}\) During the first two years, foreign workers are tied to a particular employer and to a certain kind of work. After holding a work permit for a total of two years, change of employer is permitted, but the work permit remain linked to the kind of work for which it was granted. The work permit is renewable, subject to a new evaluation, for up to four years, at which time the can apply for a permanent residence permit. If such a permit is not granted, the worker must leave the country.\(^\text{120}\) A permanent residence permit can only be granted if the migrant has been in possession of a residence permit for work four consecutive years out of the five years prior to the application. The Swedish government considers that shorter periods of a few months outside of Sweden, for example between two employments, should not in all cases interrupt the four-year period. However, the periods of absence will not be counted in the total period.\(^\text{121}\) Holders of a permanent residence permit no longer require a work permit, and are completely free to change their employer or employment sector as they wish, with the exception or public policy jobs that are reserved for Swedish nationals.\(^\text{122}\)

A person who has obtained a residence permit has the right to be immediately accompanied by certain family members. Family members who are eligible for a residence permit are the workers’ spouse or cohabitant and children, including adopted children, under the age of 18. The provision is based on EU Directive 2003/86/EC on the right to family reunification.\(^\text{123}\) Furthermore, family reunification is possible for persons intending to be married to or cohabitant with the resident as well as other close relatives, such as the residents’ parents or unmarried children over the age of 18, that where already part of the residents household and that there is a dependency relation with the resident established in the country of origin.\(^\text{124}\) Sweden does not operate a system of mandatory integration requirements prior to entry. The spouse or cohabitant is also entitled to work.\(^\text{125}\)

A permanent residence permit may be refused if the applicant has been found guilty of any criminal activity, potentially combined with other misconduct. In addition, if the immigrant constitutes a threat to public order and security, then a permanent residence permit may be denied, provided that the immigrant or his or her relatives enjoy long-term residence status in

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\(^{117}\) Tejada, OECD, *Developing Highly Skilled Workers: Review of Sweden* p. 18.

\(^{118}\) Ch. 5, sec. 18 (1) and (3) and Ch. 6 sec. 4(1) UtlL.

\(^{119}\) Ch. 5 sec. 10 and Ch. 6, sec. 2a (1) UtlL.

\(^{120}\) Ch. 6, sec. 2a (2) and (3) UtlL, Wikrén & Sandesjö p. 347.

\(^{121}\) Ch. 5 sec. 5 (1), UtlL, Bill 2007/08:147 pp. 29-30.

\(^{122}\) Ch. 2 sec. 8, UtlL.

\(^{123}\) Ch. 5, sec. 3 UtlL, Wikrén & Sandesjö p.241.

\(^{124}\) Ch. 5 sec. 3 a item 1 and 2, UtlL, Bill 1996/97:25, *Swedish migration politics in a global perspective* p.113.

\(^{125}\) Ch. 6 sec. 3, UtlL.
another state. Residency and work permits can be withdrawn if, within a period of four years, it is discovered that the immigrant has knowingly suppressed information or supplied incorrect information that were of significance in obtaining the permit.

Residency permits granted to labour migrants can be withdrawn on a number of grounds contained in Chapter 7 UtlL. Concerning labour market related grounds, aliens may face the withdrawal of their residence permit if they have conducted economic activities without holding a work permit, or have lost their job and failed to find new employment over a period of three months. A permanent residence permit is withdrawn if the immigrant relinquishes his or her residence in Sweden. However, a stay in the country of origin for studies has not been considered to entail a loss of the residence permit. Also, a new permanent or temporary residence permit can be granted on the basis of the time spent in Sweden before the relinquishment of residence. If the period of absence is one year or shorter, a residence permit is granted regardless of the period of residence in Sweden before going abroad. If the period of absence is between one and three years, a residence permit will be granted if the earlier period in Sweden was four years or longer.

2.3.4 International commitments in the field of labour migration

International law affects migration and integration in the European Union through different channels. Besides the specific EU Directives on migration, the EU Charter of Fundamental Rights and the general principles of law govern migration in the Union. Examples in this area are the rights to non-discrimination and equal treatment, and the principles of legal certainty and legitimate expectations. International human rights treaties, such as the European Convention on Human Rights, the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights are similarly relevant to migration. There are also a number of international treaties that deal specifically with labour migration and by which many of the European Union Member States are bound. The commitments are primarily to be found in the European Convention on the legal status of migrant workers, developed by the Council of Europe, and the ILO Migration for Employment Convention (ILO Convention No. 97). There is also a second ILO Convention on Migrant Workers (ILO Convention No. 143), and the United Nations has adopted its UN convention on Migrant Workers. The UN Convention on Migrant Workers has been seen as the climax of a gradual development of universal standards protecting the rights of migrant workers and their families under International law. Even though certain failings of the convention has been identified, one particular positive aspect is its broad and comprehensive definition of migrant workers which includes all migrant workers and members of their families, including certain categories that are not covered by the ILO conventions. However, the ratifying parties are
almost exclusively migrant sending developing countries, including Mali. Since no EU Member States have ratified the convention it will not be treated further. The other three treaties mentioned above will be explained briefly in the following sub-sections. Their specific touching points with the Blue Card Directive will be treated in section 2.4.

2.3.4.1 The European Convention on the Legal Status of Migrant Workers

The European Convention on the legal status of migrant workers\(^{138}\) deals mainly with the protection of migrant workers during the recruitment process\(^{139}\) and their initial period of residence in a Contracting State.\(^{140}\) For the purpose of the Convention, a migrant worker is defined as 'a national of a Contracting Party who has been authorized by another Contracting Party to reside in its territory in order to take up paid employment'. The Convention is based on the principle of reciprocity. However, several EU Member States have ratified the convention, including France, Italy, the Netherlands, Portugal, Spain and Sweden, as well as some important migrant sending countries for EU Member States such as Moldova and Ukraine.\(^{141}\)

The process of labour migration under the Convention on Migrant Workers relies primarily on the granting of a work permit by the Contracting States. According to the convention, a work permit shall be granted to migrant workers or renewed under the conditions laid down in national law. Thus, the contracting states enjoy almost unlimited state discretion in respect of the granting of residence permits. The convention does, however, lay down the requirement, amongst other, that the work permit should generally not bind the worker to the same employer or locality for a period longer than one year. Also, if a migrant has received permission to take up employment in another contracting state, he or she has the right to be admitted to the territory of that state and start to work.\(^{142}\) The contracting parties shall grant or extend the residence permit of labour migrants who have obtained a work permit. A residence permit may be withdrawn only on specific grounds, namely reasons of national security, public policy or morals, if the holder refuses to receive medical treatment required with a view to the protection of public health, or if an essential condition for the residence permit is not fulfilled. In the event of involuntary unemployment or a temporary incapacity to work, the migrant shall be granted a period of at least five months to search for a new job.\(^{143}\)

The convention also contains rules on family reunification. The spouse and the unmarried children shall be allowed to join the migrant worker, if all conditions are fulfilled and there are no grounds related to national security, the public order or moral opposing the reunification. The conditions that may be imposed include the availability of adequate housing, having sufficient steady resources and a waiting period of up to 12 months.\(^{144}\)

The convention sets out that migrant workers, as well as their family members, is to be accorded the same treatment as nationals of the host state in respect of housing and social and medical assistance. Furthermore, if a person has been residing on the territory of a contracting state for more than five years, his or her residence rights may not be terminated solely on the

\(^{138}\) European Convention on the legal status of migrant workers, UNTS Vol 1496, p. 3.

\(^{139}\) Supra note 137, articles 2,3,5,6,7 and 10.

\(^{140}\) Wiesbrock p. 234.

\(^{141}\) Guild, CEPS p. 2, Germany is not a ratifying state.

\(^{142}\) Supra note 137, articles 4(2) and 8 (1), (2) and (3), Wiesbrock pp. 234-235.

\(^{143}\) Supra note 137, article 9(4) and (5).

\(^{144}\) Supra note 137, article 12(1) and (2).
basis of reliance on social assistance.\textsuperscript{145} Despite assuring a certain number of crucial rights to migrant workers, the convention is relatively weak in terms of their protection.\textsuperscript{146}

2.3.4.2 International Labour Organization Conventions No. 97 and No. 143

The International Labour Organization, founded in 1919, identified the protection of labour migrants as a central concern in its founding documents.\textsuperscript{147} The organization has adopted several instruments relevant to labour migrants. The eight fundamental convention that apply to migrant workers, irrespective of their legal status, concerns the freedom of association and collective bargaining,\textsuperscript{148} the elimination of all forms of forced labour,\textsuperscript{149} the abolition of child labour\textsuperscript{150} and the elimination of discrimination.\textsuperscript{151} All ILO Member States are obliged to promote and realize these core labour standards, even if they have not ratified them.\textsuperscript{152} Labour migration is treated directly in two main ILO conventions, with accompanying recommendations, namely the Migration for Employment Convention\textsuperscript{153} and the Migrant Workers (Supplementary Provisions) Convention.\textsuperscript{154}

ILO Convention No. 97 and the accompanying Migration for Employment Recommendation (ILO recommendation No. 86)\textsuperscript{155} were adopted in 1949 directly after the Second World War. They deal mainly with problems concerning the recruitment of labour migrants and immigration procedures. They apply to 'migrants for employment', defined as 'a person who migrates from one country to another with a view to being employed otherwise than on his own account' and include any person regularly admitted as a migrant for employment.\textsuperscript{156} The convention contains provisions committing ratifying states to assist migrants and to provide them with adequate information free of charge, to prevent misleading propaganda and to assure equality of treatment of migrant workers in certain regards. The latter is the most crucial obligation of the Convention. It provides for equal treatment of immigrants with nationals without any discrimination on grounds of nationality, race, religion or sex, in respect of remuneration, trade union membership, accommodation and social security.\textsuperscript{157,158} Moreover, State Parties shall not return labour migrants who have been admitted in a permanent basis to their country of origin solely on the basis of the fact that they are no longer able to work due to sickness or

\textsuperscript{145} Supra note 137, articles 13 and 19, with reference to the European Convention on social and medical assistance, UNTS Vol 218, p. 255.
\textsuperscript{146} Wiesbrock p. 236.
\textsuperscript{147} Article 41 of the Constitution of the International Labour Organisation.
\textsuperscript{148} Convention (No. 87) concerning freedom of association and protection of the right to organize, UNTS Vol 68, p. 17; Convention (No. 98) concerning the application of the principles of the right to organise and to bargain collectively, UNTS Vol 96, p. 257.
\textsuperscript{149} Convention (No. 29) concerning forced or compulsory labour, UNTS Vol 39 p. 55; Convention (No. 105) concerning the abolition of forced labour. 320 UNTS Vol 320, p. 291.
\textsuperscript{150} Convention (No 138) concerning Minimum Age for Admission to Employment, UNTS Vol 1015 p. 297; Convention (No. 182) concerning the prohibition and immediate action for the elimination of the worst forms of child labour, UNTS Vol 2133 p.
\textsuperscript{151} Convention (No. 100) concerning equal remuneration for men and women workers for work of equal value, UNTS Vol 165 p. 303; Convention (No. 111) concerning discrimination in respect of employment and occupation, UNTS Vol 362 p. 31.
\textsuperscript{152} Declaration on Fundamental Principles and Rights at Work, ILO Doc CIT/1998/PR20ILO.
\textsuperscript{153} UNTS Vol 120, p. 71.
\textsuperscript{154} UNTS Vol 112, p. 232.
\textsuperscript{155} Recommendation concerning Migration for Employment (Revised 1949), ILO Doc R86.
\textsuperscript{156} Article 11(1), UNTS Vol 120, p. 71. and Para. 1(a), ILO Doc R86.
\textsuperscript{157} This includes legal provisions in respect of employment injury, maternity, sickness, invalidity, old age, death, unemployment and family responsibilities and with certain limitations, see Article 6(b), UNTS Vol 120, p. 71.
\textsuperscript{158} Article 6, UNTS Vol 120, p. 71.
an injury. The convention also calls upon each party to facilitate the departure, journey and reception of migrants for employment within its jurisdiction. Similarly, Paragraph 4(1) of ILO Recommendation No. 86 encourages State Parties to facilitate the international distribution and movement of workers, in particular from countries with a surplus of manpower to those with a deficiency.

The documents also address issues that the recruitment process can give rise to in such that they provide for assistance free of charge as regards, for example, administrative formalities and information on matters such as employment and living conditions. Furthermore, Members are requested to take adequate measures against misleading propaganda related to migration. Labour Migrants as well as their family members are also to be given access to appropriate medical services during the journey and adequate accommodation, food and clothing on arrival. Convention No. 97 has been ratified by 49 states in January 2011, including France and Germany, but not by Sweden.

When ILO Convention No. 143 and the accompanying Migrant Workers Recommendation (ILO Recommendation No. 151) in the 1970s, the focus of the ILO documents had change as a result of the economic recession and the attempts of states to restrict labour migration. The Convention, which has been ratified by Sweden, but not by Germany or France, as well as the recommendation, emphasise the importance of regulating migration. ILO Convention No. 143 has a wider scope than ILO Convention No. 97, as it covers not only regular migrant workers but irregular as well. As regards irregular migrant workers, Members are called upon to control on a regular basis whether migrant workers are employed illegally on their territory and whether movements of migrants for employment are taking place under conditions that contravene national or international law. Illegal employment and clandestine labour migration are to be prevented with all necessary and suitable means, including administrative, civil and criminal law sanctions for illegal employment and the movement of labour migrants under conditions that contravene national or international law.

ILO Convention No. 143 also elaborates on the status and rights of legal migrants for employment. It is reiterated that labour migrants shall not be regarded as illegal or irregular migrants or face a withdrawal of their residence permit solely on the basis of the fact that they lost their employment. The principle of equal treatment is extended so as to not only apply to security of employment, alternative employment, relief work and training, but also to trade union and cultural rights and individual and collective freedoms. The convention additionally treats family reunification of migrant workers, calling upon Members to facilitate family reunification in respect of the migrant's spouse, dependent children and parents. ILO Recommendation No. 151 goes further in advocating family reunification, stating that Members

159 Unless the migrant wishes to return or it is provided for by an international agreement to which the state is a party, see Article 8(1), UNTS Vol 120, p. 71. See also Article 8(2) concerning the possibility for certain countries to postpone the obligation for a period up to five years.
160 Article 4, UNTS Vol 120, p. 71.
161 Article 2, UNTS Vol 120, p. 71 and Paragraph 3(2) and 5(2) and (3), ILO Doc R86.
162 Article 3(1), UNTS Vol 120, p. 71.
163 Article 5, UNTS Vol 120, p. 71.
164 Paragraph 10(a), ILO Doc R86
166 Wiesbrock p. 249.
167 Date of Ratification: 28 December 1982.
168 Articles 2, 3, 5 and 6, UNTS Vol 1120 p. 232.
169 Article 8(1) and (2), UNTS Vol 1120 p. 232.
should take all possible measures to facilitate the reunification of families of migrant workers as rapidly as possible. A prerequisite for the reunification is that the worker has, for his family, appropriate accommodation which meets the standards normally applicable to nationals of the country of employment. Moreover, the documents request of the Members to grant migrant workers free access to the employment market after a maximum of two years of legal residence in the country.

2.4 Contents of the Blue Card Directive

2.4.1 Aim and scope

Articles 1 to 3 establish the purpose and delimit the scope of the Blue Card Directive. According to Article 1, the directive aims, firstly, to determine the conditions for entry and residence of highly skilled third-country nationals and their family members, and, secondly, to define the free movements rights of third-country nationals who fall under the Directive. For this purpose, the directive establishes a common set of rules.

A demand-driven system with no right of admission and a high level of flexibility

The Blue Card Directive does not create a right of admission. The entry system it provides for is purely driven by the demands of the Member State's labour markets, and Member States retain the competence to control how many and which type of qualified workers to admit to their labour markets. According to recital 8 of the preamble, Member States also retain the possibility of not granting any residence permits for employment in certain professions, economic sectors or regions. They may also refuse to grant a Blue Card on the basis of their national labour market situation, and may give preference to Union citizen and resident third-country nationals.

Member States also remain free to adopt more favourable provisions in a number of areas, on the basis of Article 4(2). These areas include: the salary thresholds for highly-skilled migrants moving to a second Member State, procedural safeguards, labour market access after the first two years, authorization requirements for changing employers, the period to search for work in the case of temporary unemployment, socio-economic and work-related equal treatment rights, the admission of family members and periods of absence from the Community of long-term resident highly skilled migrants. Of an even greater significance is Article 3(4), which allows Member States to adopt more favourable rules for the issuing of residence permits other than an EU Blue Card for any purpose of employment. This provision was inserted during the Council negotiations and differs markedly from the formulation in the Commission proposal.

Under the original proposal, Member States would have been free to adopt or retain more favourable provisions concerning the conditions of entry and residence of skilled workers, except for entry into the first Member State. The explanatory memorandum to the proposal clarified that Member States would be prohibited from applying more generous provisions for first entry, in order to avoid competitions between the Member States. Thus, the Blue Card

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170 Article 13(1) and (2), UNTS Vol 1120 p. 232 and Para. 13(1) and (2), ILO Doc R86.
171 Article 14(a), UNTS Vol 1120 p. 232 and Para. 6, ILO Doc R86.
172 Article 6 and recital 8 and 10 of the preamble, Directive 2009/50/EC.
173 Article 8(2), Directive 2009/50/EC.
174 Article 5(3) jo. 18, Directive 2009/50/EC.
175 Articles 11, 12(1) and (2), 14, 15 and 16(4), Directive 2009/50/EC.
scheme was implicitly foreseen to replace national schemes for highly skilled migrants. The final directive, however, allows for the co-existence of national rules for skilled migrants and the Blue Card scheme. This allowance for disparity of rules between Member States could pose problems for meeting the aims of the Directive. The Committee on Civil Liberties, Justice and Home Affairs, after pointing out that the aim of the proposal was to standardise access conditions for high-skilled third-country nationals in all Member States, stated that any departure from the basic admission criteria referred to in Article 5(1) should be avoided. Because of the allowance for co-existence of national rules, the added value of the Blue Card Scheme has been questioned. National regimes will, however, lack the possibility of freedom of movement to another Member State after 18 months contained in the Directive. According to the Committee on Civil Liberties, Justice and Home Affairs rapporteur, it is in this intra-European mobility that the directive's European added value principally lies. But Wiesbrock argues that, even having regard to intra-European mobility, third-country nationals can be expected to opt for a national entry route, if entry conditions are more favourable than under the Blue Card scheme. The adoption of the Directive has added another alternative for highly skilled migration to the existing 27 entry regimes. Wiesbrock finds that this runs counter to the goal of simplifying admission procedures for highly skilled migrants, rather than unifying the existing rules and making the entry system more transparent.

**Categories of persons excluded from the scope of the Directive**

Article 3 of the Directive sets out that a number of groups of persons are excluded from the application of the Directive, regardless of their qualifications. These categories of persons mainly include: persons under temporary protection schemes or applicants for international protection, refugees or applicants for recognition as refugees, applicants for residence in a Member State as researchers (within the meaning of Directive 2005/71/EC), family members of EU citizens who are exercising their right to free movement, persons with long-term resident status in the EU that exercise their right to reside in another Member State to carry out an economic activity and beneficiaries of international agreements facilitating their entry and temporary stay in a Member State. The decision to exclude persons seeking or receiving international protection has been questioned. For example, EU’s consultative body the European Economic and Social Committee in its opinion on the Commission proposal stated that it was not acceptable that the scope of the directive should exclude refugees and asylum seekers. According to the Committee, persons in need of international protection should be able to work, including those with high qualifications.

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177 For this argument, see Guild, CEPS p. 4.
178 They did, however, find it justifiable to give Member States the possibility, in the event of a move to another Member State, to adopt a positive derogation from the salary threshold in Article 5(2), see justification to amendment 14, Committee on Civil Liberties, Justice and Home Affairs draft report on the proposal for a Council directive on the conditions of entry and residence of third-country nationals for the purposes of highly qualified employment, PE409.459.
179 Wiesbrock p. 287.
180 PE409.459 p. 32.
181 Wiesbrock p. 287.
182 Article 3(2), Directive 2009/50/EC.
183 Guild, CEPS p. 4.
184 European Economic and Social Committee, Opinion on the Proposal for a Council Directive on the conditions of entry and residence of third-country nationals for the purposes of highly qualified employment, CES1210/2008 p. 113
2.4.2 Criteria for admission

Third-country national workers have to fulfil three sets of requirements for the Blue Card Directive to apply. Firstly, they have to pursue 'highly qualified employment' and demonstrate 'higher educational qualifications' or equivalent work experience within the meaning of the Directive. Secondly, the criteria for admission contained in article 5 of the Directive must be fulfilled. Thirdly, third-country nationals might be faced with labour market tests and quota regulations.

Regarding the first set of requirements, article 3 establishes that the Directive shall apply to third-country nationals seeking admission to a Member State for the purpose of highly qualified employment. The notion of ‘highly qualified employment’ is thus at the heart of the measure. Its meaning can be understood after a serial reading of the definitions in article 2. Firstly, 'highly qualified employment' is defined in article 2(b) as the employment of a person who: 'for the purpose of exercising genuine and effective work for, or under the direction of, someone else, is paid, and, has the required adequate and specific competence, as proven by higher professional qualifications'. The concept of 'higher professional qualifications' is further defined in Article 2(g) as qualifications attested by evidence of higher educational qualifications or by at least five years of professional experience, when provided for by national law. Lastly, 'higher education qualification' in the sense of the Directive means the degree of diploma obtained after the completion of a post-secondary course of higher education of at least three years. In addition, the higher educational establishment providing the course must be officially recognised by the state in which it is situated.\(^\text{185}\) As the Directive refers explicitly to carrying out work in the capacity of an employee, self-employed persons are excluded from its scope. The above means that the member states must accept the certificates of third countries’ institutions. The definition of a highly qualified migrant has been said to be good since it includes higher education qualifications without limiting them too much – for instance as there is no mention of universities etc. But at the same time, concern has been raised on how to bring about the recognition of diplomas where they will, in most cases, have been earned outside the EU. Even after almost 40 years, the system of mutual recognition of diplomas earned in the EU still creates headaches, particularly in regulated professions.\(^\text{186}\)

In order for professional experience to be relevant as alternative to higher educational qualifications, it has to be of a thereto comparable level, and be relevant for the employment to be undertaken. The possibility of replacing a higher education qualification with professional experience must be foreseen by national legislation, and only applies 'by way of derogation'. The possibility is thus an exception to the rule which depends on national regulation. This stands in contrast with the commission's proposal which treaded professional experience and post-secondary studies as equal alternatives and in which professional experience was considered from a duration of three years. The fact that the proposal permitted flexibility regarding higher education qualifications where the worker had three years of experience was deemed wise in order to meet business needs in an evaluation of the proposal conducted by the Centre for European Policy Studies (the CEPS). According to the CEPS, this flexibility may have helped to resolve the problems of recognition of qualifications as it could have been easier to prove that the individual had three years professional experience abroad – often a related business has employed the individual itself in the capacity for more than three years – than to go through what may become complicated recognition of qualification procedures.\(^\text{187}\)

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\(^\text{185}\) Article 2(h), Directive 2009/50/EC.
\(^\text{186}\) Guild, CEPS pp. 3-4.
\(^\text{187}\) Guild, CEPS pp. 3-4.
European Economic and Social Committee endorsed the criterion of three years of equivalent professional experience, but noted that this could also have posed practical problems when it came to professions requiring more extensive higher education qualifications. The Committee on Civil Liberties, Justice and Home Affairs, in its draft report on the Blue Card proposal, recommended that the period should be prolonged, and referred to Directive 2005/36/EC (Article 16 et seq.), under which professional experience usually has to be of a total of much more three years in order to be recognised. The CEPS considered that the question of which professional experience that would be deemed equivalent to higher educational qualifications might cause trouble. Even though the wording has been changed it still has to be assessed what level of professional experience is comparable to higher education qualifications. Recognition of professional qualifications may thus still cause trouble.

Article 5 of the directive sets out a number of criteria for admission, which constitutes the second set of requirements for the Blue Card applicant. The first one is possession of an employment contract or a job offer for at least one year in the Member State concerned. Concerning qualification requirements, individuals who belong to a regulated profession must fulfil the relevant professional rules as they are applicable to EU citizens under national law. Individuals pursuing unregulated professions have to provide proof of possessing the required 'higher professional qualifications' in the occupation or sector concerned. Further conditions laid down in article 5 of the Directive include the presentation of a valid travel document, evidence of having, or having applied for, health insurance for the whole family, and not being considered to constitute a threat to public policy, public security or public health. During the council negotiations, Member States where also given the possibility to require the applicants to provide their address in their territory. This means that third-country nationals may be required to have arranged their accommodation at the moment of applying for a residence and work permit. According to Wiesbrock, this requirement imposes a considerable burden on potential applicants, considering that, at the moment of application, it is not certain that the will actually be admitted as a highly skilled migrant. These conditions are critical to the proposal as they set out what are intended to be clear, precise and unambiguous criteria on the basis of which the individual and the businesses can regulate their affairs.

Furthermore, the salary of the highly skilled worker must reach a certain national threshold that is to be set for this purpose by the Member State authorities in accordance with their individual labour market and immigration policies. The salary must also comply with the applicable collective agreement or practices in the relevant occupation. Member states are obliged under Article 5(2) of the Directive, to set the salary threshold at a minimum level of 1.5 times the average gross annual salary. This minimum level for the salary threshold differs from the original proposal of three times the minimum gross monthly wage and is lower than the Parliament's recommendation of 1.7 times the average annual salary. However, it is not clear whether 1.5 times the average annual salary is in all cases lower that three times the minimum wage. As a further new feature since the commission proposal, the salary threshold may also be lowered to 1.2 times the average gross salary for employment in certain professions par-

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188 CES1210/2008 p. 112.
189 PE409.459.
190 Guild, CEPS p. 3- 4.
191 According to article 2(j), the concept of a regulated profession shall be interpreted in the same way as under Article 3(1) of Directive 2005/36/EC.
192 Article 5(1)(b) and (c), Directive 2009/50/EC.
194 Article 5(6), Directive 2009/50/EC.
particularly in need of foreign labour and belonging to the major groups 1 and 2 of the International Standard Classification of Occupations.  

This exception concerns corporate and general managers and other business professionals, as well as teaching staff and professionals in the fields of physics, mathematics, engineering, life science and health care. Member states wishing to make use of this possibility must communicate the list of professions in which a lower salary threshold is applied to the Commission on an annual basis.

The CEPS found the salary threshold to be a sound criterion, but with the reservation that it may be unwise to leave it to the member states to set higher levels than those set out in the proposal. CEPS argued that the key is foreseeability for the business – before a business makes the decision of which employee to take on or to move around the world, it needs to be certain that it will be able to do so and will not run into insurmountable (and incomprehensible) obstacles from the state authorities. Businesses can make these decisions based on salary levels, but they need to have very precise rules. As the salary level required is not specified in the directive, foreseeability in this regard is limited. On the other hand, the European Economic and Social Committee considered that salary is not an appropriate criterion and that the concept of 'highly qualified' should be linked to higher education certificates and qualifications or equivalent vocational skills rather than the salary that the worker is to receive.

Young professionals, such as third country nationals recently graduated from universities in the EU, cannot be expected to have the same salary level and professional experience. The original Commission proposal therefore contained in Article 6 a recommendation for a special entrance scheme with more favourable entry conditions for highly skilled workers under the age of 30. The minimum wage was to be lowered to two-thirds of the national salary threshold. The member states would even have been able to completely abstain from applying a threshold if the applicant had studied in an EU Member State. Young professionals would also not have been required to have professional experience in addition to holding a diploma of higher educational studies, unless the same was demanded from EU citizens. The CEPS found the derogation to be helpful for recent graduates who wish to stay in a member state after their studies, but warned that it might be considered discriminatory.

Several of the bodies evaluating the proposal found that the derogations for third-country nationals under 30 would lead to age-based discrimination, and the European Parliament suggested that they would be deleted, which they subsequently where during the Council negotiations.

The third set of requirements set forth for the granting of a Blue Card may encompass labour tests and other procedures applied by the Member States to regulate their employment markets, as the Member States remain free to apply such procedures. These procedures include, in

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196 Article 5(2), Directive 2009/50/EC.
197 Group 1 of the International Standard Classification of Occupations also encompasses legislators and senior officials. Group 2 additionally refers to business professionals and also legal professionals, archivists and librarians, social science and related professionals, writers and creative or performing artists and religious professionals, ILO ISCO-08.
198 Article 5(5), Directive 2009/50/EC.
199 Guild, CEPS p. 5.
200 CES1210/2008 p. 111.
201 CES1210/2008 p. 111.
202 PE409.459, Justification to amendment 22, Opinion of the Committee on Employment and Social Affairs p. 43 and CES1210/2008 p. 113.
particular, the application of the principle of Community preference and the provisions of the Acts of Accession of 2003 and 2005. Moreover, national authorities can make use of quotas, as it remains within the competence of the Member States to ‘determine the volumes of admission’ of highly qualified workers. This means that highly qualified workers do not enjoy a secure right to admission, even if all the conditions contained in Articles 2 and 5 of the Directive have been fulfilled.

2.4.3 Application procedure

The procedural provisions for Blue Card applications are to be found in Articles 10 and 11 of the Directive. Applications are to be submitted by the highly skilled worker or his prospective employer. It is up to the Member States to determine which of the two. In principle, the national authorities shall consider an application regardless of whether it is made from outside the EU or from within the Member state, the latter if it is made by a third-country national with a valid residence permit or national long-stay visa. Member states may also accept applications from other persons legally resident in the country, even if they are not in possession of a valid residence permit. During the Council negotiations, a further paragraph was inserted into Article 10, allowing Member States to require that applications must be submitted from outside its territory, provided that such limitations already existed in national law at the time of the adoption of the Directive. Some member states have been particularly anxious to move the whole of the immigration process abroad so that the individual who is coming to the member has fulfilled all the requirements before entry. These states have invested heavily in the possibility to do this. However, in a context of labour migration, this ambition has been said to be is unrealistic, since it often is as a result of an individual studying on the territory or some other encounter on the territory that a business becomes aware of them and decides to hire them. The Committee on Employment and Social Affairs, in its opinion on the Commission proposal considered, in a similar vein, that it would be logical to also apply this directive to those wishing to stay within the ‘territory of a Member State for the purpose of highly qualified employment’ in order to promote for instance students having completed their higher education within the territory of a Member State staying within in the EU. The Committee of the Regions also found that the Blue Card should be granted to qualified workers applying already resident in a Member State.

The Commission proposed that the decision on a Blue Card should be taken after a maximum period of 30 days, which could be extended to 60 days in exceptional cases. Instead, Article 11(1) of the Directive now stipulates that a decision shall be taken within 90 days of the application being lodged. According to a recital 12 in the preamble, which differs from the original Commission proposal in this regard, this deadline of 90 days does not include the time required for the recognition of professional qualifications or the time required for issuing a visa. As noted by Wiesbrock, this means that applicants might have to wait significantly longer for a decision. Furthermore, the directive does not stipulate any consequences of failing to meet the deadline for taking a decision. Such consequences are instead to be deter-

\[204\] The principle of Community preference implies that an application will be rejected if the post could be filled by an EU citizen or third-country national already residing on the territory of the Member State.

\[205\] Article 6, Directive 2009/50/EC.

\[206\] Article 10(1) (2) (3) and (4), Directive 2009/50/EC.

\[207\] Guild, CEPS p. 6.

\[208\] Justification to amendment 18, opinion of the Committee on Employment and Social Affairs.


\[210\] Wiesbrock p. 290.
mined under national law. The speedy process of the Blue Card scheme, often referred to as a 'fast-track' procedure, is put forward as one of the schemes main attractions in the international competition for highly skilled workers. The final formulation of the directive in this regard, with a deadline prolonged to 90 days, with addition of the time required for the recognition of professional qualifications and issuing a visa as well as the lack of harmonization of consequences if the process is delayed most likely reduce the attractiveness for highly skilled third-country nationals. After the 90 days period has passed, applicants must be informed of the decision in writing, and shall be offered the opportunity to legally challenge a negative decision.\footnote{Article 11(1) and (3), Directive 2009/50/EC.}

\subsection*{2.4.4 The rights accorded by the Directive}

In terms of rights granted eligible third-country nationals, Article 7 provides for the issue of an EU Blue Card which shall entitle its holder to enter, re-enter and stay in the Member State issuing the permit and the rights contained in the Directive. They shall also receive 'every facility' to obtain the requisite visas.\footnote{Article 7(1) and (4), Directive 2009/50/EC.} The European Parliament suggested the insertion of a more detailed and strict provision on the Member States obligation to facilitate that Blue Card holders receive the necessary documentation.\footnote{Amendment 39, P6_TA(2008)0557} The suggestion initially came from The Committee on Employment and Social Affairs Committee, which found it to be important that Member States commit themselves to, after having decided to grant a third-country national a Blue Card, make sure that all the necessary documentation and visas are taken care of as speedily as possible in order to have the greatest advantage of the Blue Card system.\footnote{Justification to amendment 39, opinion of the Committee on Employment and Social Affairs.}

The Blue Card gives no right of passage through another Member State, which was foreseen in the Commission's proposal.\footnote{Article 8(4)(b, COM(2007) 637 final.} The Blue Card will initially be valid for a period of between one and four years, depending on a standard period of validity which is to be set by each member state. In case the employment contract covers a period that is shorter than one year, or any longer national standard period of validity, the Blue Card is valid for the period of the work contract plus three months.\footnote{Article 7(2), Directive 2009/50/EC.} The final directive differs notably from the Commission proposal in the regard. The proposal fixed the period of validity to two years (provided that this period was covered by the work contract) and the permit was then to be renewable for 'at least' two years. The way the directive is drawn up, periods of validity will differ between one to four years between the Member States. According to Wiesbrock, this is a factor that reduces the consistent application of the Blue Card scheme, and its transparency and attractiveness for skilled third-country nationals. Moreover, as opposed to the Commission proposal,\footnote{Article 8(2), COM(2007) 637 final.} the directive contains no possibility to renew the Blue Card after a certain period of time. This means that, after four years at the longest, highly skilled migrants will have to leave the Member State where they are residing. At this moment in time, they will fall short of meeting the five-year residence requirement for obtaining long-term residence status in the EU.\footnote{Article 4(1), Directive 2003/109/EC.} In extreme cases, the possible period of residence in a certain Member State will be no longer than one year, with no possibility of renewal.
The rights to work, reside and move between Member States

During the first two years of residence, the right to work is restricted to the exercise of highly qualified employment under the initial work contract, unless a change of employment has been authorised in writing by the Member State authorities, and the conditions for entry are fulfilled.\(^\text{219}\) Modifications that affect the conditions for admission must be communicated to the competent authorities and may be subject to prior authorisation in this are required by national law. The possibility for the Member State to introduce a requirement of prior authorisation is not attached to the existence of such a provision in national law at the moment of adoption or implementation of the Directive. As noted by the European Economic and Social Committee and the Centre for European Policy Studies, the requirement that the professional mobility of Blue Card holders shall be restricted during the first two years of legal residence is not in compliance with the international legal obligations under the European Convention on the legal status of migrant workers.\(^\text{220}\) Article 8 of this convention prohibits binding a worker to one employer or territory after the first year of legal residence.

After the initial two-year period, the Member States may grant third-country nationals equal treatment with own nationals as regards access to highly qualified employment.\(^\text{221}\) Equal treatment in this regard means that the person concerned can, in principle, take up any other highly qualified work without having to meet the entry requirements in terms of salary and qualifications. The original Commission proposal awarded third-country nationals with more than two years of residence a right to take up other highly qualified employment (provided that they complied with the notification procedures),\(^\text{222}\) whereas the final Directive leaves this possibility to the discretion of the Member States. There is also a change in wording, from a requirement of 'two years of legal residence', to 'two years of legal employment', which implies that periods of residence during which the migrant has been unemployed and searching for a new job, will no longer be taken into account. In the Member States that do not make use of the possibility to allow for free access to highly qualified employment, the Blue Card holders are still, after the first two years of residence, required to communicate any changes that affect the conditions for admission to the authorities of the Member State. Such changes are, however, no longer subject to prior authorisation.\(^\text{223}\)

There are further possible restrictions for the Member States as regards access to employment. Member States may impose limitations upon the employment of Blue Card holders in respect of positions that entail occasional involvement in the exercise of public authority and the safeguarding of the general interests of the State, or that are reserved to nationals or EU/EEA citizens according to national or Community law. Also, the principles of Community preference and the relevant provisions of Acts of Accession still apply.\(^\text{224}\) As further treated below, regarding withdrawal of a Blue Card, Article 13 of the Directive stipulates that 'unemployment in itself shall not constitute a reason for withdrawing an EU Blue Card, unless the period of unemployment exceeds three consecutive months, or it occurs more than once during the period of validity of an EU Blue Card'. This entails a right for third-country nationals to extend their period of stay in the Member State concerned in order to search for work, in the event of unemployment. However, this right has been restricted in comparison to the Com-

\(^{219}\) Article 12(1) jo. 12(2), Directive 2009/50/EC.

\(^{220}\) CES1210/2008 p. 112, Guild, CEPS p. 6.

\(^{221}\) Article 12(1), Directive 2009/50/EC.


\(^{223}\) Article 12(2), Directive 2009/50/EC.

\(^{224}\) Article 12(3)(4) and (5), Directive 2009/50/EC.
mission proposal, so that unemployment may only occur once during the period of validity of the permit.

In addition to the possibility of changing employer in the initial country of residence, the Directive stipulates after eighteen months of legal residence Blue Card holders can, under certain conditions, also take up highly qualified employment in a second member state in company with family members that where already part of the family unit in the first Member State. The conditions the directive sets out in this regard comprise the submission of an application for a Blue Card in this second Member State at the latest one month after entry to that state, or alternatively, whilst the person is still residing in the first Member State. The same conditions as those for initial entry are to be fulfilled in order to receive a Blue Card in the second Member State. The Directive gives the Member States the possibility to prohibit Blue Card holders from another Member State from taking up employment while the application is still pending. Since the deadline for dealing with applications in the second Member State is the same as for initial entry, a highly skilled worker may have to wait for up to 90 days before being able to take up employment in the second Member State. As Wiesbrock points out, this significantly reduces the attractiveness of making use of the free movement right. Moreover, if the applicant’s Blue Card issued by the first Member State expires during the waiting period, the second Member State is only allowed, but not required under the Directive, to issue the person a national temporary residence permit until a decision has been taken. During the period of time pending the decision on the issuing of a Blue Card, the Member State may also impose restrictions upon the equal treatment of the applicant, except as regards freedom of association and the recognition of diplomas. Member states further remain free to apply quotas on admission in accordance with Article 6 of the Directive. After having considered the application of the highly skilled worker, the authorities of the second state may naturally refuse to issue a Blue Card. In this case, the first Member State must re-admit the migrant, even if the Blue Card issued there has expired in the meantime, and the highly skilled worker would be able to search for new employment for a period of three months following the re-admission. However, the Blue Card holder, or his or her employer, may have to cover the costs related to the return and re-admission of the Blue Card holder and any family members.

All in all, the prospect of moving to another Member State involves great insecurities, considering their uncertain situation whilst awaiting a decision, and the possibility of having to cover return and re-admission costs if the decision is negative. Especially since a negative decision might be based on the existence of national quotas which are out of the control of the applicant, rather than conditions that pertains to the individual him or herself. However, there is, in the final Directive as opposed to in the Commission proposal, a possibility to apply from the first member state, and the residence status in the second Member State can therefore be confirmed before migrants change their place of residence. The Committee on Employment and Social Affairs suggested this amendment to the original proposal, with the motivation that travelling to a second Member State involves considerable upheaval and legal uncertainty for highly qualified people and their families, and that there must therefore always be provision for their residence status in the second Member State to be confirmed before they change their

225 Article 18(1)(2) and 18 (3), Directive 2009/50/EC.
226 Article 18 (4) and Article 11, Directive 2009/50/EC.
227 Wiesbrock p. 292.
228 Article 14 (4). Directive 2009/50/EC.
229 Article 18(4) jo. 13, Directive 2009/50/EC.
place of residence. The Committee on Civil Liberties, Justice and Home Affairs rapporteur stressed that the directive's European added value lies principally in the fact that, after the two-year waiting period, intra-European mobility would be ensured. The Committee of the Regions, in its opinion of the Commission proposal, raised concern that the mobility for employment purposes of highly qualified workers may be affected by the requirement to live in the first Member State for at least two years, and urged the Commission to seek alternative formulas to ensure labour mobility.

In order to encourage mobility of highly qualified workers within the EU, the Directive provides for a derogation from Directive 2003/109/EC on the status of long-term residents, allowing them to accumulate periods of residence in different Member States in order to fulfil the five-year residence requirements to obtain long-term residence status. They must, however, have been resident in the Member State issuing the long term residence permit for at least two years prior to submitting an application. Blue Card holders may also be absent from EU territory for a longer period than other third-country nationals, during the five years before long-term residence status is reached. The permissible periods of absence have been extended to up to 12 consecutive months, and 18 months in total, in contrast with six consecutive months and 10 months in total for other third-country nationals. Blue Card holders who are eligible for long-term residence status will receive a long-term residence permit with the remark 'former EU Blue Card holder. Former Blue Card holders will lose their status less easily than other long-term residents, in so that a will occur only after 24 months of absence from EU territory rather than 12 consecutive months. Even if these two latter derogations may be restricted by the Member States to cases where the third-country national has been absent from EU territory to exercise an economic activity in an employed or self-employed capacity, or to perform a voluntary service, or to study in his own country of origin, conditions for acquiring long-term residence status are more favourable for highly skilled migrants under the Blue Card Directive than those applicable to other migrants. However, as Wiesbrock points out, the value of this favourable treatment is doubtful because of the fact that a Blue Card will only have validity of between one and four years, with no possibility of renewal.

Right to equal treatment with EU nationals

The Directive grants Blue Card holders equal treatment with nationals of the host Member State in respect of a number of socio-economic rights. These rights include wages and other working conditions (including dismissal, health and safety at work), freedom of association, affiliation and membership in workers organisations, education and vocational training and recognition of diplomas, certificates and other professional qualifications. Further rights include certain branches of social security, transfer of pensions, access to goods and services and the supply of goods and services made available to the public (including housing and employment services) as well as free access to the territory of the member state. Equal treatment in respect of social assistance and tax benefits, which were included in the Commission

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230 Justification to amendment 43, opinion of the Committee on Employment and Social Affairs.
231 PE409.459 p. 32.
232 Article 15(2)(b) and 16(2), Directive 2009/50/EC.
233 Article 16(3), Directive 2009/50/EC.
234 Article 4(3) para. (1), Directive 2003/109/EC.
235 Article 16 (4) and 17, Directive 2009/50/EC and Article 9(1)(c) of Directive 2003/109/EC.
236 Wiesbrock p. 296.
237 Article 14(1), Directive 2009/50/EC.
are not guaranteed. Furthermore, there are several possibilities for the Member States to restrict equal treatment rights. Access to study grants and loans regarding secondary and higher education, and public proceedings for obtaining housing can be restricted. National law may also contain specific prerequisites for access to university and post-secondary education, and the right to equal treatment as regards educational and vocational training may be limited to persons who have their registered or usual place of residence in the Member State. The European Economic and Social Committee found that the rights and obligations for third-country nationals contained in the commission's proposal, based on equal treatment as regards salaries, working conditions, freedom of association, education and vocational training (which are the same in the final directive), represented a good starting point for immigration legislation which should be extended to all categories of immigrant workers. However, there are compliance issues with international legal obligations under the ILO 97 Convention and the European Convention on the legal status of migrant workers as these require equal treatment with own nationals in respect of accommodation and social security. The Member States that are parties to either of the conventions are obliged to go further than what is stipulated in the Directive and grant migrant workers equal rights to, not only certain, but all branches of social security, and to not make us of the possibility in the Directive to restrict access to public housing. There is thus a disposition for disparity of the rights granted to highly skilled workers in different Member States built into the directive.

Family reunification rights

The preamble to the Directive states that favourable conditions for family reunification and for access to work for spouses should be a fundamental element of the Directive which aims to attract highly qualified third-country workers. Blue Card holders thus enjoy more favourable rules with regard to family reunification than do other third-country nationals under Directive 2003/86/EC, by way of a number of derogations to this directive. Firstly, Blue Card holders will in all cases be able to reunite with their family members in their country of residence directly, rather than having to wait for a period of one or two years to become eligible for family reunification. Moreover, the family members will receive a residence permit with the same validity as the Blue Card holder and the requirement to have reasonable prospects of obtaining permanent residence do not apply to the Blue Card holders. Furthermore, the decision on family reunification has to be taken within six months, in contrast to the standard period of nine months. Article 15(2) of the Directive also precludes the application of so called 'integration abroad' requirements imposed upon potential family migrants while they are still in their country of origin. The Blue Card holders and their family members may, however, still be subject to integration requirements after the family reunification, whilst they are living in the Member State concerned. Additional advantages include the immediate access of spouses to the labour market and the possibility for family members to aggregate residence periods in different Member States in order to receive autonomous residence permits, and for the purpose of receiving long-term residence status in the Member State.

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238 Article 15(1)(f) and (h), COM(2007) 637 final.
239 Article 14(2), Directive 2009/50/EC.
241 Article 6, UNTS Vol 120, p. 71 and Articles 13 and 18, UNTS Vol 1496, p. 3.
242 Preamble recital 23, Directive 2009/50/EC.
243 Article 15(1) and (5), Directive 2009/50/EC.
245 According to article 15(6), Directive 2009/50/EC, and by way of derogation from the Article 14(2) second sent., Directive 2003/86/EC, Member States shall not apply any time limit in respect of access to the labour market.
246 Article 15(7) and 15(8), Directive 2009/50/EC.
'Family Members', to whom the derogations apply, are, in broad terms, defined as spouses and minor children by reference to Article 4(1) of Directive 2003/86/EC. The European Parliament requested that the definition should be extended as to include partners with whom the sponsor is in a duly attested stable long-term relationship or who are bound to the sponsor by a registered partnership and adult unmarried children of the sponsor or his or her spouse or partner, where they are objectively unable to provide for their own needs on account of their state of health. The Committee on Civil Liberties, Justice and Home Affairs rapporteur, who initially suggested the amendment, motivated it as follows: 'Excluding the persons referred to in Article 4.2(b) of Directive 2003/86/EC is highly undesirable from a humanitarian point of view. Excluding the persons referred to in Article 4.3 of Directive 2003/86/EC is discriminatory towards unmarried couples who are in a long-term and committed relationship.' Even if the scope of the family-reunification provisions can be questioned, the general view is positive. The European Economic and Social Committee agreed with the proposal that the Directive should make less restrictive provisions for family reunification than Directive 2003/86/EC and the Committee of the Regions was of the opinion that the entry conditions regarding members of the families of highly qualified workers could be a decisive element in recruiting highly qualified personnel. The CEPS found the family reunification provisions likely to be very contentious as they are substantially more favourable than those that apply to long-term resident third-country nationals.

The Directive accords Blue Card holders the right to take family members residing with them in a Member State with them when moving to a second Member State. For family members that were not part of the family unit constituted in the first Member State, the same conditions as for first entry apply, according to Article 19(6) of the Directive. This requires the fulfilment of certain conditions. Firstly, an application for a residence permit as a family member has to be submitted within one month after entering the territory of the second Member State. The Member States may also impose additional requirements, namely: presentation of the residence permit in the first Member State, valid travel documents, evidence of family relationships with the Blue Card holder, valid health insurance, evidence of sustainable accommodation for the whole family and stable and regular resources. These conditions should not be to problematic for highly skilled workers and their families to fulfil. However, the family members have to fulfil almost the same conditions as for initial entry when moving to a second Member State, which makes the prospect of moving freely within the Union less attractive. There is also a certain discrepancy with the European Convention on the legal status of migrant workers as this convention sets out the family reunification rules which do not include a sickness insurance requirement.

2.4.5 **Grounds for refusal, withdrawal or non-renewal**

Possible grounds for withdrawing, refusing or not renewing a Blue Card are contained in Articles 8 and 9. Some of them are mandatory; the most important being when the applicant

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247 Article 2 (f), Directive 2009/50/EC.
249 Justification to amendment 12, PE409.459.
250 CES1210/2008 p. 111.
251 OJ C 257/20 p. 25.
252 Guild, CEPS p. 6.
253 Article 19(1) (2) (3) and (4), Directive 2009/50/EC.
254 Wiesbrock p. 295.
255 See section 2.3.4.1.
does not, or no longer, fulfils the requirements of the Directive. Other situations in which a Blue Card must be withdrawn or refused is if there has been fraud or false information provided by the applicant in the process of obtaining the Blue Card. Withdrawal of or refusal to renew a Blue Card is also mandatory if the worker violates the restrictions imposed regarding changing his or her employer during the first two years of residence.

Finally, a Blue Card is withdrawn if the worker or does not find work within a period of three months after having lost his job, or if unemployment occurs more than once during the period of validity of an EU Blue Card. The allowed period of unemployment does not conform either ILO standards or the European Convention on the legal status of migrant workers: Article 9(4) of the European Convention on the legal status of migrant workers gives the worker at least five months to find a new job and the sets forth that labour migrants shall not face a withdrawal of their residence permit solely on the basis of the fact that they lost their employment. The European Economic and Social Committee suggested that the period should be prolonged to six months, not only in order to comply with international agreements, but also to make easier for workers to find new employment. The Centre for European Policy Studies similarly pointed out that there are good reasons for allowing a person a longer period to find work that the three months. The CEPS thus argued that the labour market can change rapidly. The individual who has made the decision to move with the whole family to a member state deserves fair treatment in the event that he or she becomes unemployed. According to the centre, the threat of expulsion so shortly after an individual becomes unemployed plays into the hands of unscrupulous employers as it gives the employer too strong a position in the immigration status of the individual after he or she moves to the state.

The above referred grounds where the only possible grounds for withdrawal, refusal or non-renewal in the original Commission proposal. During the Council negotiations, the member states where also given the possibility to apply a number of optional grounds for refusing a permit. Optional ground for refusal include the situation of the national labour market, and the outcome of a labour market test indicating that the position could be filled by national or Community manpower, or by lawfully resident third-country nationals or long-term residents from other Member States. Reasons for refusal may also include the application of quotas on the basis of Article 6. These optional grounds for refusal have been considered problematic, as they are extremely unpredictable for the applicant. Furthermore, Wiesbrock considers that they could easily be used by Member States in order to circumvent the entry of highly skilled migrants that otherwise fulfil all conditions for entry. A final possible ground for refusal is that the prospective employer has been sanctioned for undeclared or illegal employment or to ensure ethical recruitment in sectors suffering from a lack of qualified workers in the countries of origin.

There are also several optional grounds on the basis of which a Blue Card may be withdrawn or not renewed. The failure to notify a change of employment or conditions of admission may

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256 Article 8 (1) and 9(1)(a), Directive 2009/50/EC.
257 Article 9(1)(c) jo. Art 12(1), 12(2) and 13, Directive 2009/50/EC.
258 Article 13(1), Directive 2009/50/EC.
260 CES1210/2008 p. 112.
261 Guild, CEPS p. 6.
262 Article 8(2) and (3), Directive 2009/50/EC.
263 See Wiesbrock p. 296.
264 Wiesbrock p. 296.
265 Article 8(4) and (5), Directive 2009/50/EC.
lead to withdrawal. However, this shall not be the case if it can be proven that the communication did not reach the authorities for reasons beyond the control of the applicant. Additional grounds for withdrawal or non-renewal are: reasons of public policy, public security or public health; the lack of sufficient and regular resources to avoid reliance on social assistance (unless the applicant finds him- or herself within the three-month period of temporary unemployment); the failure to communicate as address and the application for social assistance after previous information by the member state authorities in this respect.\(^{266}\)

### 2.4.6 Implementation and reporting provisions

The Directive entered into force 19/06/2009 and the final date for transposition in the Member States is 19/06/2011. It shall not apply to the United Kingdom, Ireland or Denmark.

There is a duty on the member states to communicate to the Commission and the other Member States if legislative or regulatory measures are enacted in respect of Articles 6, 8(2) and 18(6). There is also a specific obligation for those Member States which make use of the provisions of Article 8(4) to reject applications for EU Blue Cards in order to ensure ethical recruitment in sectors suffering from a lack of qualified workers in the countries of origin to communicate a duly justified decision indicating the countries and sectors concerned.\(^{267}\)

There is also an obligation on the member states to communicate to the Commission statistics regarding the application of the directive. The statistics shall comprise, inter alia: the volumes of third-country nationals who have been granted an EU Blue Card and, as far as possible, volumes of third-country nationals whose EU Blue Card has been renewed or withdrawn, indicating their nationality and, as far as possible, their occupation. Statistics on admitted family members shall be communicated in the same manner, except as regards information on their occupation.\(^{268}\)

The Commission is to report to the European Parliament and Council every three years to the European Parliament and the Council on the application of the directive in the Member States shall propose any amendments that are necessary. The Commission shall, in particular, assess the relevance of the salary threshold referred to in the Directive and study its impact in terms of brain drain.\(^{269}\)

### 2.5 Address of brain drain issues

When the commission laid down its proposal for the Blue Card Directive, it received criticism from several on the basis that it would lead to a depletion of much needed members of developing countries workforces. Third countries, especially African countries but also the EU’s Eastern neighbours, thus expressed concern that the scheme would aggravate the problem of highly qualified workers in these countries leaving for Western Europe and North America, pursuing higher salaries, better working conditions and job security, rather than looking for a job at home or setting up a business that will strengthen the local economy.\(^{270}\) For instance, the program coordinator for migration of the Commission of the African Union stated that the scheme presented in the proposal would 'necessarily lead to brain drain'.\(^{271}\) Several African

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\(^{266}\) Article 9(2) and (3), Directive 2009/50/EC.

\(^{267}\) Article 20 (1), Directive 2009/50/EC.

\(^{268}\) Article 20 (2), Directive 2009/50/EC.

\(^{269}\) Article 21, Directive 2009/50/EC.

\(^{270}\) EurActiv Network, *An EU 'Blue Card' for high-skilled immigrants?*  

health ministers also spoke out against the proposal, claiming that it could have adverse effects on poor countries, particularly as concerns an already deteriorating health sector.\textsuperscript{272} The Committee of the Regions, in its opinions on the Blue Card proposal, was concerned to note that, according to the ILO, skilled worker admission programmes tend to intensify brain drain concerns.\textsuperscript{273} In spite, or because of, these concerns and critical views, the Blue Card Directive contains several elements aimed at preventing the detrimental effects of brain drain. When informing on the adopted Directive, the EU Institutions also points out that its aim is not only to enhance competitiveness within the context of the Lisbon strategy, but also to limit brain drain.\textsuperscript{274}

2.5.1 Circular migration

Even though the emphasis of the Blue Card on temporary work permits can be said to by large be motivated by the Member States concern of maintaining control over their labour markets, it can also find recourse in assertions of the benefits of ‘circular migration’.\textsuperscript{275} The Blue Card Directives’ potential detrimental brain drain effects may thus be limited by facilitating the circulation of highly skilled third-country workers to and from the EU and their countries of origin. In doing so, the institutions of the European Union asserts, the Blue Card’s circular migration scheme will serve as a means by which poor countries can garner developmental benefits from migration; this is how ‘[t]he proposal also complies with EU’s development policy’.\textsuperscript{276}

It is not only the temporary nature of the Blue Card and the provisions that puts limits on its duration that can promote circular migration. In fact, provisions promoting temporary visits to the country of origin may entail more beneficial circulation. If a migrant is allowed to return home for shorter periods of time during his residency abroad he or she may, for example be able to prepare for his return which could entail more positive impacts for both the migrant and the country of origin.\textsuperscript{277} The provisions of Article 16(3), extending the periods for which Blue Card holders may be absent from EU territory, during the five years before long-term residence status is reached, may be such very provisions that allow for beneficial circulation.

The right accorded to Blue Card holders to transfer their pensions to their country of origin\textsuperscript{278} is also something that might promote their return, or circulation, as well as benefit them and their country of origin upon return. The transfer of accumulated pension rights by circular migrants was also something the Committee of the Regions called on the Commission to strive to ensure, in its opinion on the Blue Card proposal,\textsuperscript{279} and the program coordinator for migration of the Commission of the African Union found it to be one of the positive aspects of the proposed Blue Card scheme.\textsuperscript{280}

It is also specified in the preamble of the Directive that mechanisms, guidelines and other tools to facilitate circular and temporary migration that would minimise negative and maxi-
mise positive impacts of highly skilled immigration on developing countries should be developed and implemented in order to turn 'brain drain' into 'brain gain'.

2.5.2 Ethical recruitment

In Recital 22 of the preamble of the Directive, it is specified that the member states should, in implementing the Directive, refrain from pursuing active recruitment in developing countries in sectors suffering from a lack of personnel. Furthermore, the recital sets out that ethical recruitment policies and principles applicable to public and private sector employers should be developed in key sectors, for example the health sector and the education sector. The stance in favour of ethical recruitment is followed up in Article 3 (4), stating that 'the Directive shall be without prejudice to any agreement between the Community and/or its Member States and third countries, that lists the professions which should not fall under this Directive in order to assure ethical recruitment, in sectors suffering from a lack of personnel, by protecting human resources in the developing countries which are signatories to these agreements.' In individual cases, Article 8(4) stipulates that an application for an EU Blue Card may be rejected in order to ensure ethical recruitment in sectors suffering from a lack of qualified workers in the countries of origin. The discourse of the preamble promoting ethical recruitment, the possibility of bilaterally excluding professions from the scope of the Directive for reasons of ethical recruitment as well as the explicit ground for refusal in individual cases are clear manifestations of a concern for limiting negative brain drain effects. However, none of these provisions bind the Member States in any way. The program coordinator for migration of the Commission of the African Union found it commendable that the Directive mentioned the promotion of ethical recruitment standards to limit active recruitments by Member States in developing countries, but went on to note that since the Directive does not stipulate specific any binding provisions in order to give effect to this spirit of ethnical recruitment policy, it was unlikely that anything would happen in this regard.

2.5.3 Reporting with a view to identify brain drain impacts.

Recital 24 of the preamble of the Directive sets out that reporting provisions should be provided for to monitor the implementation of this Directive, with a view to identifying and possibly counteracting its possible impacts in terms of brain drain in developing countries. The relevant data should be transmitted annually by the Member States to the Commission.

3 RESEARCH AND THEORIES ON THE IMPACTS OF SKILLED MIGRATION

In the previous chapter, it has been described how the Blue Card Directive has been criticized because of the negative impacts it could have on developing countries through the outflow of skilled migrants. However, the research and theories on such skilled migration is not unanimous as to the negative implications of skilled migration. Even though the literature departed from the idea that skilled migration leads to depletion of developing countries important resource of skilled workers, researchers have thereafter stressed positive impacts which might balance out the detrimental effects. This chapter will provide an outline of the theories on the impacts of skilled migration. Such theories will later be elaborated on when applied to the Malian context in chapter 4.

281 Recital 22 of the preamble, Directive 2009/50/EC.
282 Maru p. 6.
3.1 The absence of skilled workers

The discussions that skilled migration leads to depletion of developing countries most impor-
tant resource began in the 1960’s. An intuitive reflection is that the displacement of scarce
talent affects the country from which it stems negatively and the absence of a significant share
of a country's skilled work force and the subsequent loss for those remaining behind has been
the main concern regarding skilled migration and the literature on highly skilled migration has
focused largely on the adverse economical effects. The literature measures this loss for those
remaining behind in different ways, some defining it as the difference between the value emi-
greants would have added in the home economy and the income they would have received,
others measuring the harm by the public cost of emigrants' education. Importance is often
given to fiscal effects as skilled workers are typically net contributors to a country's fiscal
system.

Beside the direct effects of the absence of a skilled worker, some literature has forwarded the
importance of indirect effects, or 'Spillover effects' which occurs when people that have been
working with the skilled migrant no longer can learn from him or her. It has also been iter-
ated how the departure of even small numbers of certain workers with particular specialized
skills could lead to significant losses, and how skilled migration can have important institu-
tional effects as certain highly skilled workers are believed to be close to indispensable is
building domestic institutions to serve the public good and enhance public welfare. This lit-
erature argues that systems of higher education can be an institution on which the interna-
tional flows of human capital have a particularly devastating effect, thus crippling the well-
spring of future human capital. An important long-term consequence that has been for-
warded is the weakening of indigenous research focused on local problems. The research
conducted in developed countries, in which the migrated workers are partaking, are much less
geared to the problems afflicting developing countries.

However, the debate is diversified as regards the implication of the absence of skilled mi-
grants. It has been argued that economies in developing countries may have difficulty absor-
bining the human capital made available to it. Were the trained manpower not to migrate, the
investment made in their training would be lost to the economy anyway. Another argument
is that when some workers emigrate, their jobs are taken over by others, with no loss of total
output and even a gain for those remaining behind since they will receive the abandoned
jobs. Furthermore, it has been argued that migration will not create a loss in the cases
where the skilled workers would not, even if they remained in their country of birth, be will-
ing to work in a sector where human capital is lacking. As an example, it has forwarded that if
a country has a lack of doctors in rural areas, and the doctors migrating are only willing to
work in an urban setting, their migration does not affect the lack of rural medical care.

284 Page & Plaza.
285 Kapur & McHale, Give us your best and brightest: the global hunt for talent and its impact on the developing
world pp. 87-88.
286 Kapur & McHale, Give us your best and brightest p. 91.
288 Kapur & McHale, Give us your best and brightest p. 95-98.
289 Kapur & McHale, Give us your best and brightest p. 104-105.
291 Kapur & McHale, Give us your best and brightest pp. 87-88.
292 Clemens, Skill Flow: A Fundamental Reconsideration of Skilled Worker Mobility and Development pp. 15-
16.
3.2 The prospect of migration

The initial idea that the impact of skilled migration is largely negative has later been challenged by theories that the prospect of migration raises the level of education in the countries of origin. It is argued that a prospect or an option of emigration affects the decision-making of people in sending countries, whether or not they actually end up emigrating. In particular, the prospect of emigration increases the inducement to get more education. Stark thus argues that in a closed economy, or a small open economy with no migration, there is a tendency to under invest in human capital. This tendency is reduced when emigration becomes an option and, despite some losses through migration, the overall average level of human capital in the economy rises. People respond to the possibility of migration by raising their investment in human capital creation. However, not all who have increased their capital will either want to migrate or be accepted for migration, leaving the economy with a higher level of human capital than before. One can also hypothesize that people opt for certain types of education specifically to increase their probabilities of migration. If the education attained is adapted to the economies of foreign destinations rather than the domestic economy, the sending countries may have difficulty absorbing the human capital made available to it. Important questions remain about the applicability of these theories and whether they might apply in some situations but not in others. More generally, there is broad evidence across countries that unless outflows of skilled workers are extremely high, countries with larger flows of skilled workers abroad tend to have more skilled workers at home than those with less migration of skilled workers, but this need not apply in all settings.

3.3 The role of the diaspora

The literature is much occupied with the collective potential of migrants to be an asset and, occasionally, a liability for their country's development during their time abroad. When people migrate from their country of birth, they do not become foreigners to the society they leave. Migrants maintain connections with their families and with other people in their home country. These migrants form what is called a diaspora. In many ways, the members of a country's diaspora have a very different relationship with those remaining behind than others in their destination countries have. The literature thus describes how the diaspora affects the sending country both directly, through its members' interaction and transactions with those remaining behind, and indirectly, through connecting their country of origin to international networks. The direct effects can take the form of investment and remittances funded by the financial capital the migrant has accumulated abroad. Remittances from expatriates constitute large international flows of money, often representing important resources for the countries of origin. There is literature that argues that remittances increase with the level of skills. Since skilled migrants typically earn more than workers with lower education, they will therefore

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293 Beine, Docquier, Rapoport, *Brain drain and Human Capital Formation in Developing Countries: Winners and Losers* pp. 631–632
295 Stark pp. 16–17.
296 Skeldon p. 19.
297 Beine, Docquier, Rapoport.
298 ‘Unrequited transfers’, meaning primarily money that migrants send to family and friends without attaching any claims to it (in contrast to other financial flows such as debt or equity), see Kapur & McHale p. 132.
send more money to those at home. However, others argue that skills and educational level have other connections to the flow of remittances which makes the overall effect negative. It is thus argued that skilled workers have less of an incentive to remit since they may come from more educated and wealthy families. Also, they are more likely to spend a longer period of time abroad, and to reunite with their close family in the host country. The latter is either because they are more willing to do so or because they face lesser constraints. Both factors weaken their ties with the home country. Regarding the effects of remittances, the literature has found that remittances can have positive effects on the educational attainment of children from households with migrant members. Some have found that children in households with a migrant family member completed more years of schooling and others that in households with at least one family member living abroad, remittances significantly contributed to a reduction in the probability of children leaving school. However, whether or not remittances have an overall positive effect on society is debated. According to the UNDP, remittances are essentially spent on consumption of daily goods and seldom on long-term investment. It is often argued that such daily consumption does not promote development.

The human capital the migrant has acquired abroad in the form of education, training and work experience can also affect the sending country through flows of new knowledge, skills, ideas, attitudes and information. Furthermore, the migrants acquire a social capital abroad, for example through building and nurturing interpersonal relations. Their professional and personal contacts as well as familiarity with norms, customs and values in their country of residence can also prove very useful and productive for the sending country. Indirectly, the members of a diaspora can help connect the sending country to international networks providing a basis for, inter alia, joint research and project funding.

Not all diasporas are equally effective in supporting development, even after allowing for differences in size. The literature has identified a number of factors that determine the effectiveness of a diaspora. These factors can be divided into two broad groups: the characteristics of the diaspora, and the conditions and policies of the home country. The factors pertaining to the country of origin, such as the reasons for leaving and the conditions and policies regarding migration are of vital importance to the diaspora effectiveness but they will not be treated in this thesis since they are not likely to be affected by the Blue Card system. The personal characteristics of the migrants, such as their level of skills, risk awareness and dynamism naturally affects the role the diaspora plays to the country of origin. Kapur and McHale argue that the characteristics of the diaspora are what the impact depends foremost on. The length of time during which a diaspora community has been abroad is also said to be important. Kapur and McHale write: 'the greater the vintage of a diaspora, the less intimate are its links with its country of origin'. In this context, the literature is most concerned about the weak links between second- and third- generation migrants and the country of origin. Furthermore, a diasporas' ability to affect its country of origin is said to vary positively with its own success. Since this is a function both of the success of the diaspora community within the destination

300 See for example Faini, Remittances and the Brain drain, and Rempel & Lobdel, The role of urban-to-rural remittances in rural development.
301 Faini p. 3.
302 Rapoport & Doquier, The Economics of Migrants’ Remittances.
303 Hanson & Woodruff, Emigration and educational attainment in Mexico, Mimeo.
305 UNDP 2009.
307 Kapur & McHale, Give us your best and brightest p. 119.
country and of the salience of the destination country itself, the factor of where skilled migrants go is important. Finally, the propensity of the diaspora to connect to, and form networks in their counties of residence has also been found to be important for its effectiveness.\textsuperscript{309}

3.4 The role of the returning migrant and circular migration

The fact that many skilled migrants return to their country of origin, either permanently or for shorter periods of time, is an important factor in the debate on highly skilled migration. It is increasingly argued that the negative effects from the absence of migrants on those remaining behind in their country of origin must be balanced against the positive impacts upon return.\textsuperscript{310} The literature argues that the time spent away can allow migrants to accumulate savings, skills, firsthand experience of well-functioning institutions and raised expectations.\textsuperscript{311} If such human capital is accumulated beyond what would have been possible if the migrants had never left it is argued that the time spent abroad can be turned to the advantage of the home country.\textsuperscript{312} The literature further finds that the nature of these impacts can depend on the reasons why migrants might return and what types that are returning. The numbers of migrants that are returning is also important – the greater numbers of returnees, the greater are their impacts. The literature puts forward different theories about which groups of migrants that are the most likely to return. Some suggest that returnees are negatively selected, that it is the least successful migrants, as measured by earnings and labour market attachment that tend to return. Such a negative selection could diminish the positive impacts of the returnees. Another distinction that is made is between returns stemming from 'mistakes' and returns stemming from 'plans.'\textsuperscript{313}

3.5 Sociopolitical impacts

Finally, researchers are concerned with the important sociopolitical dimension, which cut through all aspects of skilled migration. The literature argues that the absence of human capital may have a political effect, reducing the support for democracy, the exercise of democratic powers and the driving force for development and well-being. Because developing countries have a limited middle class to begin with, when this segment leaves, democratic consolidation may become more difficult.\textsuperscript{314}

On the other hand, there is literature that argues that highly skilled migrants living abroad often play an important and positive role in the societal and political debate and the development of a civil society in countries of origin.\textsuperscript{315} In some countries (return) migrants who have studied and worked abroad are said to have played an important role in reforming domestic policies, in many cases, migrants can effect such positive change in governance institutions personally\textsuperscript{316}, in many cases at the very top of the countries government\textsuperscript{317}.

\textsuperscript{309} Kapur & McHale, Give us your best and brightest pp. 119-120, 125-126.
\textsuperscript{310} Kapur & McHale, Give us your best and brightest p. 163.
\textsuperscript{311} Clemens p. 25.
\textsuperscript{312} For this argument, see Kapur & McHale, Give us your best and brightest p. 163.
\textsuperscript{313} Kapur & McHale, Give us your best and brightest p. 163 and 176.
\textsuperscript{314} Kapur & McHale, Give us your best and brightest pp. 108-109 and Tanner, Brain drain and beyond: returns and remittances of highly skilled migrants p. 3.
\textsuperscript{315} de Haas p. 1248.
\textsuperscript{316} de Haas p. 1247
\textsuperscript{317} Clemens pp. 25-26.
Some literature also raise concern that political activism among diasporas can have a negative side, where long-distance nationalism amplifies political tensions and conflict in the country of origin.\textsuperscript{318}

As regards the information and ideas stemming from skilled migration, Kapur and McHale point out that the cumulative effect of millions of conversations—akin to filling a pond one drop at a time—is likely to be substantial. On the one hand, the information flows resulting from skilled migration convey knowledge about things to be done and how to do them. On the other hand, they change expectations of and preferences for what is and is not acceptable, whether in regard to standards of service, the role of the state, or the behaviour of politicians.\textsuperscript{319}

4 \hspace{1em} THE IMPACTS OF HIGHLY SKILLED MIGRATION IN MALI

4.1 An overview on Mali

Mali is a land-locked country in the western Sahel with a population of approximately 14 million. Recurrent droughts engender famine and have provoked migration throughout the history of the country. Today, Mali continues to be buffeted by internal and external forces that propel - or compel - migration. Underpinning most migrations worldwide are economic factors, and there is no doubt that Mali has very strong economic push factors. Mali is one of the world’s poorest countries and is ranked 160 out of 169 on UNDP’s Human Development Index for 2010.\textsuperscript{320} 77\% of the population lives on less than two dollars a day and over half the population lives in what is defined as extreme poverty.\textsuperscript{321} There is also strong demographic pressure that buffets migration.\textsuperscript{322} Regarding migration of highly educated workers, political instability in the 1960s and the World Bank Structural Adjustment Program in the 1980s promoted waves of skilled migration.\textsuperscript{323} Today, Mali is a politically stable democracy, and freedom of expression is generally ensured.\textsuperscript{324} However, migration of the highly skilled is still propelled by socio-economic factors such as low salary levels, unemployment, and inadaptation of higher education to the needs of the labour market, as well as widespread corruption and an unfavourable environment for intellectual development.\textsuperscript{325}

4.2 Malian migration patterns

'Even if you go to the moon, you will find a Malian there' – Malian saying

Mali is a country characterized by large and persistent emigration movements involving all social classes.\textsuperscript{326} Official statistics on the size and nature of Malian migration are notoriously inaccurate and incomplete. Probably, the only reliable source on Malians abroad is the Re-

\hspace{-1em}\textsuperscript{318} Kapur & McHale, \textit{Give us your best and brightest} p. 120.
\hspace{-1em}\textsuperscript{319} Kapur & McHale, \textit{Give us your best and brightest} p. 124
\hspace{-1em}\textsuperscript{321} UNDP 2009 p. 178.
\hspace{-1em}\textsuperscript{323} UNESCO, \textit{Transformer la Fuite des Compétences en Gain: Le Cas du Mali} p. 11.
\hspace{-1em}\textsuperscript{324} Swedish Ministry for Foreign Affairs, \textit{Human Rights in Mali 2007} p. 4.
\hspace{-1em}\textsuperscript{325} UNESCO p. 11.
censitement Administratif à Caractère Electoral (RACE), carried out by the Malian Ministry of Territorial Administration. According to RACE, there were, in 2001, 924,497 Malians living abroad, or 8.4% of the Malian resident population. There are reasons to believe that the actual stock of Malians living abroad is significantly larger than this. More or less doubtful higher figures spanning from 3.8 million in 2005 to 4 million are figuring in the debate.

The table below provides an overview on Malian migration patterns, indicating the number of Malians living abroad and migration rates, and with specific numbers on migrants with a tertiary education and Malians pursuing tertiary education abroad. In the right-most column, the most common countries of residence are listed, in descending order.

### Estimations on Malian-born residing abroad

<table>
<thead>
<tr>
<th>Types of migrants</th>
<th>Number residing abroad</th>
<th>Migration rate (residing abroad/residing in Mali)</th>
<th>Most common countries of residence</th>
</tr>
</thead>
<tbody>
<tr>
<td>All education levels</td>
<td>927,497&lt;sup&gt;1&lt;/sup&gt;</td>
<td>8.4%&lt;sup&gt;1&lt;/sup&gt;</td>
<td>Ivory Coast, Soudan, Senegal, Niger, Ghana, Burkina Faso. In Europe: France, Spain, Italy&lt;sup&gt;3&lt;/sup&gt;</td>
</tr>
<tr>
<td>Tertiary educated (skilled)</td>
<td>3,853&lt;sup&gt;4&lt;/sup&gt;</td>
<td>15%&lt;sup&gt;5&lt;/sup&gt;</td>
<td>France, Senegal, USA, Ivory Coast, Tunisia, Canada, Togo, Germany, Burkina Faso&lt;sup&gt;6&lt;/sup&gt;</td>
</tr>
<tr>
<td>Students pursuing tertiary education abroad</td>
<td>3,203&lt;sup&gt;7&lt;/sup&gt;</td>
<td>10%&lt;sup&gt;8&lt;/sup&gt;</td>
<td>France, USA, Niger, Canada, Saudi Arabia, Russia, Cuba, Germany&lt;sup&gt;9&lt;/sup&gt;</td>
</tr>
</tbody>
</table>

Sources: 1. RACE. The figure is probably a significant underestimation. 2. CERPOD, RACE, DGME. 3. Eurostat Statistics Database and OECD StatExtracts Database. 4. Docquier & Marfouk, appendix, Table A.2-2. The figure is probably a significant underestimation. 5. Docquier & Marfouk, appendix, Table A.1-2. The figure is probably a significant underestimation. 6. MMEIA, Répertoire de la Diaspora Intellectuelle et Scientifique du Mali. 7. In 2008, UNESCO Institute for Statistics online Database 8. Ballo, IOM p. 86. 9. UNESCO Institute for Statistics online Database. Statistics not available from several neighbouring countries.

Africa is the principal destination for Malian migrants. According to the statistics available between 84% and 95% of all expatriated Malians are residing there. Most migrants go to Mali's neighbouring countries in North and West Africa, the Ivory Coast being by far the preferred country of destination hosting over half of all Malians abroad. Apart from Africa,
Europe receives the largest stock of international migrants. An estimate using the statistics of Eurostat, the statistical office of the European Union, indicate that approximately 80,000 Malians are residing in Europe. However, there could be a clandestine migrant population largely exceeding this estimation, possibly amounting to several hundreds of thousands. The vast majority of Malians in Europe are living in France. According to the RACE, France was hosting 94.3% of Malians residing in Europe, or 2.4% of all Malians abroad. Spain is hosting the second largest population of Malian migrants followed by Italy and Germany, hosting significantly smaller populations of Malian migrants.

Recurrent droughts engendered temporary relocations both inside the country and across the borders to neighbouring countries. Despite data on flows being old and not being distributed according to nationality, it is worth noting that both outward and inward movements between Mali and neighbouring western African countries – especially the Ivory Coast – are intense. Given the low foreign population in Mali, this phenomenon probably mirrors the high relevance of circular migration for Malians. Malian emigration differs according to the choice of destination countries and the type of move envisaged. Circular and temporary migration seems to prevail among outward flows to neighbouring countries whereas long-term emigration prevails in France.

4.2.1 Highly skilled migration from Mali
The statistics available do not allow to determine the rate of highly skilled migration from Mali with any accuracy. Many institutions consider that the lack of harmonized international data on migration by country of origin and education level is a major problem for monitoring the scope of skilled migration from developing areas. Although the great majority of migrants have only a primary educational level, the phenomenon of highly skilled migration has been estimated to be important and growing. In 2000, 15% of the total number of highly skilled workers born in Mali was residing in OECD countries, according to estimates made by Docquier and Marfouk. This made the country's skilled migration rate slightly higher than in Africa as a whole. It was however well below average among the neighbouring western African countries. Western Africa is one of the regions that are the most affected by skilled migration in the world. The estimate of a 15% rate of highly skilled migration may be on the low side. Firstly, this is because it only includes migrants residing in OECD countries. Even though the skill level of immigrants in non-OECD countries is expected by Docquier and Marfouk to be very low, a directory of highly skilled Malians residing abroad prepared by the Ministry of Expatriated Malians and African Integration (MMEIA) indicates that a significant number of skilled Malians are living in non-OECD neighbouring countries.

332 UNDP 2009 p.150.
336 Docquier & Marfouk p 5.
338 Ballo, IOM p 86.
339 Docquier & Marfouk p. 20 and appendix, Table A.1-2.
341 Ministère des Maliens de l’Extérieur et de l’Intégration Africaine (MMEIA), Répertoire de la Diaspora Intellectuelle et Scientifique du Mali. The directory is not of official character. It has been prepared by collecting lists from Malian embassies abroad and associations of intellectuals.
Secondly, the estimate excludes a large number of students who temporarily emigrate to pursue tertiary education. Such students represent an important group of skilled Malian migrants.

The occupational profile of Malian migrants varies by destination area. For example, while emigrants on the Ivory Coast tend to be found in the agricultural sector and the retail market, in France they are mainly employed in services to enterprises, education, health and social services. Most skilled Malian migrants are probably living in OECD countries. The vast majority of those residing in OECD countries are residing in Europe. The largest share of highly skilled migrants is likely living in France. The directory of skilled Malians living abroad prepared by the MMEIA indicated that after France, the most preferred destination countries are: Senegal, USA, Ivory Coast, Tunisia, Canada, Togo, Germany and Burkina Faso. There are signs of a recent development in migration patterns making North America a more and more preferred destination. It also seems that the numbers of highly skilled are increasing. In 2000, the share of highly tertiary educated Malians living in OECD countries had nearly doubled since 1990, and the number of highly skilled Malians living in Europe had nearly tripled.

Students who emigrate to pursue tertiary education abroad represent a significant group of skilled Malian migrants. An indication of their importance can be found through examining the interest for migration among the persons that have been interviewed in the present study. While professionally active Malians interviewed in Bamako showed a relatively weak interest of migrating, the interest manifested by University students was very strong. Twelve out of thirteen university students stated that they were interested in migrating after they had finished their studies at the University of Bamako. Out of these twelve, ten expressed a strong wish for migration and six of them where actively planning or preparing their migration, for example through getting the grades needed to obtain a scholarship for studies abroad, or through contacts with development cooperation projects abroad. Two students stated that they could envisage migrating, but that it was not something they had given much thought. According to the UNESCO Institute for Statistics, 3,203 Malians were studying abroad in 2008. These figures include studies abroad at all levels. Even if it is likely that the vast

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342 Docquier & Marfouk p. 12.
343 UNESCO p. 10.
346 2985 out of a total of 3853 in all OECD countries, Docquier & Marfouk, appendix, table A.2-2.
347 According to a study on skilled migration from Mali commissioned by UNESCO in 2005, more than 2400 skilled Malians where probably residing in France in 1999, UNESCO p. 10. Also, out of the 157 Malian born physicians living abroad around the year 2000, 138 where living in France, Clemens & Pettersson, New data on African health professionals abroad p. 22.
348 The directory counted the following numbers of skilled migrants: France: 115, USA: 51, Ivory Coast, 49, Tunisia 42, Canada 39, Togo 30, Germany and Burkina Faso: 27, MMEIA, Répertoire de la Diaspora Intellectuelle et Scientifique du Mali.
349 UNESCO p. 7.
350 Docquier & Marfouk, appendix, table A.2-2.
351 None stated that they would migrate on a permanent basis. 7 out of 9 stated that they could go abroad for shorter periods of time, between 15 days and 6 months.
353 Ballo, IOM p. 86.
majority of these studies are at a tertiary level, they can only give an indication as to the emigration rates of Malians pursuing tertiary education. According to the National Direction of Higher Education, this direction distributes approximately 200 scholarships from foreign countries for university studies there each year. The scholarships are to be granted according to educational attainment. The direction estimated that, in addition to these students, over 1000 students go abroad each year using private funding. The main destination is in all likelihood France.\textsuperscript{355} In fact, between 1965 and 1983 many of the best recent graduates to French universities, through a cooperation program between the Malian and French governments. Within this program, fifty students moved to France annually.\textsuperscript{356} After France, the Statistics of The UNESCO Database indicate that the most Malians studying abroad are residing in USA, Niger, Canada, Saudi Arabia, Russia, Cuba and Germany.\textsuperscript{357} However, there were no statistics available from many of Mali’s neighbouring countries, such as Senegal and the Ivory Coast, where it can be suspected that many Malians are studying. The numbers of students going abroad is rising.\textsuperscript{358} According to the UNESCO Database, the number of Malian students abroad had more than doubled between 1999 and 2008.\textsuperscript{359}

There are no reliable data on the return rates of skilled migrants from Mali. However, some indications on this subject, mainly regarding students abroad, are presented in the following. According to a survey among students departing within the French-Malian program approximately 50\% of these students stayed abroad after completing their education.\textsuperscript{360} At the Section for Equivalence of Diplomas at the National Direction of Higher Education, which takes part in the handling of validation of foreign diploma, I learned that since 2008, a total of 772 diplomas had been validated. A majority of these diplomas were from tertiary education. Since validating foreign diplomas is compulsory in order to be employed in the public sector, these figures can serve as an indication of the return rate of migrant students that wishes to take up work in that sector. During the three year period prior to 2008, approximately 3,600 students left Mali for studies abroad, and approximately 772 returned and where available for public employment. This makes for a return rate of 21\%. Naturally, significant numbers may return without requesting validation of their diplomas, which limits the relevance of the estimation. However, as regards the staffing possibilities for University of Bamako, the estimation is highly relevant.

Furthermore, the Malian government formerly had a program in place that provided public employees with a scholarship and leave of absence for education abroad for a limited period of time. After learning of the potential drainage of its workforce through this training abroad, the government conducted a survey on the return rates of those that had left within the program. This survey showed that, out of the 367 employees that had been granted leave of absence, 86 had not returned to Mali after the end of the leave of absence.\textsuperscript{361} Accordingly, even within this organized project of short-term migration, and where the migrant has an employment in Mali, a significant number did not return. This, together with the information from the National Direction of Higher Education, implies that a significant share of Malians going

\textsuperscript{355} In 2008, 1766 Malians where studying in France, UNESCO Institute for Statistics online Database.
\textsuperscript{356} 15-20 of the students graduating first in their classes received a French scholarship and the rest were funded by the Malian government.
\textsuperscript{358} Ballo, OIM p. 86.
\textsuperscript{359} UNESCO Institute for Statistics online Database.
\textsuperscript{360} UNESCO p. 10.
\textsuperscript{361} UNESCO p. 10f.
abroad to pursue tertiary Education chooses not to return. OIM also points out that a good part of the migrated students choose to stay and work abroad.\footnote{Ballo, IOM p. 86.}

### 4.3 Research on the impacts of skilled migration in Mali

Beine, Docquier and Rapoport have found that Mali is experiencing a beneficial brain drain, or in other words, migration of skilled workers. Using data on emigration rates by education level, they have examined the impact of brain drain migration on human capital formation in developing countries in an economic model.\footnote{Beine, Docquier, Rapoport p. 631.} They found evidence that skilled migration prospects have a positive effect on gross (pre-migration) human capital formation in a number of countries, including Mali. That is to say, the prospect of pursuing skilled migration raises the number of people that acquire tertiary education.\footnote{Possibly through raising the expected return to human capital and fostering investment in education at home, Beine, Docquier, Rapoport pp. 643 and 648.} Also after this positive effect has been balanced against the outflow of skills through the actual migration, it is concluded that Mali is experiencing a positive brain drain. Mali is thus benefiting from a 'net positive effect' of the migration of highly skilled workers on the labour force, in terms of numbers of skilled workers and on the proportion of high skill workers residing in their home country, even if this effect is small.\footnote{Beine, Docquier, Rapoport pp. 643 and 646.} Mali differs in this way from many other countries in Africa. Skilled migration appears to be detrimental in Sub-Saharan Africa, as one of the regions that is the most affected by the negative effects of the brain drain. However, six neighbouring countries in western Africa are also benefiting from skilled migration.\footnote{Beine, Docquier, Rapoport pp. 637 and 644-646.} According to the study, it appears that the countries that are experiencing a beneficial brain drain generally combine low levels of human capital and low skilled migration rates, whereas 'losing' countries are typically characterised by high skilled migration rates (above 20%) and/or high proportions of highly educated in the adult population (above 5%).\footnote{Beine, Docquier, Rapoport, P. 644.} Mali has a skilled migration rate of 15%, should this rise with 5 % or so the effects of the migration would thus turn to the negative.

In contrast to the findings Beine, Docquier and Rapoport, a study commissioned by UNESCO in 2005 showed that Malian themselves regarded the exodus of skilled workers as a serious problem.\footnote{84% respondents were of this opinion, UNESCO p. 6.} Education was found to be the sector that was the most affected, followed by the health and IT sectors as well as mines and industries. Rural development, the environment sector, the administration, the judicial system and diplomacy where also found to be affected, but to a lesser extent.\footnote{UNESCO pp. 6 and 18.} According to the study, the exodus of skilled workers had resulted in a lack of expertise in the most affected areas. It was iterated that in the higher educational system, there was a permanent lack of teachers as regards quality and quantity. The lack of expertise had, in term, lead to a drop of quality in the educational sector as a whole. Furthermore, the study found that the exodus of skilled workers had brought on a general dysfunction in almost all sectors because of a lack of criticism and sense of urgency as well as aggravated corruption and nepotism. It had also lead to Mali significantly lagging behind in IT development.\footnote{UNESCO p. 12.}
4.4 The impacts on the Malian system for higher education

4.4.1 The structure of the Malian system for higher education

The Malian system for higher education has historically been composed of 'Grands Écoles'. Three of them still provide more professionally directed education of teachers at primary and secondary level, engineers and within rural agriculture among other areas. There is also a growing sector of private higher education. But the absolute majority of higher education in the country is carried out at its only public University, the University of Bamako. In 2008, the University had a student body of over 60,000. The University of Bamako is situated in the heart of the capital. Most faculties, and the campus, lies on what people in Bamako refers to as 'the hill of knowledge', near the southern bank of the river Niger which flows through the centre of the city. The teaching is carried out at five faculties and two university institutes. The only education at PhD level in the country is carried out at the University's Higher Institute for Education and Applied Research. PhD education is available in approximately 10 areas.

4.4.2 The absence of skilled workers

The concern for aggravated brain drain were young intellectual and elites in developing countries leave for Western Europe, rather than staying and strengthening the local economy at home, made third countries, especially African countries, criticize the commission's proposal for the Blue Card Directive. In the following sections, it is investigated whether the University of Bamako is affected by such brain drain and if so, what this entails for those remaining behind at the University.

As the literature on highly skilled migration points out, migration is only plausible of having a negative effect if there is use for the concerned academics in the domestic economy. However, all of the teachers and students interviewed stated that there is a lack of human resources at the University of Bamako. Approximately seven out of ten told me about this lack spontaneously when talking about their situation at the University, or about challenges the University is facing. Others stated that there is a lack of human resources when they were explicitly asked about the sufficiency of human resources at the University. According to the most recent statistics available to the author, in 2008 the University had 62,519 students and 682 teachers. Only 167 of the teachers were professors or 'senior lecturers', who are at least officially the only teachers allowed holding lectures. These figures support the statements of the teachers and students that there is a crucial lack of human resources at the University. The

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371 École Normale Supérieure, École Nationale d’Ingénieurs and Institut Polytechnique Rural de Formation et de Recherche Appliquée.
372 A second public university is to be constructed in the city of Katibougou. The pressure of rising student numbers is often mentioned by respondents as one of the main reasons for constructing the new university.
373 The Faculty of Science and Technical subjects, the Faculty of Literature, Language, Art, and Social Studies, the Faculty of Medicine, Pharmacy and Odonto-Stomatology, the Faculty of Law and Political Sciences and the Faculty of Economical Sciences and Management.
374 The Higher Institute for Education and Applied Research and the University Institute of Management.
376 EurActiv Network, An EU 'Blue Card' for high-skilled immigrants?
377 As described in section 1.3, these consequences are foremost investigated from a sociological perspective. However, one can suspect that an investigation made according to at least some of the economical models mentioned in section 3.1 would result in the finding of a significant loss for those remaining behind in Mali. Facts in support of this are the low salaries of university professors in Mali and the fact that public education is free of charge and even subsidized by the government at university level.
378 Skeldon p. 19.
379 See section 3.1.
lack of resources can be divided into two parts: lack of personnel and lack of qualifications among the existing personnel. Almost nine out of ten students and teachers interviewed stated that the number of teachers is too low. Fewer, almost four out of ten voiced a concern that there is a lack of competence or qualification among the existing personnel. Interestingly enough, the percentage was higher among the students than among the teachers. The principal told me that the strengthening of human resources at the University was one of his main priorities as there is an insufficiency in both numbers and qualifications. This view was shared by the official in charge of the section for human resources at the University administration. Accordingly, there is a manifest lack of human capital in both numbers and qualifications at the University of Bamako.

Another relevant factor is whether the institutions in need of human capital are recruiting or not. If they are not, for example due to financial constraints, the human capital will not come to use in the society even if there is a need for it. For a number of years, the University of Bamako did not recruit any new teachers. But over the last two years, the governmental organ responsible for staffing the University has tried to recruit a substantial number of professors. Therefore, the corresponding qualifications would not be lost to the Malian society if it were available. However, it should here be noted that the factor may be a relevant to the Malian society in general as unemployment is high in many sectors and among workers of all levels of education.  

For migration to have an impact the human capital needed has to exist among the migrants. The fact that the TOKTEN program has identified Malians living abroad who are qualified to teach at the University of Bamako and that a number of these migrants have been requested to come to the University to teach shows that at least some of the human capital needed exist among skilled migrants. Also, all of the University students I interviewed whose studies would, if pursued to postgraduate or PhD level, qualify them for work as teachers, stated that they were interested in, or could envisage migrating. This implies that human capital needed at the University of Bamako will continue to exist among Malian migrants.

But the facts that workers with the needed human capital are being sought after and that this capital exist among migrants does not by themselves necessarily mean that the migration creates a loss. Some literature tend to view the economy in terms of a 'lump of labour', arguing that even if the human capital of skilled workers leaving the country would have been absorbed in the economy if they had stayed, their migration does not create a loss. In the extreme, people of this persuasion assume that there is a fixed amount of work to be done, so that when some workers emigrate, their jobs are taken over by others, with no loss of total output and even a gain for those remaining behind since they will receive the abandoned jobs. However, all the vacancies at the University of Bamako have not been filled. Since 2008, the governmental organ responsible for staffing the University has tried to recruit 250 teachers. In the first round of recruitment, 77 teachers were employed and after repeated additional rounds of recruitments, in June 2010, 73 positions still remained vacant. It should be noted that the number of qualified teachers needed by the University widely exceeds the positions offered in these rounds of recruiting. Another interesting fact regarding the educational sector as a whole is that statistics regarding the Malian labour market in 2007 show that al-

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381 See section 4.4.4.2.
though the overall unemployment rate was rising, many positions offered within the education sector remained vacant at the end of the year. Malian employers are thus trying to hire qualified teachers without succeeding, rendering the above related argument irrelevant to the case of the University of Bamako. It should, however, be noted that this argument too might be relevant for the Malian economy as a whole.

But does this mean that the human capital needed is not present in Mali? When asked about the reasons for the lack of human resources at the University of Bamako, the persons working there have often pointed at low salaries and low esteem of the profession. This suggests that workers qualified for the profession might disregard it also when they are present in Mali. If this is true, the migration of some of them would not affect the lack of human capital. The people giving view to this opinion are present in the structure and cannot be viewed as a primary source of information on the mindset of workers plausible of being recruited. Others stated that there are unemployed Malians interested in a job at the University. These job seekers may not have the qualifications sought after in the latest recruitments (otherwise, there would not still be positions vacant), but even if persons with these qualifications may have higher demands on their employer, this at least indicates a certain interest in work at the University. Also, one out of four of the University students interviewed in this study whose studies would, if pursued to DEA level, qualify them for work as teachers stated that they were interested in teaching at the University. Interestingly enough, four out of five of the students and teachers I interviewed in Paris stated that they were interested in working at the University if they should return to Mali. Accordingly, the University is not such an uninteresting employer that Malians qualified to work there refuses to do so whether they are migrating or not. And even if some of the workers qualified and present in Mali refuse an offer of work at the University, skilled migration is not an irrelevant factor as there are manifestly qualified workers among the migrants that would accept such an offer. This circumstance is also of importance to another reflection put forward in the literature, namely that skilled migration is only a relevant factor if the migrants would, if they remain in their country of birth, actually be willing to work in a sector where human capital is lacking. However, since the migrants and prospective migrants with qualifications needed at the University interviewed within this study assert an interest for work there, their migration, or remaining outside Mali, is relevant.

It can be concluded that skilled migration is most probably a relevant factor behind the lack of human resources at the University, thus creating loss for those remaining behind. To understand the extent of this loss the implications of the lack of human resources at the University of Bamako is investigated in the following sections.

**Direct effects**

With a teacher to student ratio of approximately 1:100 the impacts on the education could seem obvious. They were also ever-present in the discussions with students and teachers. When asked to describe their reality as students at the University of Bamako, seven out of ten spontaneously told me about problems stemming, exclusively or partially, from the lack of human resources. They thus described how teachers are not taking enough time to explain or oversee student work and how lectures and classes are scarce and overcrowded. For example,

383 ANPE & AFRISTAT p. 35.
384 ANPE & AFRISTAT p. 43 and 45.
385 Also, literature on unemployment argues that this perception of a static “lump of labour” is misleading as supply creates its own demand on the skilled labour market, where jobs created for skilled workers are similarly destroyed when these workers leave. See, for example, Kapur & McHale, *Give us your best and brightest* pp. 87 – 88).
3500 students would take lectures in an auditorium constructed for 1000 students, and 200 students attend class in the same classroom. Four out of five students told me that they believed that the lack of resources caused problems at the University. Further along in the discussions regarding this, the students elaborated on problems such as teachers not having enough knowledge of the subject they are teaching, or not possessing pedagogic skills. Others told me about teachers not showing up for class or showing up late, expatiating upon private matters or their contempt for Malian education in class. One student told me that some subjects are not being taught at all and another how a subject on his curricula was taught only after the arrival of a visiting Senegalese teacher. When asked directly what they believed could be the consequences of the lack of human resources some students voiced a concern that they would leave university with insufficient knowledge or that their diplomas would not be recognized in the western world.

The teachers all stated, either spontaneously or upon a specific question, that the lack of resources causes difficulties at their workplace. Some stated that the lack of human resources is their biggest concern regarding the University of Bamako. Certain expressed that due to this lack they have a heavy workload and are tired. A faculty director explained that since the teachers hold more classes than appropriate, they do not have the time to prepare classes and mark student work well. Some teachers told me that they are not able to teach in the manner they would like due to the large classes. For example they cannot control a group of 200 working independently or distribute material to a class of 2000 students. The vast majority of teaching seems to be done by dictations over microphone – a fact that both teachers and students expressed concern about. Some teachers described how they are teaching subjects in which they do not have a formal education and how some subjects cannot be taught at all. Many teachers told me that it is difficult to provide the students with a qualitative education and sufficient guidance. Also in research and official reports, the quality of the education at the University of Bamako is often described as very low. The lack of human resources in higher education is often mentioned as one of the main reasons for this.

Spillover effects

Besides the direct effects of the absence on one teacher from the workforce, one should have regard to the fact that the knowledge of a highly skilled worker might also have positive effects on the productivity of others. Some literature refers to this phenomenon as 'spillover effects', and holds that it is especially important in a developing country where knowledge about best technological practices, organization methods, and the like is lacking. Spillover effects and 'learning by copying' are related to the concept of 'demonstration effects' were a professional lacking a certain skill can copy what is demonstrated to be successful.

In the case of the University of Bamako, these concepts would imply that the knowledge and skills of a teacher do not only benefit the structure through his or her own work, but through colleagues performing better since they have the opportunity to learn from, or copy him or her. According to the literature, two conditions must be met for spillovers to be relevant to the importance of the emigration loss: (1) the spillovers must be disproportionately localized, so that other local workers gain from their proximity to the skilled worker; and (2) once a skilled worker has moved, the tendency for knowledge to flow back to his or her former home

386 See for example UNDP Mali, Rapport 2009, Projet TOKTEN: Transfert de Connaissances à travers les Nationaux Expatriés p. 3.
387 Page & Plaza p. 292.
388 Kapur & McHale, Give us your best and brightest pp. 92 – 94.
through enduring relationships cannot be too strong. At the University of Bamako, the level of skills and education among the teachers is varying. Out of the approximately 700 teachers working there in 2009, only 87 were professors. To be titled professor, a teacher has to hold a PhD degree, and members of the teaching staff that hold such a degree should get a position as professor within five years, according to the University regulation. This suggests that the highest level of education among the teachers is concentrated to a small group. However, teachers interviewed as well as officials at the University administration have told me that the system set out for career advancement is not completely implemented and that there are teachers holding PhD degrees or other high degrees without having a professor title. Also, knowledge and skills are not only dependent on a certain educational attainment. But the assumption is backed by both students and teachers stating that there is a significant difference in the level of skills and knowledge between teachers. The first condition is thus met. Regarding the second condition, the flow of knowledge between expatriate Malians and the University of Bamako is reasonably strong. Even so, the spillover effects of a highly skilled professor at the University of Bamako can be assumed to be significant, and the subsequent loss of these spillovers when such a professor migrates ads, if only slightly, to the loss brought on by the absence of human capital.

**Specialized skills**

One should be careful not to assume that skilled workers can be treated as a homogeneous mass. This assumption could lead to a serious underestimate of the loss stemming from the departure of certain workers with specialized skills. The output loss from the absence of particular specialists is, of course, related to the importance of the role that they play in the home society. In Mali, many academic specializations are dependent on only a few professors possessing the knowledge to teach them. In some cases there is only one. For some subjects, there is no teacher qualified at all and the teaching of these subjects has thus either been cancelled or never been possible. One understands that the migration of a single one of these scarce talents could have far-reaching impacts, in the extreme stopping education in a certain discipline.

**Institutional effects**

Besides the concerns for the economical effects of migration, the literature raises concerns about institutional effects. One activity for which certain highly skilled workers are believed to be close to indispensable is building domestic institutions to serve the public good and enhance public welfare. This literature argues that systems of higher education can be an institution on which the international flows of human capital have a particularly devastating effect, thus crippling the wellspring of future human capital. This could be the case for Mali as the University of Bamako is suffering a loss due to the migration of skilled workers. The literature describes the process whereby skilled migration damages education institutions as follows: In an open economy, institutional inflexibilities (such as wages in public sector educational institutions) might cause growing problems for training the next generation of human capital. The bureaucratization of higher education, the prevalence of extreme politicization, and the perpetuation of a system in which quantity vastly trumps quality and inputs alone are monitored will not attract talent, especially if that talent has alternatives to working at home. A vicious cycle ensues, in which individuals at the upper end of the human capital distribution

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390 See section 4.4.4.2.
392 Kapur & McHale, *Give us your best and brightest* pp. 96-98.
emigrate and leave behind a pool of poorer quality. What I have learned about the history of the University of Bamako presents striking similarities with this theoretical description. Today, the University is described by many, including students and teachers there, as an institution struggling with providing a qualitative education, while harbouring a vast quantity of students. But, during some of the interviews conducted within this study, I learned that the University of Bamako was functioning better a few decades ago. In the years to follow Mali experienced what is described as waves of skilled migration on several occasions. These have to a large extent involved teachers. At the same time, salaries have stayed at a very low level. Certain respondents also expressed concerns about a high politicization and corruption in the system for higher education. For example, a teacher told me the following:

The University is a place you want to control. Because before, it was always the school that permitted new ideas and revolts. So [the government] always try to have a grip on that so that they do not lose control... So [the government] try to appoint persons that they can control a little.

Furthermore, as explained above, the low quality of the University of Bamako is, according to some respondents, one of the reasons for its difficulties to attract the human capital needed. The role of highly skilled migration in the problems of the University of Bamako is difficult to discern, but the similarities to the theory presented above are at the very least thought-provoking.

**Long-term effects on research**

A possible long-term consequence of skilled migration is the weakening of indigenous research focused on local problems. Researchers require complementary inputs. This is one reason why the productivity of researchers is much greater in developed countries than in developing ones. The research conducted in developed countries is, however, much less geared to the problems afflicting developing countries. Teachers at the University of Bamako voiced a concern that they were not able to conduct research. Some told me that they are not able to do so at all, some that it was not possible to the extent that they wanted. The reasons behind this where stated to be lack of equipment, and time constraint. Since the latter is due to the lack of personnel, there is an apparent link to skilled migration. As described in section 4.4.5.2, several respondents in this study voiced concern that the human capital Malian migrants acquire abroad is not always applicable or relevant to Malian conditions. Even though it is not expressively stated, there are thus indications that research conducted by Malians abroad is not as geared towards Malian problems as any research these migrants may have conducted, should they have stayed in Mali.

In conclusion, this section has argued that skilled migration is probably causing a significant loss at the University of Bamako and contributing to the lack of human resources. Furthermore, skilled migration is depriving the University of certain spillover effects from highly qualified workers on their collegial environment, and in some cases regarding particular specialists, possibly putting a complete halt to certain education. The negative impacts of these losses are important. Similar losses in the past may have contributed to the descent of the quality of University education to the low level of quality it is at today. As the system for

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394 UNESCO p. 11.
higher education is an important nation building institution the effects are also institutional, threatening the public good and welfare.

4.4.3 The prospect of migration

The prospect of migration may mitigate the negative effects of the absence of skilled workers by raising the level of education among those remaining in Mali. If there are more Malians who invest in an education because of the prospect of migration than who finally end up migrating, the overall average level of human capital in the society could rise. Nine out of ten of the students interviewed at the University of Bamako stated that they were interested in, or could envisage, migrating. For some students, going abroad had been a dream since childhood. The majority were interested in migration as a means of pursuing their education or career and for certain migration was something they were prepared to pursue, but not actively seeking. For the purpose of this study, students that could envisage migrating, even if they were not actively seeking it, are assumed to be influenced by the possibility of migrating in their decision-making. Also, the possibility to migrate may affect the decision-making of people, even if they are not themselves prepared to migrate, since other highly skilled persons migrating can be perceived to reduce competition for jobs available on the domestic market. This has however not been investigated in the present study.

Among the students who stated that they were interested in or could envisage migrating and the respondents who had already migrated, half stated that the possibility of migrating had influenced their decisions in the sense that it had motivated them to work hard in school. One person interviewed told me that he himself did not want to migrate, but that his father made him work hard in school in order to be able to migrate. In Mali, the possibility to migrate to pursue further education abroad is in many cases dependent on the reception of a scholarship. Scholarships for education abroad granted by the Malian state are formally distributed according to educational accomplishment, and the same can more or less be assumed to be the case for scholarships from the state of the receiving country or other institutions such as private foundations. A system is thus in place that at least theoretically is likely to create motivation among the students interested in migrating. Among the students stating that the possibility to migrate was a motivation for them to study hard, approximately eight out of ten told me that they were planning to finance their migration with a scholarship and that the criteria to obtain this scholarship was their primary source of motivation. One could therefore draw the conclusion that the possibility of migration to pursue higher studies, via the criteria for obtaining the scholarships needed to do so, has a strong impact on university students.

The share of respondents stating that the prospect of migration had motivated them in their studies was slightly larger among teachers at the University of Bamako that have migrated some time ago than among present students at the University. The share was also larger among the respondents working as university professors in Paris, whose migration took place even longer ago. These diversities could be coincidental but could also imply that the importance of this impact has changed over time due to the change in some underlying factor. This factor could be the manner in which scholarships have been distributed. When the Malian government started distributing scholarships, some decades ago, the scholarships where strictly rewarded for academic excellence. As awareness of the scholarships picked up among the students, working hard in school was perceived as a sure means of migrating. However, the increasing number of scholarships from other institutions that were distributed according

396 See section 3.2 regarding such theories.
to other, or less clear, criteria may have affected the perception among students that only hard work could lead to migration. An even greater reason for this shift in perception could be the fact that the distributions of Malian state scholarships have been more and more affected by corruption. Because scholarships are not considered to be awarded for educational attainment, but for kinship or for other subjective reasons, working hard is perceived as a less certain strategy for migration. This is a theory put forward by several teachers and one student elaborating upon motivation among university students. One of the teachers thus answered my question if migration could be a source of motivation as follows:

Yes, in our time we were certainly, because the first three were automatically scholars to go abroad. . . . But now you could not be the first, and still go, if you have a long arm. . . . Now there are other means of obtaining this goal.

Approximately three out of ten respondents believed that there is corruption within the distribution of Malian state scholarships. Two persons told me that they themselves had lost a scholarship they had rightfully earned due to corruption. Another person told me that the same had happened to a close relative.

None of the persons interviewed stated that the possibility of migration has affected their decision to go to university to begin with. Only one believed that other students might be affected in this way. Neither did any of the respondents tell me that their choice of type of education had been affected by the possibility of migration. Two persons believed that this might be true for others, one telling me that the possibility for migration can be a motivation for people choosing medical studies.

In conclusion, the possibility of migration seems to have a substantial effect on the decision-making of Malian university students since it motivates many to study hard. The theory put forward in some literature that the prospect of migration might have negative effects on the sending countries as it influences students to choose types of education adapted to the economies of foreign destinations rather than the domestic economy does not seem to apply to Mali. The positive impacts of the prospect of migration might be perceived as limited as they do not seem to entail the decision to enrol in studies, and only affects students already pursuing education. Furthermore, there is evidence to suggest that the positive impacts of the prospect of migration are threatened by increasing corruption within the distribution of Malian state scholarships.

4.4.4 The role of the diaspora

People who migrates from their country of birth does not become foreigners to the society they leave. Many Malian migrants maintain strong connections with their families and with other people in their home country. The following sections look at the capital Malian migrants accumulate abroad in terms of, among others, knowledge, skills, money and social connections, and through what channels and to what extent this capital is transferred to those remaining in Mali.
4.4.4.1 Financial capital

Remittances

Remittances from expatriates represent important resources for Mali. In 2009 remittances amounted to 405 million dollars, or 4% of the GDP. It is often pointed out that these transfers supersede international aid. Remittances are an especially important resource for certain regions. For example, in 2005 they accounted for as much as 80% of household resources in the Kayes region, which is disproportionately affected by emigration flows. However, the data available on remittance flows is not disaggregated regarding level of education, leaving it uncertain how large share of the remittances is stemming from skilled migrants.

The scope of the present study has not permitted a thorough investigation of remitting customs among highly skilled Malians abroad, but it can give some indications. The professors interviewed in Paris gave a picture of a highly active intellectual diaspora in this regard. Two out of the three professors sent money home every month. The third professor told me that he sometimes, on rare occasions, sent money to his mother and that he has sent books and computers to the children in his family in order to support their schooling. According to information available from 1996, 86.8% of the migrants living in France, regardless of their level of education, remitted at least one time that year. A comparison between the scarce information available on the average frequency of remittances and the findings from the interviews indicates that highly skilled Malians in France remit at least as often as other migrants. Furthermore, the two professors that remit regularly stated that they send 300-400 euro and around 300 euro respectively every month. These amounts supersede the average amount transmitted by migrants living in France significantly, according to the information available. In 1997 the average amount of remittances per month was approximately 98 euro. This suggests that the amounts remitted by skilled migrants in France are approximately three times the amounts sent by migrants in general. These findings supports the theory forwarded in certain literature, that skilled migrants remit more than other migrants. However, due to the limited number of interviews, the findings can only serve as indications.

It should be reminded that a significant part of the Malian intellectual diaspora consist of university students. The argument that skilled migrants remit more than other migrants is not put forward with these young migrants in mind, since they are not abroad to work. Only one of the students interviewed in Paris, or respondents in Mali that had studied abroad, had worked during their time abroad. None of the respondents in Mali that were asked if they had remitted during their time abroad had done so. But surprisingly, both respondents that where asked the same question in Paris stated that they took money out of their scholarships to send home. One student told me that he knew other students who also remitted. These student remit less per month than the average of 98 euro. One of these students sent around 75 euro to his family every month, and the other sent some money at the end of each year. He had been able to send 300-400 euro home since his arrival in France. However, the reason why these students remit is interesting. One of the students explained to me that: 'About 80% of the Malian students in

398 Ballo, IOM.
399 Ammassari, Gestion des migrations et politiques de développement: Optimiser les bénéfices de la migration en Afrique de l’Ouest.
400 Gubert, La migration facteur de développement: la région de Kayes p. 39-40.
401 Gubert, La migration facteur de développement: la région de Kayes p. 39-40.
402 See section 3.3.
403 These scholarships where provided by French institutions.
France come from poor families, so there will necessarily be a need of their help to satisfy the everyday needs.' The other student explained further:

> Generally we come from poor families and however little you get, it is better that you deprive yourself of certain needs to help the ones at home too. . . . Me, when I was in Mali I worked. Since I am here, I have to keep thinking of my family since I am no longer there to help them. Since I am here I need to sacrifice myself for my family. It is completely normal.

Also, the professors that remitted stated that they supported the basic needs of their family, one telling me that he, for example, could send money for medications to a sick aunt. The other professor told me that: 'I have family over there, like everybody we send money every month to support the family, to feed it.' These skilled migrants' incentive to remit does not seem to be affected by their families being particularly wealthy. This refutes the theory in certain literature, that skilled migrants remit less than other because they come from wealthier families.  

However, lack of incentive is naturally better investigated among the skilled migrants that do not remit. None of these migrants stated that their family had no need of their financial aid. Such a statement could perhaps not be expected and the lack thereof cannot be taken as evidence that it is not the case. However, the discussions regarding remittances give a somewhat different picture as to why these migrant did not send money home. As one teacher in Bamako pointed out: 'He [the skilled migrant] has not gone to search for money, he has gone to study'. Another teacher stated that: 'being a student your priority is to finance your studies'. It could be the case that such approaches are allowed for by the fact that the family is somewhat well off. The case could also be that the expectances on a young family member migrated to study is set on what he or she will be able to contribute with after he has finished his studies, and not while he is away. To the family, however much they might be in need of support, it is more important that students succeed in their studies than it is to receive a part of a meagre scholarship or revenue from a part-time job. The social obligation might, in a matter of speaking, be put on hold until the return to Mali. Furthermore, for almost all of the respondents that had studied abroad, the studies had been financed by a scholarship and not by family. The only person interviewed that stated that his family had financed his studies was the migrant interviewed in Paris that is remitting the most today. Since studies at the University of Bamako are free of charge, and students receive financial support from the government, the mere fact that they are pursuing academic studies does not mean that the students come from wealthy families. However, the fact that their families are able to spare their labour does suggest a certain financial leeway. Some of the respondents in Mali, also among those that had migrated, told me about how their family had limited financial means. For example a teacher that had studied abroad told me that: 'I had never thought that one day I would go abroad. I was not in an environment that permitted me to think that.'

The assumption that skilled migrants typically come from wealthy families does not seem to hold true for the case of Mali. Neither does the assumption that wealth within the family diminishes the incentive to remit. A reason for this is that one Malian family can be extensive and at the same time include members that are well off, and those that are in need of support to meet their basic needs.

The last insight contradicts another theory forwarded in the literature, namely the suspicion that family reunification weakens the ties to the country of origin. If a Malian has a social

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404 See section 3.3.
obligation towards his kin, it does not only involve his closest family but a significant number of people, including aunts, uncles, brothers-in-law, cousins, step-mothers and so on. Also, when a Malian refers to an aunt, uncle or a cousin, they might not only think of people related to them by blood. This became somewhat clear to me when a student stated that she had received a gift from the sister of an aunt. Further light (or the opposite) was shed when out of two siblings being asked if they had a migrant relative, one stated that one of her cousins had migrated, and the other stated that he had no migrant relative. The assumption that the family reunification possibilities available to skilled migrants, which generally includes spouses and children, would eliminate the social obligations to those remaining behind appears misguided by a western conception of family structures. Also, one of the professors interviewed in Paris had married a Malian woman who had joined him in Paris. He described how his obligation to support his kin in Mali had actually grown since her arrival as it now included her family too.

Neither does the typical finding in the literature that the flow of remittances tends to decline with the length of the migrants' stay seem to be completely valid for the Malian context. Both professors interviewed in Paris who remits regularly had been living there for over 20 years. The third professor first came to France in 2002, and returned to Mali during a period in 2007. The fact that he remits less than the other two suggests the opposite relation to the one found in other studies. When I asked one of the professors in Paris who remit regularly regarding his connections with family members in Mali he told me the following:

I have more contacts now. Because before, when I was a student [in France], it was a bit more calm, my father and some other persons. I did not have the same effective connection. But now my connections have become much more intense, because now they know that I can give something. And the people do not leave me alone.

According to these three interviews, a longer period of time spent abroad does not diminish the flow of remittances, it rather increases it. When I asked the professor cited above why he did not cut the ties with those remaining in Mali he responded that:

Many want to, but we do not succeed. . . . Because it is emotional. When I was little, there was a lady who helped me, who carried me on her back, who bathed me. . . . Now this lady will send me a letter, she will say that she is now an old lady.

The emotional ties seem strong enough to endure both time and distance. It may also be relevant to remark that the lady of which the professors speaks is probably far from the only woman that took care of him as a child. The same emotional tie is likely to exist with a number of caregivers. Even if time and distance weakens the ties between the skilled migrants themselves and their extended family, there are social structures in place that ensure that the link remains. The professor continued:

And, in fact, there is another reason; I believe that it is more cultural. . . . My father, he has a social role and to be able to fill this social role he will oblige me to send him resources, to not abandon the others. Many people will go through my father, and he will tell me that my uncle is there, that something is needed.

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405 See sections 2.3.2.2, 2.3.3.1, 2.3.3.2, 2.3.3.3, 2.3.4.1 and 2.3.4.2.
406 Lucas & Stark, *Motivations to remit: evidence from Botswana* and Faini p. 3.
for my aunt, that a child is sick. There is a bit of a moral obligation for me, because I do not want to disappoint or frustrate my father.

The parents of a migrant seem to serve as intermediaries to the resources of the migrant, and this role as an intermediary is upholding their social status in the community. If a migrant is not willing to undermine the social status of his own parents, or cut the connection with them, he stays interconnected with the whole extended family.

However, the findings from these interviews with diaspora members of how much skilled migrants remit do not correspond with the opinions among some of the other respondents. One of the diaspora members stated that: 'They are not very important in the transfer of money, the intellectuals. It is rare, not a lot.' There were also others who stated that it is rather the role of less skilled migrants to send money home. The social obligation on the skilled migrants might be somewhat lesser. Also, it was forwarded that their lifestyle abroad cost more. As one of the professors interviewed in Paris put it: 'The costs here, it’s a lot. It is not like the other migrants who seek money and deprive themselves of everything and who send for constructions. [Us, only] sometimes, but for us it’s the [cost of the] transports, life and education.' But there are also other significant distinctions to be made. The statement of a student interviewed in Paris, even though it concerns whether migrants support each other or not, can complement the picture:

*We are migrants with an urban profile, we come from the big city. The migrants that are organised in communities, who are loyal, they have a rural profile. They save money, when you have a problem; the group takes care of it, or the family. This is the Soninké especially. The migrants with an urban profile, they flee.*

Geographical origin, or rather which social community or people the migrant belongs to, affects the migrant's propensity to remit. The professor interviewed in Paris who described the role of his father as an intermediary for his remittances belongs to the Soninké community. He is also the migrant interviewed that remits the most. He told me that:

*I have a lot of pressure on me from the people in Mali, they think that since I am in France I have a lot of money. Many ask me to help them, a thing I cannot do. I cannot help everybody. But at the same time, I do not manage to live well here because a good part of my resources are sent to Mali. . . . And many migrants in France are caught in this trap. People say that the Malian migrants send a lot of money to the country, but there is a lot of suffering behind this.*

The statement also shows how it is not only the less qualified migrants that make sacrifices for those who remain in Mali. As a conclusion from the statements cited above, it is the opinion of the author that a migrant belonging to a community with strong social obligations will have a propensity to remit, regardless of his level of skills or education. The findings of this study indicate that skilled Malians abroad send money home to a significant extent. It is often argued that the favourable effect on remittances can mitigate the negative impacts caused by the absence of skilled migrants.⁴⁰⁷ It will now be investigated what impact these remittances have in the case of higher education in Mali.

⁴⁰⁷ See for example Faini p. 3.
It is not evident that the remittances always have a positive impact on development. According to research on the impacts of remittances in Mali, the money sent from individuals are essentially spent on consumption of daily goods and the money sent through associations go to investments. The interviews with professors in Paris attested to the same; that the money they sent went to consumption goods such as food and medications or to pay for marriages, funerals etc. It is often argued that such consumption do not promote development. Research in Mali has found no significant positive relationship between numerous remittances and local development; rather Azam and Gubert have noted that the large inflows of money reduced the propensity of those who stayed behind in Kayes to work. The same notion was described by one of the professors interviewed in Paris:

*I discuss the support with other migrants a lot. For example, the Malian migrants send a lot of money to Mali, but we do not see the impact. I you will, it has become a state of dependence. The people in the country, the young over there, many do not work, or do anything anymore.*

The impact of remittances on the Malian society in general is difficult to discern. The further discussion will focus on the impacts they have on the University of Bamako. It is assumed that such impacts can occur in two ways: By being sent directly to the University in the form of money or material, or by being invested in the education of individual students.

Remittances being sent directly to the University are scarce, but they exist. According to the principal at the University of Bamako, diaspora members sent a lot of materials such as books, laboratory equipment and computers regularly. However, none of the persons interviewed in this study stated that they had sent money or material to the University during their time abroad. Neither did they tell me about anyone among their colleagues or fellow students doing so. But some of the students and teachers at the University of Bamako knew about such transfers taking place. Approximately one out of three where of the opinion, because of personal experience or what they had heard from colleagues or fellow students, that migrants did support the University by sending money or materials. Five of the respondents where more or less personally affected by the remittances. Two where teachers that received documentation. The third was a student who described how a teacher had brought books for the students when he came from abroad to give classes. Two teachers were working at a faculty that received donations of documentation from migrants. The support was most often stated to be in the form of books or documentation but one teacher had heard about computers being donated to the University. According to a study on skilled migration performed in 2005, the TOKTEN program has given rise to numerous donations from Malians living abroad. It was specified how one of the faculties had received 25 computers from an expatriate living in the USA.

Purely financial support seems to be very rare, but according to one teacher, a famous Malian migrant has financed the construction of a research centre at the University grounds. Also, a student told me that she had heard that migrants where to finance the construction of a library at her faculty, but she questioned if the rumour was true. The opinion that financial support to the University is rare or inexistent was expressed by many of the respondents, both in Mali

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408 Merabet, Gendreau, European Commission, MMEIA, *Les questions migratoires au Mali: valeur, sens et contresens.*
409 See for example UNDP 2009.
410 Azam & Gubert, *Those in Kayes: The Impact of Remittances on their Recipients in Africa.*
411 UNESCO p. 16.
and in Paris. Some of the diaspora members interviewed did however believe that this could happen, but that it would need to be in the context of migrant organisations.

As described in section 3.3, several researchers have found remittances have positive effects on the educational attainment of children from households with migrant members. Approximately half of the students interviewed at the University of Bamako had a family member with tertiary education who had migrated, or who had migrated to pursue tertiary education. In my opinion, it is not likely that as much as 50% of the Malians in general have a skilled migrant in their family and accordingly there seems to be a certain correlation between having a highly skilled migrant among your relatives, and pursuing higher education. However, it cannot be concluded that it is having a migrant in the family that affects the educational attainment within the family and not the other way around. It is more interesting to learn to what extent the students with migrant family members themselves feel that this has influenced their education. Only one out of six of the students interviewed had received remittances from migrant family members. They felt it had helped them in their education. For example, a student showed me a laptop computer that she had received from the sister of an aunt who was working in Thailand. A professor interviewed in Paris told me that diaspora members would sometimes send books or computers to children in the family. He himself had done so, in order to support their education.

The above suggest that university students in Mali do receive a certain amount of support from skilled migrants abroad. Given that as much as half of the students had migrant family members, and that skilled Malian migrants seem to remit significant amounts, it is a bit surprising however, that only one out of six students received remittances. It seems that there are higher priorities for the use of remittances than to support university studies. This on the other hand, is maybe not so surprising, in a country where 77% of the population lives on less than two dollars a day. Even if support for university student is not the highest priority for the use of remittances, the interviews have shown that some university students are supported in this manner. If one out of six students at the University of Bamako, as suggested by the interviews, receives remittances, the impact is tangible. In this context, one should also have regard to the other ways a migrant may support the education of someone at home. Students receive encouragement from migrated relatives. One student interviewed thus received messages where her migrated relatives told her to do everything to continue her studies and not to stop at master level. Another student told me the following about his brothers studying in France: "Every year during the vacation they come here, they give me advice on studies, that you have to study hard. Only work pays." All in all, the combined support from the diaspora to individual university students probably has a significant impact.

Investments

The University of Bamako is a public university, often stated by respondents to be perceived as 'the governments’ business'. If you want to invest money you have earned, it is more natural to do so in a private initiative. Malians abroad seem to invest heavily in the private sector for education. An official at the DGME stated that about 80 % of the private schools in Mali are initiated, or funded (entirely or partially) by expatriated Malians. An example of investments made by skilled migrants is for the construction of an engineering school in Bamako. This development might have a very positive effect on the Malian system for higher education. It could also affect the University of Bamako positively, relieving the student pres-

412 This statement does not, however, say anything about how many of these migrants that are highly skilled.
413 UNESCO p. 19.
sure. The impacts have not been investigated further, but on a cautious note it should be men-
tioned that the development of private schools has been described as anarchical and uncon-
trolled and concerns have been raised about their academic quality. Neither can private sec-
tor higher education take on the important institutional role of public universities since they
often concentrate on maximizing profits rather than on attempting to serve the public good
and enhance public welfare.

Intermediaries for funding, donations and scholarships
In addition to the financial capital they have themselves accumulated abroad, capital from
foreign institutions, organizations or individuals can reach the Malian system for higher edu-
cation through the efforts of skilled migrants. Approximately one out of three of the teachers
interviewed at the University of Bamako stated that diaspora members facilitate such transfers
of financial capital. The expatriates had, for example, given information on or promoted dona-
tions of material, research funding or scholarships for studies abroad.

In conclusion it has been found that a significant amount of financial capital finds its way
from or through skilled Malian migrants to those remaining in Mali. The portion going to the
University of Bamako is limited but it does have a positive impact, not least through the sup-
port given to individual students. As pointed out by Kapur and McHale, it is however im-
portant to remember that financial capital and human capital are not substitutes. The inflow of
financial capital, however strong, cannot compensate for the outflow of human capital which
is equally critical for development. Skilled migration does however have other benefits for the
country of origin, one being human capital flowing back from the diaspora.

4.4.4.2 Human capital
All students and teachers interviewed in Paris think that they have acquired human capital
during their time in France that would be useful at the University of Bamako, or in the en-
deavours to improve the Malian system for higher education. Similarly, all teachers inter-
viewed at the University of Bamako expressed an opinion that the diaspora possesses human
capital that could be useful there. The vast majority specified this capital as information since
they believed that the main difference between the situation in Mali and abroad is access to
information, through libraries, media plurality etc. Other forms of human capital, namely in-
novative solutions and new teaching methods were only mentioned by two teachers.

To what extent is this human capital transferred to those remaining behind at the University?
All teachers at the University of Bamako with whom the subject was discussed told me that
they knew skilled migrants, the majority knew several. All but two stated that they were in
contact with these migrants and discussed topics related to their work at the University. Ac-
cording to the respondents, not only information was transferred through these interactions.
Examples of other forms of human capital were knowledge of the academic discipline and
ideas on how to improve the University. Many described how this capital was useful for them
in their work as teachers. Similarly, the teachers interviewed in Paris stated that they knew
several of the teachers at the University of Bamako with whom they were in contact and in-
teracted. However it appears that these discussions rather revolve around the possibility of

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414 UNESCO p. 12.
417 One of the teachers interviewed is active in a discipline that is not being taught at the University of Bamako,
therefore this interview is not relevant to, and has not been accounted for, in this section.
418 Three of the persons interviewed were not asked about the subject, due to time constraint.
moving to Mali or France respectively than human capital pertinent to the work carried out at the University. The respondents refer to the discussions as informal or personal, telling me that they revolve around how things are working out in Mali or if there are any developments. After explaining this about the nature of the discussions, one of the professors proceeded by telling me that he had tried to have professional discussions with teachers within his discipline, without succeeding. One of the students had no interactions with persons at the University at all. The other student told me that he regularly discusses the differences between studying in France and in Mali with several students at the University of Bamako. For example he is often asked whether it is hard for a Malian to study in France.

According to the interviews in Bamako, it can be concluded that there is a vivid transfer of human capital from the diaspora to the teachers at the University of Bamako. There seem to be a slight difference in the contents of the interactions that the members of the diaspora that I have interviewed are having. This is probably explained by the fact that the interactions described by diaspora members are exclusively based on personal relations, whereas the majority of the relations described by the teachers at the University of Bamako have been forged in their professional context. A majority of these, apparently very fruitful, relations have been forged through the TOKTEN program which will be described below.

Other channels for the transfer of human capital are participation in the public debate and conferences and forums in Mali or abroad. The Malian diaspora is manifestly active in the public debate on higher education and they are participating in forums and conferences where the subject is treated. For example, there is at least one web based debate forum created by members of the diaspora where expatriates and locals discuss topics such as the higher education. Also, members of the diaspora have created a forum for scientific discussions called Maliwatch which has initiated a scientific symposium being organised in Mali every second year. Here, a variety of themes of which many are of interest for the system for higher education and scientific research are discussed. The years when these meetings do not take place in Mali, equivalents are organised in different locations abroad. But is the diaspora active in such a manner that the transfer of human capital through these channels might affect their home country tangibly?

At the University of Bamako, seven out of ten persons asked about the activeness of the diaspora in public debate and forums on higher education thought that the diaspora does participate, but the participation was often perceived to be sporadic, carried out by a small number of expatriates. Several respondents stated that such diaspora participation is timid or only just emerging. Many do however go on to say that they believe that the participation will pick up speed. This image was mirrored by the interviews in Paris. None of the students told me that they had been participating in the public debate or in forums or that they knew of other diaspora members doing so. They seemed to be of the view that the diaspora in general is not very active in this regard. Statements leading to this conclusion were that they did not think were that diaspora members can make their voice heard unless they reunit, followed by a negative response to the question if they are presently doing so. Another student told me that many want to do something for their country, but that the system is somewhat blocked. One

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419 www.malilinknet, latest date of consultation 12 November 2010.
420 www.maliwatch.org, latest date of consultation 12 November 2010.
421 www.msas.maliwatch.org, latest date of consultation 12 November 2010.
422 It should be mentioned that the specific subject of participation in public debate was not treated in all interviews, thus conclusions drawn from more general statements about diaspora activeness could be misleading.
423 Again, since they were not explicitly asked about this, it cannot be concluded that this is not the case.
student stated that the students discussed problems of the University between them, but that they did not articulate any solutions in a clear fashion. He proceeded by stating that: ‘This is the problem with these intellectuals; they talk too much but act too little.’ Neither did any of the teachers state that they had been active in the public debate on higher education, but two of them had participated in conferences were the subject of education had been discussed. Also, the teachers seemed to have a stronger view that the diaspora in general are active in this regard. They all knew of meetings or conferences, organised by Malian authorities or by diaspora members, where diaspora members had been present and discussed the Malian educational system. One stated that about 10% of the diaspora was preoccupied with the Malian system for higher education and that they could make themselves noticed through writing articles or participating in conferences. He did not express his opinion on to what extent they did so.

Human capital seems to be transferred through the participation in scientific forums or conferences rather than in public debate in the media. As mentioned, the limited activeness by the members of the diaspora interviewed in Paris took the form of participation in conferences or forums. One of the teachers interviewed had participated in conferences in Bamako and abroad where he had expressed his views on higher education. The other teacher had animated conferences within an organisation that, inter alia, was preoccupied with educational questions (even if not higher education). In Bamako, every second respondent told me about how expatriates had participated in a forum on education organised in Bamako in November 2008. Many stated that they had contributed actively. With one exception, the ideas expressed by the expatriates were judged by the respondents to be good. A teacher that was present at the forum elaborated on the contribution of the expatriates. Though stressing that the work carried out at the forum was group efforts with locals and expatriates working together he told me that the views and ideas expressed by expatriates where in many ways different. They did not always harmonise with local interests and according the respondent, they were not all adapted to the Malian context. Some of the proposals had a clear international influence, for example the expatriates suggested that teachers should have a provision-based salary, according to an American model. This proposal was blocked by the teachers union. Another proposal put forward by the expatriates was that the highest leadership public establishments for higher education should be elected, which the case in many countries, and not as presently, appointed by the government. Their proposal was at least partly backed by the forum.

The interviews in Paris did not reflect diaspora activeness in the public debate on higher education. However, at the University of Bamako, four persons stated that expatriates participate in the public debate on higher education. A student had heard expatriates express themselves on higher education in the media and a teacher stated that there are expatriates that write articles on the subject. Another told me that he believed that expatriates participate in the debate but he could not remember any specific examples and another told me that expatriates are active on debate forums on current issues, where the higher education might be touched upon.

Human capital is thus being transferred from the Malian diaspora through both these channels. Human capital seem to be transferred through participation in scientific forums or conferences to a larger extent that through the public debate in media. The latter seem to be happening to a rather limited extent, but as several respondents indicated, the participation could very well be on the rise. The diasporas’ participation in forums and conferences does already seem to be vivid and there are examples of these contributions leaving traces in the scientific debate.
The Transfer of Knowledge through Expatriate Nationals program

Since 1998, a multilateral cooperation program designed to capitalize on the skills of nationals living abroad to promote international intellectual co-operation has been in place in Mali. The Transfer of Knowledge through Expatriate Nationals (TOKTEN) program was initiated by ENDP in 1977 as a response to the phenomenon of extensive emigration of highly-qualified workers and has since been implemented in over 50 countries. TOKTEN funds the services of expatriate national experts for short term assignments (usually one to three months) with selected host institutions in the government, academic and research institutions, private sector and NGO:s. According to UNESCO it has proven to be a cost-effective and innovative modality for transferring knowledge. In Mali, the program has mainly been concerned with higher education and research, with the specific objectives to: remedy the lack of qualified teachers, contribute to the improvement of the quality of the education within the system for higher education and promote the opening up of the University through the establishment of a system for exchange and transfer of knowledge between locals and expatriates and the strengthening of relations between the Malian system for higher education and foreign universities, especially in the EU. Recent evaluations have concluded that TOKTEN contributes to strengthening the positive impacts of migration on the development of Mali. In March 2010, the program had led to the establishment of a directory of 525 expatriate Malians who volunteered for the programme. The directory is available to the faculties and when the teachers identify the need for a competence they can request a visit. As at 7 January, at least 11 connecting points in different countries in Africa, America, Asia and Europe had been set up within the program and at least 444 missions had been conducted at the University of Bamako in the form of courses, scientific conferences, supervision of academic work and professional training.

According to the principal and the official in charge of the section for human resources at the University administration, the program is important in the work to amend the lack of human resources at the University. It is also well known among the teachers at the University. All except one of them told me that they knew about the program and approximately half of them brought it up spontaneously in the discussions of other topics. It has already been described how the project plays an important role in promoting interaction and transfer of knowledge between teachers at the University of Bamako and members of the diaspora. Several of the teachers interviewed had forged relationships permitting transfer of human capital with members of the diaspora through the TOKTEN program. Approximately two out of five teachers interviewed at the University of Bamako had worked with visiting TOKTEN teachers. One professor told me how the third cycle education at his faculty was practically based on TOKTEN interventions. This suggests that the program has an important impact on the University of Bamako. However, the program is much less known among the students. None of them mentioned the program by name. One third did tell me that they knew of Malian professors visiting from abroad to teach at the University. None of them described these visits in a manner that shows they were aware that the TOKTEN program is in place. Also, only two stu-

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425 UNDP Mali, Rapport 2009, Projet TOKTEN
426 As of February 12 2009, TOKTEN was also expanded so as to include the health, agriculture and small business and industries sectors, UNDP Mali, Rapport 2009, Projet TOKTEN p. 3.
427 Through, i. a., holding courses, training Malian teachers and supervising academic work.
430 MMEIA, Répertoire de la Diaspora Intellectuelle et Scientifique du Mali.
dents had personal experience of a member of the diaspora teaching at their faculty. This suggests that the impact of the TOKTEN program through direct interaction between students and diaspora members is rather limited.

The project is generally perceived as beneficial among teachers at the University. All teachers interviewed stated that it had positive impacts on the University. They specified positive outcomes such as transfers of knowledge to students and teachers, materials being donated and the expatriates serving as intermediaries to international cooperation and funding. They also stated that they believed that the expatriates gained an insight in the Malian reality and how their participation in the project could promote their return to Mali. The teachers that have had personal experiences of visits had a mainly positive view on them. Examples of their experiences in this regard where that the visiting teachers fully achieved what was expected of them and that the course conducted was of good quality. The two students that had taken classes taught by expatriates where equally positive, one stating that the students understood the subject well and the other that the teacher was eminent and that the faculty invites him back every year.

Even if the program was perceived as generally positive for the University, its functioning and organisation was often criticised. Approximately two out of five of the teachers interviewed stated that the overall functioning of the program was bad and two thirds of the teachers specified problems within its organisation. A reoccurring statement was that the visits are too short. This was believed by some to have a negative impact on the quality of the course and also, taken together with the fact that the visits are often scheduled according to the availability of the visitor rather than that the curricula of the University, on the organisation of other education at the University. Some respondents stated that the visits are not always integrated in the existing educational program, for example because it is difficult to plan and follow up on the education from a distance. One teacher told me how all other education at his faculty stopped during the TOKTEN visits, since the visiting teacher needed the student's full time in order to teach the course in the limited duration of the visit. Another concern raised by many was that the support was not directed where it was most needed and that some areas where there was a need did not receive any support. According to some, mainly people outside the teacher collective, this was because there is certain averseness among the teachers to express a need for support within their discipline. They attributed this averseness to a sense of pride among the teachers – that they did not want to be perceived as incompetent and that they feel humiliated if their departments were found to be in need of support from expatriates. Another explanation put forward was that the teachers were paid for their overtime and did not want their working hours to be cut by visits from expatriates.

The teachers interviewed in Paris expressed the same notion, namely that the reason for the difficulties to direct the support primarily is to be found among the teachers. Two of them where very interested in teaching at the University within the TOKTEN project and had made several attempts to be considered for a mission without being invited. (One of them stated that he had been in contact with a faculty and that he had been told that they needed his competence.) They both believed this might have been because the teachers at the University wanted to protect their posts, or because there was a lack of trust towards people from the outside. One teacher in Paris had been on a TOKTEN visit to another establishment for higher education in Bamako. He was of the opinion that the program was poorly organised and he did not want to go on another visit. He stated that the local teachers had done nothing to facilitate the cooperation and that his work there had not been integrated in the rest of the education. A professor at the University had a slightly different take on why support was not directed
where the most crucial need is, namely that the program is governed by nepotism. One of the teachers interviewed in Paris where of the same opinion. He stated that no expatriates would be invited to the University unless they knew the right person there. Another effect of the nepotism put forward by these two teachers is that it is not the most competent expatriates that are being invited. In fact, several teachers at the University voiced a disappointment with visiting expatriates, stating for example that they were not as competent as expected, not any better than the local teachers and not sharing their knowledge and materials as much as they could. These opinions differ from the more positive estimations put forward by the teachers and students that have had personal experiences of working with visitors – a difference that might be explained by a general scepticism to the program brought on by a sense of pride, distrust towards the expatriates or fear of losing overtime pay. However, the most critical teacher was one of those who had worked with a visitor. He stated that the visitors were often unable to convey any new knowledge and that they might have lied about their qualifications. A certain mutual distrust can be detected among teachers at the University, the University administration and the diaspora. This will not be treated further here. Nor will the room for improvement to strengthen the program's effectiveness and positive impacts.

However, it is interesting to examine whether the program has any negative impacts on the University. It has already been mentioned that visits might disturb other teaching. This disturbance could probably be diminished if the visits where longer, as other subjects could then be taught at the same time. Another aspect is the importance of the program not replacing or competing with local Malian professors, something that was stressed by the official in charge of the program at the UNDP office in Bamako. Some teachers stated that visitors often come and teach subjects in which there are competent local teachers. It is most likely true that visitors often come and teach subjects that are already taught before their visit, and thus they are replacing somebody, in a sense. However, teachers and administrative personnel at the University stated that many subjects are taught by teachers that are not formally qualified to do so. But the fact that they do not have the formal qualifications or titles to teach a subject does not necessarily mean that they are not competent. In some cases, even if not formally qualified, the teacher might have years of experience in teaching the subject. On the other hand, the sense of pride and fear of losing overtime pay may influence the statements that TOKTEN visits are redundant. The question of whether or not visitors within the TOKTEN program are replacing or competing with competent local teachers is complicated. But since virtually all teachers seem to be working overtime and many are teaching multiple subjects, visits from expatriates relieving them of some of their workload, would not make them redundant at the University.

There is another important aspect of this issue: The overtime pay is stated by many teachers to be indispensable for them to be able to survive on their salary. An overtime-based system like the present, with manifest negative impacts on the quality of the education, is not sustainable in the long run. However, if the teachers are deprived of overtime pay and their basic salaries are not raised the result might be an abandonment of the profession. As mentioned, the teachers were on strike throughout the field study. One of their demands where raised basic salaries. Even though none of the local teachers were working, visits within the TOKTEN program took place. An official interviewed at the principal's office at the University of Bamako stated that it was a deliberate strategy of theirs to direct the semester visits to the time of the strike, so that the teaching would not come to a complete halt. According to the official, this was a 'minimum service' that was accepted by the striking professors. From a teacher active in the teachers’ union I learned the same thing – that the union was not disturbed by TOKTEN visits being conducted during the strike. He also described how interactions with foreigners
and diaspora members are important in the work of the union. From the interview, I got the notion that the access to external influences during the visits was more important than its possibly negative effects on the strike. Three other teachers told me that the visits being conducted during the strike was not good for the strike, but they seemed more concerned with the fact that they could not oversee the education or exchange with the visitors as they were alone with the students.

To me, the fact that the TOKTEN visits diminish the over time of the local teachers at the same time as they are conducted during the strikes is problematic. Education being conducted during strike outside the control of the local teachers might have negative effects on the possibility for them to gain a hearing for their demands for higher salaries. It should be stressed that the teachers and union member interviewed, who obviously have a better understanding of this complexity than me, do not seem to believe that the visits during the strikes are threatening their chances to succeed. The suspicion that the TOKTEN program might have this negative impact is thus not founded by the findings of the study, but I believe that it deserves mentioning.

Finally, a large scale program such as the TOKTEN program might cause a cut in other initiatives. The Secretary General of one of the faculties told me how his faculty used to get visits from foreign professors funded by the Agence Universitaire de la Francophonie, an international university association designed to support research and education in French. However, this organisation had now stopped the funding, which had caused problems at the faculty. He believed the funding might have stopped because the University benefits from the TOKTEN project. If a program is put in place that takes over the role of other initiatives, it is natural that they are diminished. However, according to the statistics available, this particular faculty has not received any visits within the TOKTEN project the last four years. One can assume that at least one visit would have been organised within the cooperation with the French organisation during this period, so the loss of its support probably has a negative outcome for this particular faculty.

Another multilateral cooperation program, the TALMALI project managed by UNESCO, invited the Malian Diaspora to invest its competences in higher education. However, it is no longer in place at the University of Bamako.

4.4.4.3 Social Capital

The professional and personal contacts of diaspora members, as well as their language skills, familiarity with norms, customs and values in their country if residence and the ability to interact and work with people of different cultures can also prove very useful for the sending country. In some literature, social capital is presumed to play a critical role because it is assumed that it is used to transfer other forms of capital, e.g. financial and human capital. It is very likely that the Malian diasporas’ social capital is important in the transfer of human and financial capital from them to their compatriots in Mali. The social capital they have acquired is probably also vital for their success in interconnecting Malians at home with individuals, networks and institutions abroad. Several teachers interviewed in Bamako told me how Malians they knew abroad, for example old students of theirs, informed them on semi-

433 Kapur & McHale, Give us your best and brightest p. 110.
nars or conferences that would be taking place in their country of residence, and that they believed the teacher might be interested in attending.

Facilitating the migration of others

A different, and equally important role that the social capital of the diaspora plays, is that of helping them facilitate the migration of others. Through information on jobs, social services and housing abroad, as well as through being a contact person and providing support to newly arrived, diaspora members may thus help others migrate. Many Malians depart on migration within a scholarship program, a university cooperation, or similar. For these migrants, the need for help from diaspora members is often limited given that they are migrating within an organized context. A majority of the persons interviewed that had migrated had done so within an organized context, and the same applied to them. However, two of the persons interviewed told me how a friend or a relative living in their country of destination had helped them in their migration, for example to find a job. Also, one of the professors interviewed in Paris stated that his migration had not been possible without the help of relatives living abroad. This professor was also very active in helping others with different aspects on migration. During his time residing in France, he stated that he had made possible the migration of four relatives, for example through helping them with inscriptions at the University.

However, diaspora members are sometimes reluctant to make use of the social capital they posses to promote the migration of others. The reason for this is interesting. One professor interviewed in Paris told me the following, in responding to the question whether he had facilitated the migration of someone else: ‘No, when I came here, I saw right away that it was not suitable. Those who can make shift over there, they had better[stay].’ A student in Paris responded similarly to the same question:

The persons that are in contact with me, they ask me to check with the University if they could be inscribed, I always advise them: if it is not the case of a scholarship, to rather go study in Senegal or Cameroun, because it is easier to study over there with less money. But, on the contrary, if you come here, with the idea that you will work and study at the same time, you risk to not study. Because the studies are hard, and you, who has not studied at their level, if you come and work, is it not certain that you will succeed do both at the same time. Even for the first year, you risk failing.

These migrants seem reluctant to facilitate the migration of others, because they believe migration is not beneficial to these persons.

Regardless of the facts that many skilled migrants do not ask for the help of diaspora members in their migration, and that some diaspora members are reluctant to facilitate a migration they do not believe to be favourable for the prospective migrant, the study has shown that diaspora members do, in a tangible way, facilitate the migration of others, and that they possess a significant social capital that prospective migrants could tap into in order to succeed in their migration.

4.4.4.4 Connecting to international networks

The literature puts forward the role of the diaspora as intermediaries as an important source for positive outcomes for the country of origin. If international cooperation is complicated by for example poor information on distant prospective partners or difficulties in contracting across national boundaries, members of the diaspora can use their connections in the country
of origin and the host country, or leverage their good reputation to facilitate cooperation. The literature most often underscores their importance in international business, but it is also possible that they can facilitate research co-operations or inter-university relations that affect the Malian system for higher education more directly. The literature suggests that diaspora members can function as intermediaries in several ways. Diaspora members demonstrating their capabilities might affect the perception of all academics from the country of origin positively, spurring an international interest in academic cooperation. Also, they can use their superior knowledge of the characteristics of old and new country acquaintances to match partners. Diaspora members that have an ongoing relationship with a foreign institution, such as that of an employee to an employer, might be able to use their own reputation to vouch for a particular cooperation partner abroad. And in the next phase of the cooperation they have the capacity to ensure that each party lives up to its side of the agreement.

At the office for external relations at the University of Bamako, I learned that there was vivid cooperation with other universities, mainly in France. According to an official at the office, it happened that diaspora members were the focal points or intermediaries for new co-operations. The official did, however, state that in most cases, the cooperation was established through direct contacts between personnel at the University of Bamako, and at the institutions abroad. An evaluation of the TOKTEN program found that the program had been successful in connecting the University of Bamako with universities abroad. Up to 2011, twelve cooperation agreements had been concluded between the University of Bamako and universities abroad through the intermediary of members of the diaspora linked to the program.

The opinion that diaspora members can serve as intermediaries in this manner is spread among the professors at the University of Bamako. Approximately two out of five teachers interviewed told me that diaspora members serve as intermediaries for international relations at the University. They described, for example, how cooperation between the University and institutions abroad, shared research projects and visits by foreign academics had been organised through the efforts of Malian expatriates. Several also pointed out that the diaspora can serve as intermediaries for the transfer of financial capital to the University, which has been treated under section 4.4.4.1.

4.4.4.6 Factors influencing the role of the diaspora

In order to understand the present and future impacts of skilled migration, it is essential to examine the factors that determine the effectiveness of the Malian diaspora. Firstly, it is important to understand how the length of time spent abroad by Malian migrants influences their role in Malian society. As described in section 3.3, it is often argued in the literature that a long time spent abroad weakens the links between migrants and their country of origin. Malians have a strong history of migration and many of the skilled migrants have spent a considerable time abroad. There have been several significant ‘waves’ of skilled migration starting from the 1960s. This study has shown that the Malian diaspora plays an active role in many ways, in spite of its relative vintage. No evidence has been found that the diaspora members that have spent several years in their country of residence are less active than those that have arrived more recent. But there might be a temporary rupture when young migrants go from being students to professionally active. One teacher interviewed in Bamako described how he had lost contact with former students of his, when they finished their studies abroad and

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438 UNESCO p. 11.
started working. As described in section 4.4.4.1, the transfer of remittances seems to follow an opposite pattern, actually increasing over time. However, what the literature is most concerned about is the weak links between second and third generation migrants and their country of origin.\textsuperscript{439} This concern is probably, at least to some extent, relevant to the case of Mali but has not been investigated within the present study.

A diasporas' ability to impact on its country of origin is also stated in the literature to vary positively with its own success. It is also argued that since the success of the migrants is dependent on the salience of the destination country, the factor of where skilled migrants go is important.\textsuperscript{440} In the discussions on the role of the diaspora within this study, the respondents often specified where active diaspora members were residing. France was mentioned most often – approximately two out of five diaspora interventions described were made by Malians living there. The second most frequent country of residence, mentioned in about one third of the cases, was the United States. With the exception of Canada, which was mentioned three times, other host countries where only mentioned once.\textsuperscript{441} These frequencies can serve as an indication as to where the Malian diaspora is the most active, namely in France and the United States. African countries where only mentioned two times. A comparison with the share of skilled Malians living abroad in the eight main countries of destination gives interesting results. European countries\textsuperscript{442} are hosting 37\% out of the total number of Malians living in these eight countries, and where mentioned in 48\% of the total number of times a specific country of residence was mentioned in connection with diaspora activeness. This suggests that diaspora members living in European countries are slightly more active than average. However, the same comparison regarding USA and Canada gives an even more interesting result. While hosting only 23\% out of the total diaspora in the eight main countries of destination, these countries where mentioned in 45\% of the cases of diaspora activeness. This indicates that the Malian diaspora in North America is comparatively very active, and significantly more active than the diaspora in Europe.

In contrast, the comparison suggests that the Diaspora living in African countries is much less active compared to the ones in Europe and Northern America. While hosting 38\% of Malians living in the eight countries, African countries where only mentioned in 6\% of the cases of diaspora activeness. It should be noted that the African countries mentioned in connection to diaspora activeness where not the same as the African countries among the main eight countries of destination. These countries, indicated to be hosting 38\% of the total Malian diaspora in the eight main destination countries where thus not mentioned once in connection to diaspora activeness. Cautiousness is called for as regards these results. First, because the figures on where Malians skilled migrants are residing are very uncertain and can only serve as indications.\textsuperscript{443} Second, because the persons interviewed, having learned about the focus of the study on migration into the European Union and knowing that the interviewer was from a European country, may have had more of a propensity to talk about interventions by migrants living in European or other western countries rather than African countries. However, the results support the theory put forward by Kapur and McHale, that diaspora possibility to affect their home country is dependent on their country of residence. For Mali, migrants living in North American seem to be significantly more active than in other regions, the diaspora in

\textsuperscript{439} Kapur & McHale, \textit{Give us your best and brightest} p. 120.
\textsuperscript{440} Kapur & McHale, \textit{Give us your best and brightest} p. 120.
\textsuperscript{441} They where Germany, Niger, Russia, Senegal and Thailand.
\textsuperscript{442} France and Germany.
\textsuperscript{443} See section 4.2
Europe is slightly more active than its size suggest, and the African diaspora seems comparatively very inactive.

The propensity of the diaspora to connect to, and form networks in their counties of residence is also important to its effectiveness. In Mali for example, the remittances sent from individuals are spent on the consumption of daily goods, whereas money sent through associations go to more long-term investment which are more probable to promote development (even if such an impact on development has not been shown). Also, some respondents in Bamako stated that diaspora support to the University could only happen through associations, and correspondently, students interviewed in Paris told me that they could only be an important force if they organized themselves. Much of the diaspora activeness described above has occurred through networks or associations, mainly through the TOKTEN program. An important work of identifying diaspora members has indeed been conducted within the program and it plays an important part in interconnecting the Malian diaspora, at least in France. A teacher interviewed in Paris stated that it is very difficult to find and unite members of the diaspora, and that the ones that participate in reunions are usually the same that are active within the TOKTEN program. There is still much to gain in interconnecting diaspora members. While there is a well-developed system of associations according to geographic origin among Malian migrants abroad and there are student associations, associations according to profession seem to be rare. None of the persons interviewed within this study knew of Malian teachers abroad associating themselves according to their occupation. One professors interviewed in Paris told me how he had tried to initiate an association with colleagues within his discipline, but that the response had been weak and he had not succeeded. Another professor in Paris had been a part of an association that was preparing to gather computers and send to Mali, but now the members of this association had dispersed. A student in Paris described how highly skilled diaspora members in France where often isolated from each other, as opposed to migrants with a lower education and with a 'rural profile':

The migrants with an urban profile, they flee from each other: "I do not want that you visit me, that you are aware of my situation here. Otherwise one day you will come and say that you have a problem with a hundred euro, et cetera." This is why we do not see each other. Everyone for their god, god for everyone. It is like this in France.

In conclusion, the propensity of skilled Malians abroad to form networks and associations seem rather low, at least in France. It is likely that the same is the case for diasporas in other regions as well, since the persons interviewed had not heard of associations of skilled Malians in any country of destination. However, there is at least one association of skilled Malians abroad, namely the association Maliwatch. Maliwatch was created by Malians living in USA which could be taken as an indication that the Malian diaspora in northern America is more active than in other regions as regards forming networks as well as in other areas.

4.4.5 The role of the returning migrant

445 Azam & Gubert.
446 www.maliwatch.org, latest date of consultation 12 November 2010.
The Mali [the hippopotamus] is amphibian. He may go far to find grass but once he has found what he is looking for he will return to sleep in the water.’ - Official at the University of Bamako

Migration should not be assumed to be a permanent decision, or a one way movement. In reality, many Malian emigrants eventually return to their country of birth. This raises the possibility that the time spent abroad is, in fact, to Mali’s advantage. In chapter 3.4, it has been described how the literature argues that the nature of the impacts upon return can depend on the reasons why migrants might return and what types that is returning. Some thus suggest that returnees are ‘negatively selected’, which could diminish the positive impacts of the returnees. Others similarly argue that returns stemming from ‘mistakes’ leads to fewer positive effects for the country of origin than returns stemming from ‘plans.’ Regarding these theories, skilled Malian migrants in general seem to depart with the outset to return after a certain period of time. For example, 8 out of ten of the University students interviewed in Bamako that where interested in migrating stated that they where determined to return to Mali later on. This group, e.g. university students going abroad for high-level study is according to the literature a very important class of potential returnees. They probably constitute a large part of Malian skilled migrants. 4 out of six of the persons interviewed in Paris wanted to return to Mali, and 3 of them where currently preparing their return. A fifth respondent had previously made preparations to return up to what he perceived as a critical point, but where for the time being not willing to take the final step. Return does thus not seem to be the result of failure abroad. In fact, the opposite case could be at hand, where return is the result of a strong determination and ambitious planning. Respondents in Paris stated that it was not easy to return; finding employment at home required ambition and the pressure from family and friends to contribute to their well-being after the return required a certain financial capital. One professor that stated that the only wish he had was to be able to return to Mali described what was hindering him from doing so:

I have not found an opportunity to work. I cannot take the risk. If I go, I cannot go just like that, and look for something. . . . Because there are social reasons. Today, I am settled in France, I support my family at home a lot.

There could thus be a certain positive selection of returnees among the skilled Malian migrants. That is to say, the migrants that return could be especially successful or ambitious in comparison with other migrants. This would suggest that their contribution to Malian society after their return is significant.

The literature also point out that there can be other critical elements in the selectivity attributes of return migrants than their success. It is thus argued that those who return are likely to place greater weight on the public good rather than private returns. There would be little reason to return if only the latter mattered. Furthermore, it is pointed out that migrants that choose to return are likely to have a greater commitment to institution building. If this is true, the benefits for the country of origin are believed to be quite substantial. Of the persons interviewed currently residing in France who stated that they wanted to return to Mali all voiced a sense of concern for the greater good or a commitment to institution building. One professor thus stated that it would be good for him to return to serve his country. A student

447 For this argument, see Kapur & McHale, Give us your best and brightest p. 163.
448 Kapur & McHale, Give us your best and brightest pp. 163 and 176.
449 Kapur & McHale, Give us your best and brightest p. 171.
450 Kapur & McHale, Give us your best and brightest p. 172.
had been working with a non-governmental organisation to promote rural development before going abroad, and wanted to continue working in the same field after his return. A professor elaborating on why he wanted to return stated:

*Today I have understood that you can contribute with something to your country, even if you are not... Even if you cannot change everything, at your level you can always contribute with something. And that I have knowledge today that can be useful for my country.*

A student similarly stated: *'Me, I want to return. I have plans for myself and I have plans for Mali. I had started some projects, mainly in children education, so I have to return and follow them through.'* Similar examples of concern for the greater good or commitment to institution building where presented during the interviews in Bamako. Two of the students interested in migration stated that they were determined to return to Mali because they wanted to serve their country. A professor stated that he had returned because he felt a moral obligation towards the University of Bamako and the Malian state for having awarded him a scholarship. A law professor stated that he had *'done his best to move things forward'* after his return by assuming responsibility of several law reviews. These indications are, however, sporadically and there is nothing to suggest that a group of migrants without interest of returning would not voice a similar concern or commitment.

Furthermore, the disregard for private returns pointed out in the above hypothesis is not a clear cut question. The statements of one of the persons interviewed in Paris that was preparing his return did present an example of disregard for private returns. He told me that during a visit in Bamako he went to the University to ask if they had any need of his competence, and continued as follows:

*They said that they needed me, but that it was a problem of money. I said that money is not important to me. Foremost for me, is to transfer [knowledge]. . . to take action, see what I can do.*

But even though wage levels after return are undoubtedly lower in many cases, the financial situation of the migrant might not be worse after returning to Mali. Many respondents pointed out that living expenses are much higher abroad and that skilled migrants in particular are living in social contexts that require a lot of capital. Although the professionally active persons interviewed in Paris stated that they were able to put money aside, a lot of this money where sent to relatives or friends in Mali. The social obligation to support friends and relatives is very strong, at least in certain families or social contexts, and it is the view of the author that the nature of this obligation is important to the understanding of the situation of skilled Malian migrants and returnees. It is a very complex issue and the nature and implications of the social obligation vary between individuals. The obligation is affected by what community or people the migrant belong to or whether he comes from an urban or rural setting. *451* One migrant interviewed in Paris, who is of the Soninké people, described how the social obligation of supporting friends and family was a heavy burden for him and how these links to his relatives where growing stronger in spite of the long distance and the period of time that had passed. He believed that he would probably have a more fulfilled life, should he have returned to Mali earlier on:

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*451* See section 4.4.4.1.
When I do the evaluation today, of my life, I think that they [who have returned] have fulfilled their lives more than me. Because I stayed in Europe. Life is very difficult here. For example all my friends married before me. They have children, I do not yet. . . . I have a lot of pressure on me from the people in Mali, they think that since I am in France I have a lot of money. Many ask me to help them, a thing I cannot do. I cannot help everybody. But at the same time, I do not manage to live well here because a good part of my resources are sent to Mali. If I were in Mali I tell myself that maybe I would be a lot more calm in some ways.

For this migrant, the social obligation towards friends and relatives is perceived to be elevated because he is living in his high wage country of residence. A similar statement was made by a student elaborating on where she wanted to work after her studies: ‘If you go abroad and you are paid better you are obliged to support all those that have stayed. This is something that motivates you to stay.’

In contrast, other respondents told me how the social obligation towards relatives in Mali is one of the obstacles to returning – that migrants do not have the financial resources to meet the expectations after their return. According to a Malian professor, who had studied abroad, those that are abroad have a lesser obligation to support the family (or maybe it is easier to decline or ignore the demands for support while living in another country). Talking about why it might be easier to pursue studies abroad, he stated that: ‘That is the advantage for those who leave. They do not have the responsibility for the family; they are more concentrated to their work.’

One can thus not make the conclusion put forward in the above referred theory, that the decision of a Malian migrant to return is not based on reasons related to private return. Even though many of them earn more while abroad, returning to Mali will not necessarily lessen the private return because of the higher living expenses abroad and the social obligation to support relatives and friends.

Similarly as during the time spent abroad, the contribution of return migrants can take different forms. Thus, the financial capital the migrant has accumulated abroad can be used in investment and entrepreneurship. The human capital the migrant has acquired in the form of education, training and working experience can benefit their home country through the diffusion of knowledge, technical skills, ideas and information. The social capital the returnees have accumulated abroad, such as professional and personal contacts and familiarity with norms, customs and values in the foreign country can also prove useful and productive for their home country and returned migrants can help connect the sending country to international networks.

4.4.5.1 Financial Capital

The often higher wage levels in countries of residence might allow for skilled migrants to accumulate financial capital to an extent that would not have been possible, should they have stayed in their country of origin. After the return, these savings can benefit the country of origin through investment and entrepreneurship. Researchers have found that the duration of the stay abroad and overseas savings, together with new skills, have positive effects on becoming an entrepreneur. Clear indication has also been found of how overseas migration to higher

452 Kapur & McHale, Give us your best and brightest p. 173.
453 Clemens p. 25.
wage economies can enable future new entrepreneurs to accumulate financial capital on a scale not otherwise possible.\textsuperscript{454}

Many skilled migrants from Mali live in high wage economies.\textsuperscript{455} It is likely that they, similarly as was found in the above mentioned study, are able to set money aside to an extent that would not have been possible in Mali. However, as mentioned above, the higher wages might be offset by the higher level of living expenses abroad. In spite of this, all of the migrants professionally active in France interviewed in this study, where able to set money aside to send home. The possibility to accumulate substantial capital to bring with them on return might, however, be reduced by the obligation to remit while abroad. But skilled Malian migrants do seem to save money specifically designated for their re-settling prior to their return. A student interviewed in Mali described how he, and other of his fellow Malian students, looked to find a 'petit travail', an extra work, parallel with their studies or for the months following their graduation in order to save some money to bring home. This money would be needed to support the students a few months while they were looking for employment in Mali. A professor interviewed in Paris explained that the accumulation of a certain capital was a part of the return process for many professionally well established Malians abroad. Before moving back to their country of origin, they would set up a business which would support them after their return. Another professor interviewed in Paris stated similarly that: 'There are certain, really, they buy land back home and build for the future.' Returning migrants may thus, for example, set up or invest in private schools in order to secure his or her future after re-settling in Mali. Some money, probably a significant portion, should also be set aside to meet the expectations of friends and relatives awaiting the return. One of the professors told me that:

\begin{quote}
I support my family back home a lot. Here, I have a wife who is also a student and who needs me. So I need to have a revenue for a period, even if I go to Mali, that will allow me to continue to meet my obligations. If I go to Mali tomorrow, saying that for one or two years, I will not be able to help anyone, the people will not understand.
\end{quote}

These statements indicate that a certain financial capital is accumulated and transferred to Mali in connection to the return of skilled migrants. Similarly as with the capital transferred by migrants while they are still residing abroad, probably little of this financial capital that reaches the University of Bamako. But also similarly, it might be invested in the education of individual students or fund the development of private institutions for education. It is probably not uncommon either, that return migrants that take up teaching positions at the University of Bamako bring with them books or other material to their future work place. Approximately half of the teachers interviewed in Bamako had experience of returning migrants sharing or donating materials that they had brought with them from abroad. Three of them had done so themselves. Material can also reach the University through the efforts of returned migrants using their connections abroad. One teacher thus told me how members of an association of young economists that had recently returned from studies abroad had organised the donation of books to the Faculty of Economical Sciences and Management: 'They [the returned migrants] have become aware of the difficulties at the faculty regarding material et cetera, so they have organised their friends that are abroad.'

In all cases, many of the returning migrants are likely to bring materials that they need in their own teaching – materials that they would not have been able to acquire in Mali. In fact, sev-

\textsuperscript{454} Kapur & McHale, \textit{Give us your best and brightest} p. 173.

\textsuperscript{455} See section 4.2.1.
eral teachers interviewed in Bamako expressed a frustration that returning migrants kept material that they were bringing with them to themselves. One teacher told me that:

Yes, someone that comes from abroad can bring new material for his own course, but it is foremost personal. If he had the right sense to share, it would be a good thing, but most often it happens that he do not share. He is content with himself, his course.

The importance of the transfer of materials by returning migrants can also have been lessened by the arrival of the internet. One teacher who was of this opinion told me that:

Before, there was a lack of material. Those who came, came with a lot of material. But with the internet, even those that have not been abroad can put together their whole course from the internet.

In conclusion, certain financial capital is accumulated and transferred to Mali in connection to the return of skilled migrants. Even if the amount reaching the University of Bamako in ready money is probably limited, a significant transfer of books and other material is taking place from or through returning migrants. Also, money that the returnees bring with them might be invested in the education of individual students or in private institutions for education.

4.4.5.2 Human Capital

When skilled migrants return, they are likely to do so with enhanced human capital. The literature argues that returning migrants can help the diffusion of knowledge and norms in their home countries—including technical skills and firsthand experience of high-quality institutions.\(^{456}\) Is this the case at the University of Bamako? To be allowed to teach at the University, a level of education is required which, in many disciplines, is not available in Mali. One can thus say that, as regards the University of Bamako, skilled migration is indispensable. A teacher interviewed at the University of Bamako put it like this:

One can assume that many of the teachers at the University of Bamako have been abroad to acquire some of their education. There were no statistics available on how many of the teaching staff that had pursued education abroad but the interviews with teachers at the University of Bamako gave a clear picture. They all stated that a significant share, between 50% and 100% of the teaching staff had pursued education abroad. Three out of four stated that the share was between 70% and 100%. There are thus many returned skilled migrants that have taken up positions at the University of Bamako.

Have these returning migrants acquired human capital abroad that benefits the University of Bamako? All students and teachers interviewed in Paris who wanted to return to Mali believe that they have acquired human capital during their time in France that would be useful at the University of Bamako, or in the endeavours to improve the Malian system for higher education. Similarly, all teachers interviewed in Bamako that had returned from migration stated that their time abroad had allowed them to acquire human capital such as skills, experience, information and effective methods of working that benefited them in their work as teachers.

But applying the knowledge and skills acquired abroad after return might be complicated. Firstly, the knowledge and skills might not be adapted to the Malian context or applicable

\(^{456}\) Clemens pp. 25-26.
under Malian conditions. Several of the persons interviewed in this study where of this opinion that. Half of the professors interviewed at the University of Bamako, who had returned from migration, had found that the human capital they had acquired abroad was not completely adapted to the Malian context or applicable under Malian conditions. A common problematic was the difference in the financial means available at the migration destination and in Mali. The difficulties where most prevalent among teachers and students within medicine, they where iterated by all respondents in this discipline. A student stated that: 'Certain European pathologies do not exist here, and there are pathologies here that you do not have in Europe, there is a difference.' The difficulties may also be connected to the way of work, as described by one of the teachers interviewed:

*In Europe there are many specialists in everything, but here you have to know how to do a lot to work. You will learn a specialization abroad . . . even though here you have to know a bit of everything. That creates problems.*

Many of the persons interviewed believed that returning migrants needed to do an important work of adapting the skills and knowledge acquired abroad upon return. Cooperation and exchange with the colleagues in Mali was often pointed out as crucial for this adaptation. The presence of returned migrants at the University of Bamako is a mechanism influencing the cooperation and debate there. The diversity of experiences is stated by many to enrich the debate, but some of the respondents pointed out that it could also complicate cooperation and lead to divided education. One teacher stated that:

*I studied in Russia. There are others that come from France, Germany and the United States. We do not have the same way of addressing on the problems. There are differences. It is like I have always said: "the teaching here has to be unified . . . there are too many influences".*

The statement of another teacher further illustrates the tensions that sometimes exist:

*There has been a sort of a ideological struggle between the east and the west . . . For example those that have studied in France say that in Russia there is no real education and they deliver diplomas just like that and people come from there and know nothing. . . . Even now there are those who think this.*

However, the majority of the teachers interviewed where of the opinion that that the pluralism of ideas was beneficial, that the debate and cooperation at the University of Bamako was generally working well, and that the adaptation of the human capital acquired abroad was possible, even though many iterated the need for an increased discussions and exchange between the teachers.

In order to understand whether the returning teachers have acquired human capital beyond what they would have accumulated if they had never departed it is interesting to learn if teachers that have been abroad are perceived as better at their profession than other teachers. A minority\(^457\) of the persons interviewed where of this opinion. However, the majority\(^458\) found that there was no notable difference in the quality of the teaching carried out by teachers that had been abroad and those that had not. Several respondents iterated that the quality of a teacher is first and foremost depending on the individual, and to a lesser extent on where

\(^{457}\) One out of eight teachers and four out of nine students.

\(^{458}\) Five out of nine students and four out of eight teachers.
he or she has acquired his education or experience. Interestingly enough, three out of eight teachers where of the opinion that teachers that had acquired their education abroad where actually less equipped than those that had remained in Mali. One teacher thus stated that: 'Based on my own experiences, those that have studied here have much better understanding of reality. They know the situation better.' Another teacher that had returned from migration similarly explained that: 'Someone that has stayed here often has ideas that are much more pertinent, and a capacity of analysing that is more pertinent.' The interviews with students at the University of Bamako gave some similar information. Five out of thirteen students had negative experiences of returned teachers, and linked these experiences to traits or attitudes that they believed that the teacher had acquired abroad. One student had found that many returned migrants were boastful: 'They have learned a lot abroad and many of them boast: "Me, I have studied in France, in the United States, I have held classes in Warsaw". I do not know if they are right to do so.' Another student had also had bad experiences of teachers that had returned from migration, and linked their behaviour to their stay abroad:

*It is horrible. To study and obtain a grand diploma, and then you cannot even make use of it and give what you have, your skills and your knowledge, to the students. . . . It could be a problem of salaries, most of them is bothered by studying abroad and returning to work here with a lower salary, maybe they are obsessed with money. . . . Even if they do not give good classes here, they can find employment abroad. . . . Maybe they give good classes abroad, but here they are only officials and they do not care about us.*

Another student was equally disappointed with the contribution of returning migrants: 'These professors should contribute to finding solutions to our problems, but we come to understand that they are like our enemies, because they do not act in a way that permits finding solutions.'

From the above, one understands that having spent time abroad is not generally perceived at the University of Bamako to automatically render you a better teacher. However, presently it is not possible, in many disciplines, to acquire the education needed to be a teacher at the University in Mali. Even if it might be more profitable in some cases, that teachers are educated in Mali as opposed to abroad, this is often not possible. If a Malian goes abroad to acquire an education that is not available in Mali, he or she will return with human capital beyond what would have been accumulated if he or she had never departed.

To conclude, returning Malian migrants bring with them significant human capital in the forms of skills, experience, information and effective methods of working that benefit them in their work as teachers and contribute to the endeavours to improve the University. However, there are some problems associated with returning migrants making the human capital they have acquired abroad available to the University of Bamako. The knowledge and skills are not always adapted to the Malian context and the diversity causes certain tensions within the teacher body at the University. But, all in all, the human capital the migrants are returning with is substantial, and there is a debate and exchange taking place at the University which enables a fruitful adaptation and diffusion of this capital. The statement of a student interviewed at the University of Bamako can serve as an illustration on how a returning migrant can give an important imprint on his surroundings:

*The best teacher in the world in surgery, he came back to the country to serve in my first year here, to give a class, in order to contribute to the development of*
the country. It was not for money but solely because of love for the country since he had all advantages in Europe. . . . It is a professor of inspiration. He inspires many with his modesty.

4.4.5.3 Social Capital

The professional and personal contacts as well as the familiarity with norms, customs and values in the foreign country that the returning migrants have obtained abroad will benefit the country of origin in several ways. Firstly, the social capital of these migrants will allow for a continued inflow of financial and human capital from abroad after their return. Several returned migrants interviewed at the University of Bamako thus told me about how they kept exchanging information and ideas with persons they had gotten to know during their time abroad. The social capital of the returned migrants can also be used to help interconnect the University with individuals, networks and institutions abroad. For example, I learned from a teacher at the University of Bamako how a group of students that had returned from studies abroad had set up an association of Malian and foreign young economists that supported the University: ‘They [the students] became aware of the difficulties at the faculty in terms of material and other things, so they organized their comrades that are abroad.’ Through the connections they have abroad and the information on jobs, social services and housing abroad they have access to, the returned migrants can also help others migrate. And perhaps even more importantly, they may be a source of motivation for migration. The following statement by a student interviewed at the University of Bamako shows that this was the case at least for him:

Because we think that our professors are good, and that this is because they have been to Europe, we have to do the same if we want to be like them: go to France, to Belgium et cetera. This idea is very strong.

4.4.5.4 Connecting to international networks

The interviews conducted at the University of Bamako provided many examples on how returned migrants had connected the University with networks abroad. At the department for external relations at the University of Bamako, I learned that the University had a large number of cooperation programs with partner universities abroad as well as several individual research co-operations. When asked whether members of the Malian diaspora was helpful in setting up these co-operations, the respondents at the department, who where both returned migrant themselves, told me how such help was seldom necessary as the staff where successful in setting up the co-operations without intermediaries. The international connections established by returned migrants plays an important role at the University of Bamako, leading to an inflow of information, knowledge and funding. This probably holds equally true for other parts of the Malian society.

4.4.6 Sociopolitical impacts

The migration of highly skilled workers may have important political effects in the country of origin through strengthening, or diminishing, the support for democracy, the exercise of democratic powers and the driving force for development and well-being. The information and ideas stemming from highly skilled migration are most likely to play an important role in this context. Also, the sociopolitical group constituted by skilled Malians living abroad and returned migrants may possess an important political force. However, the absence of highly skilled workers from Mali caused by migration may also diminish the support for democracy.
and have other important political effects, which will be the first aspect of the sociopolitical dimension of skilled migration to be investigated here.

**Sociopolitical impacts of the absence of skilled workers**

The literature argues that the absence of human capital may have a political effect, reducing the support for democracy, the exercise of democratic powers and the driving force for development and well-being. Because developing countries have a limited middle class to begin with, when this segment leaves, democratic consolidation may become more difficult. Since there seem to be a strong positive relationship between support for democracy, education, and class, the fact of positive selection (by education) of migration might weaken support for democracy.\(^{459}\) If the intellectual Malian elite are not in clear surplus, skilled migration could, according to these theories, have a tangible negative impact on democratic consolidation and driving forces for development in Mali. This thesis does not investigate democratic support or driving forces for development in Malian society in general. Instead, it has focused on the driving forces to improve the University of Bamako and the propensity to hold the Malian government responsible for the functioning of the system for higher education.

Firstly, the group that possesses driving forces for development of the University of Bamako need to be identified. After this, it can be investigated whether or not this group is in surplus and if it is likely to pursue skilled migration. There seem to be a relatively broad knowledge of the problems at the University of Bamako in Malian society. Naturally, all teachers and students interviewed were well aware of the problems at their university. When asked if this awareness was shared by Malians in general approximately half of the persons interviewed told me that the problems are relatively well known among all public. The other half roughly believed that these problems were only understood by the educated part of the population. It should here be noted that the findings regarding the views and actions of Malians outside the University is uncertain as it is based on second-hand information. However, my own observations in Bamako and on the Malian countryside suggested that the problems at the University are widely known as the teacher strike is an often debated subject. But the awareness of the University’s problems does not seem to equivalent a concern for the institution or sense of urgency to amend its problems. Even though all of the teachers and students told me they felt it was important to improve the University, and the majority proceeded with elaborating on ideas they had on how this could be done, or otherwise showing that the issue is indeed one of concern to them to which they have given thought, they did not think that this concern was shared by Malian society in general. When asked who shared their view that it is important to change things at the University approximately seven out of ten told me that this view was only shared by the part of the population that had an education. According to a majority of the respondents, the group actually taking action to improve the functioning of the University is concentrated to the teachers and students of the University. Very few stated that actions were taken by people without an education.

These findings suggest that the theory related above could be applicable the Malian context, as the societal sense of concern for the University and inclination to act to improve its functioning is limited to a small group. Furthermore, the persons interviewed believe that their concern for the University is mainly shared by Malians that have an education. Within the group that seem to possess the most important driving forces for development of the University of Bamako, there are thus many individuals that have the educational attainment required to pursue skilled migration. The above suggest positive selection by education of skilled mi-

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\(^{459}\) Kapur & McHale, *Give us your best and brightest* pp. 108-109, Tanner p. 3.
migration might weaken societal driving forces for development as regards Mali’s system for higher education, since driving forces to improve the University seem to be concentrated to a limited group which is plausible of pursuing skilled migration.

Besides the impacts skilled migration might have by removing members of the group promoting development of the University of Bamako from the country, the study provides examples suggesting that it could diminish the driving forces for improving the University of Bamako of those remaining behind. This goes in line by a suggestion made in the literature stating that the very possibility of exit may make highly qualified workers feel as though they have less stake in the national system, thus diminishing their 'voice'. When asked why the students and their families do not demand a better education from the University a student answered as follows:

Yes, those that are aware are angry and ask themselves if it is not time to reform the educational system, but the families that have the means to provide higher education to their children pay for an education for them abroad . . . their concern is for the education of their own children, and not for the children of others.

The higher middle class are sometimes perceived by the respondents to be one of few societal groups with a political power in Mali. Opinions like the above, that the possibility for the wealthy and powerful to send their children abroad for education reduces their concern for the Malian system for higher education are shared by nine other respondents. A student interviewed in Bamako described this link between the power to change and financial means. She had told me that all students and their families were talking about the problems at the University but that no-one was doing anything. When I asked her why nobody acted she answered that 'everybody wants to but the problem is the means'. I then pointed out that there are some people in Mali with financial means and she responded: 'yes, but generally their children are abroad'. Another student told me how political power in Mali is concentrated to a small group of people who only thinks of themselves. When asked if this group do not want a qualitative education for their children, he responded that 'the problem is that generally their children are abroad'. Others go further, telling me how the group with political power stay inactive because the system were their children have access to a better education than other groups ensure that they remain in power. When asked if wealthy Malians took part in discussions regarding improving the University a student answered: 'They send their children abroad, or to private schools.' I then asked if this meant that they were not present in the discussions and the student responded: 'Exactly, since their children will be educated well, and be better than us, it will ensure that the posts come back to them'. One student told me how the subject has been touched upon by the former Malian Prime Minister Ibrahim Boubacar Keïta addressing the students during a student strike around 2002. According to the student, the Prime Minister encouraged the students to go to school, telling them that none of the rich people's children studied in Mali, but abroad. If the students did not go back to school, the wealthy would continue to rule since the youth studying in Mali would not have an required level of education to rise to power.

An adjacent opinion was certain respondents. A student who did not think that all students have an awareness of the University’s problems thus stated that 'the ones that have this awareness, they want to leave.' When I asked if this meant that they did not care for the Uni-

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Kapur & McHale, *Give us your best and brightest* p. 120
iversity he said 'Can I, at my level, do anything? I have no power.' This suggest that Malians with high demands on their education might see migration as an easier way of obtaining the education they want, than struggling to improve the education provided in Mali. Accordingly, skilled migration might diminish the driving force of Malians with high demands on education to improve the University of Bamako.

In conclusion, the findings of the study indicate that the societal group promoting improvement of the Malian system for higher education is not in surplus. Migration within this group could therefore have a negative effect on the exercise of democratic powers and the driving force for development. The fact that this group is mainly composed of highly educated intellectuals makes it plausible of skilled migration. The study also provides examples indicating that skilled migration may diminish the driving force for development among those remaining behind.

The political role of Mali's diaspora and returned migrants

The literature argues that highly skilled migrants living abroad often play an important and positive role in the societal and political debate and the development of a civil society in countries of origin. One of the main reasons for this is said to be that they tend to have more opportunities and freedom to organise themselves and express their opinion than is often the case in the sending countries.\textsuperscript{461} In Mali, which is a country with important numbers of citizens living and working abroad, the diaspora is a rather important political factor. This is probably to a large extent explained by the important financial resources they transfer to the country. As an example of the role the diaspora plays in the politics of the country, one of the officials interviewed in Bamako stated that a main reason why Mali had not signed a bilateral agreement with France regarding the governance of migration (and the return of Malian migrants from France), was that the diaspora opposed the agreement. Also, the political role can be played by individual migrants. Several respondents stated that exiled Malians had made political carriers, both of a local and higher level, because of their importance to their community of origin as regards transfer of money and information. However, even if this holds true for the Malian diaspora in general, the part of diaspora that has a higher education seems to play a comparatively weak political role. Where the diaspora has a political leverage, it seems to be because of the financial capital it engenders, rather than the skills and knowledge it may possess. When I asked about the skilled diaspora specifically, the general the responses showed that it was not a group perceived to have much political importance. Only three of the persons interviewed stated that they believed that the skilled diaspora had any politic leverage. One teacher stated that he used to think that the skilled diaspora was very powerful, but that he did not think so anymore. Another teacher stated that even though these intellectuals could have some leverage, they are simply too far away.

Even if the skilled diaspora does not seem to play an important political role from abroad, the social effects may be important, in that migrants returning to Mali can be a powerful force for social change. In some countries (return) migrants who have studied and worked abroad have played an important role in reforming domestic policies.\textsuperscript{462} In many cases, migrants can effect such positive change in governance institutions personally, at the very top. According to the literature, numerous leaders broadly believed to have fostered development in their countries of origin were return migrants following a long period of work and study in a rich country. Examples of such leaders include Deng Xiaoping of China, Mohandas K. Gandhi of India and

\textsuperscript{461} de Haas p. 1248.
\textsuperscript{462} de Haas p. 1247.
Ellen Johnson-Sirleaf of Liberia. Clemens argues that a close look at nearly all developing countries where sustained economic growth has occurred since World War II reveals important movements of people in key public and private sector positions to and from rich countries.\textsuperscript{463} This work, being focused on the Malian system for higher education, cannot make any assumptions on how skilled migration might influence the political governance of the country.

Whether or not the concern raised in some literature, that political activism among diasporas can have a negative side, where 'long-distance nationalism' amplifies political tensions and conflict in the country of origin\textsuperscript{464}, is relevant for Mali has not been investigated in this study. It could mentioned that I have not come across any indications that this would be the case.

\textit{Information and ideas stemming from highly skilled migration}

The information and ideas finding its way to Mali and the University of Bamako through skilled migration may stimulate driving forces for development and contribute to the strategies on how such development can be obtained. As pointed out by Kapur and McHale, the cumulative effect of millions of conversations—akin to filling a pond one drop at a time—is likely to be substantial. On the one hand, the information flows resulting from skilled migration convey knowledge about things to be done and how to do them. On the other hand, they change expectations of and preferences for what is and is not acceptable, whether in regard to standards of service, the role of the state, or the behaviour of politicians.\textsuperscript{465}

Ideas and information that seemed influenced by international experiences where very often manifested during the interviews at the University of Bamako. For example, when asked if the system for higher education was in need of improvement, many of the respondents, after emphasizing that this is the case, proceeded to tell me about ideas they had, or had heard about, on how this improvement could be done that in many cases seemed internationally influenced. The fact that strategies for improvement are internationally influenced does not mean that they originate from skilled migration, but every second respondent also expressed the opinion that ideas or motivation for improvement came to the University of Bamako through skilled migration. One student put it like this: "\textit{Those who go abroad they see what is happening there and they know what is happening here. . . . So they can come up with good solutions.}" Three out of five persons interviewed at the University described this link through specific examples from their own experience. Such experience could be that the respondent had developed an idea during his or her sojourn abroad, or been influenced by exchanges with skilled migrants. In a discussion on the teacher strike where it was stated that the strikers could only be successful if they received support from the politicians, a teacher interrupted and said that: "\textit{No. In Europe there are powerful groups even in the civil society.}" This was followed by a discussion on the role of civil society in Mali.

In fact, several connections between the teacher strike that took place in spring 2010 and skilled migration were manifested during the interviews. For example, one teacher described how skilled migration had provided motives for it:

\textsuperscript{463} Clemens pp. 25-26
\textsuperscript{464} Kapur & McHale, \textit{Give us your best and brightest} p. 120.
\textsuperscript{465} Kapur & McHale, \textit{Give us your best and brightest} p. 124.
Those who are everywhere, in Burkina-Faso, Dakar, Abidjan and Niger, they have seen how the teachers are treated over there. So we make a comparison: we are in the same region, we have the same treaties and agreements – there is no reason that they should be treated better than us. So the awareness has partly been raised through migration.

A member of one of the teacher unions on strike explained to me that some of the demands of the strikers were, inter alia, equal salaries with colleagues in the neighbouring countries and organisational changes to the hierarchy of the teaching personnel. He also described how the union used travels of their members abroad and exchanges with Malian teachers visiting from other countries, as important strategies in its work. He concluded the interview by stating that:

*It is through these collaborations [with Malians abroad] and research projects [abroad] that we have come this far in our work, and the possibilities of our teachers and researchers to go abroad must be improved.*

This support the findings by Gubert, that migration and remittances push up salary levels in the Malian region of Kayes.\(^{466}\)

Though they only provide fragmentary evidence of a phenomenon that may be spread throughout Malian society, these findings suggest that skilled migration has an extensive sociopolitical impact. By being a vessel for external impulses and information, skilled migration may, drop by drop, contribute to the development of Malian society.

The conclusions in the sections above underscore the fact that the development effects of migration include an important sociopolitical dimension, and show how skilled migration can contribute to shaping the societal climate in Mali.

### 4.4.7 The combined effect

All things considered, the negative implications for the University of Bamako of the absence of the skilled workers pursuing migration seems to be offset by the gains derived from migrant return, the prospect of migration raising the level of education, the role played by the diaspora and the sociopolitical impacts. However, this balance could be shifted even by a slight change in migration outflow, leading to a situation where skilled migration has serious negative effects on the country. In this regard, Beine, Docquier and Rapoport have found that Mali with its migration rate of 15\(^{\%}\)\(^ {467}\) is experiencing a beneficial brain drain, whereas countries with migration rates from 20\(^{\%}\) are negatively affected by the outflow of skilled workers.\(^ {468}\) This suggest that an increase of 5\(^{\%}\), in the migration flows from Mali, or 1.100 individuals, may entail negative effects for the country.

### 5 Impact assessment of the Blue Card Directive

Even though every migration decision is a personal one, regulations can have important impacts on migration trends. According to a study analyzing the determinants of the outflow of skilled workers from Africa conducted in 2008, immigration policies in OECD countries

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\(^{466}\) Gubert p. 39.

\(^{467}\) Docquier & Marfouk, appendix, Table A.2-2

\(^{468}\) Beine, Docquier, Rapoport, p. 631.
where, together with other causes such as the wage gap countries of origin and destination and former colonial links, a significant determinant of African emigration.\footnote{Marfouk, Abdeslam, \textit{The African Brain drain: Scope and determinants} p. 26.} There are several examples of migration legislation having had noticeable effects on migration patterns. One is the migration of Malian citizens into France in the 1980s. At this time, a tendency of considerable prolongations of the periods in France, in many cases as long as until retirement, was noted among Malian migrants. This was associated with a change in French Migration legislation putting end to the system of 'rotating migration' (one return to Mali was compensated by one admission into France) that had been applied up till then. Presently, a recent development in Malian migration patterns is making North America a more and more preferred destination, especially for highly skilled migrants. According to a study commissioned by UNESCO in 2005, the increasingly restrictive migration policies of European countries, and France in particular, is one of the probable causes behind this development.\footnote{UNESCO p. 7.} In the following chapter, it is investigated whether the Blue Card Directive is such a migration policy that has significant impacts on migration patterns and what consequences this is likely to have in countries of origin. In the first section, the main mechanisms through which the Blue Card could have impacts on migration patterns are presented, and it is investigated what impacts the Blue Card will have within these fields. In the second section, the likely consequences for the countries of origin are presented, with a focus on Mali and its system of higher education.

### 5.1 The impacts on skilled migration

In order to understand what impacts the Blue Card will have on skilled migration, it is initially important to know how it relates to its legislative context. The existing immigration rules for highly skilled workers in several Member States, including France, Germany, the Netherlands and Sweden, are equally favourable or more favourable than the Directive. Also, many Member States are bound by international conventions going further than the Blue Card as regards aspects of migrant workers rights.\footnote{See section 2.3.4.} As appears from the table on the following pages, which provides a comparison of the Blue Card scheme with existing national legislation regarding skilled migration in France, Germany and Sweden, the Blue Card does not set out more favourable conditions or rights for skilled workers in many aspects. On an overall basis existing national legislations appears more favourable.
| Legislative comparison between Blue Card Directive 2009/50 and selected EU Member States |
|---------------------------------|-----------------|-----------------|-----------------|-----------------|
| **Special regulations for highly-skilled migrants** | Dir. 2009/50 | France | Germany | Sweden |
| | Yes | Yes | Yes | No |
| **Eligibility Highly-Skilled migrants** | | | | |
| Minimum salary | 1.5 x average gross annual salary | Salary level comparable to highly qualified French workers for employees over 30 years | 63,600 euro | No |
| **Qualifications** | 3 years higher education | 0-8 years higher education | No | No |
| **Work-experience** | 5 years professional experience | 5 years professional experience | Yes | No |
| **Employment contract Required?** | Yes, minimum of 1 year | Yes, generally | Yes | Yes |
| **Special regulations for young highly-skilled Migrants** | No | No minimum salary requirement | No | No |
| **Work and residence rights** | | | | |
| Initial validity of the Permit | 1-4 years | 3 years | Permanent | Up to 2 years |
| Professional mobility? | After 2 years | Yes, within the professional project | Yes | After 2 years |
| **Requirements for permanent residence** | | | | |
| Residence | N/a | 5 years | N/a | 5 years |
| Maintenance | N/a | Yes | N/a | Yes |
| **Family reunification rights of highly-skilled migrants** | | | | |
| Waiting period | No | No | No | No |
Where existing national legislation accords equally favourable or more favourable conditions or rights to skilled migrants, the added value of the Directive can be questioned. In fact, the aims of the Blue Card Directive may even be counteracted in these cases as Member States may be caused to adopt less favourable legislation for skilled migration in these regards. However, even though Member State remain free to adopt more favourable provisions in a number of areas, the literature has found it likely that most Member States will align their legislation to the scheme put forward in the Directive.472 One reason for this could be the value seen in harmonizing rules throughout the EU. Also, since there are strong forces advocating restricted immigration within the European Union, the transposition of the Blue Card Directive could be utilized as an opportunity to, or pretext for, introducing less favourable rules for skilled labour migration. However, since the Directive leaves as much flexibility and room for discretion possible to the Member states and some Member States will undoubtedly keep their national legislation at least in some regards, a complete harmonization will not be obtained. This will certainly be the case for those Member States that are parties to the European Convention on the Legal Status of Migrant Workers and the International Labour Organization Conventions No. 97 and No. 143, where these conventions proscribe more favourable conditions, e.g. as regards professional mobility and social security rights.473 In fact, since the Blue Card has added yet another set of rules to the existing ones, it can be argued that it will lead to increased rule confusion.

5.1.1 Migration rates

The Blue Card scheme is purely driven by the demands of the Member States labour markets and no Blue Card can be granted if there is not an offer of employment, corresponding to the specific needs of the employer to fill a vacancy. The world is currently emerging from an economic crisis, and there is a rising unemployment in the EU. Due to the scarcity of employment possibilities and the fact that there is subsequently no large-scale excess demand for labour, the Blue Card Directive will most probably not affect the migration of skilled workers into the Union in a tangible way. The Directive is, however, highly flexible. It is designed to respond swiftly to changes in the demands of the Unions labour market.474 At a time where the demand for skilled labour rises, the features of the Blue Card as regards the attractiveness of the EU for prospective immigrants, and of migrant labour for the employers, will shape the inflow of skilled migration into the Union.

5.1.1.2 Features of the Blue Card plausible of increasing skilled migration into the EU

Here, it should first be pointed out that the initially ambitious approach in the Blue Card Directive so as to increase skilled immigration was watered down considerably following sessions in the European Parliament and before the European Council.475 The final Directive

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472 Wiesbrock p. 601.
473 See section 2.3.4.
474 See section 2.4.1.
475 Caviedes, Prying open fortress Europe: the turn to sectoral labor migration p. 203.
needs to be understood as a compromise. This compromise straddles, on the one side, the call of the Lisbon Agenda as well as forces within the Member States advocating an increase in the supply of labour and a more flexible labour market, and, on the other side, governments’ reluctance to setting off on a visibly more open admission policy, with all that this implies in terms of reneging on electoral anti-immigration commitments to the contrary.\textsuperscript{476}

Facilitated family reunification and inter-community movement

In spite of having been watered down considerably, the final version of the Directive does contain certain elements that, according to the literature as well as the findings in this study, will increase the attractiveness of the European Union for highly qualified workers from third countries. The two important features in this regard are, in the opinion of the author, the facilitation of family reunification and the possibility of inter-community movement.\textsuperscript{477}

The facilitation of family reunification was stated by Malians interviewed within this study to be a feature making the EU more interesting for Malian migrants. Also, the view that the favourable rules with regard to family reunification raises the attractiveness of the EU as a migration destination has been forwarded in the literature and by the Centre for European Policy Studies (the CEPS),\textsuperscript{478} and according to the Committee of the Regions it could be a decisive element in recruiting highly qualified personnel.\textsuperscript{479} However, none of the persons interviewed within this study stated that they themselves would make a decision to stay in, or move to, the EU based on the fact that family reunification would be easier in the future. They merely voiced an opinion that the migration of other Malians might be determined by this factor. Furthermore, even if the conditions for family reunification are very favourable in comparison with other EU legislation (they are, for example, substantially more favourable than those that apply to long-term resident third-country nationals), the Member States bound by the European Convention on the legal status of migrant workers are according more favourable conditions to migrant workers as no sickness insurance requirement is applied for family reunification. Also, the fact that national legislation of many member States already accords the right of family reunification under similar, or more favourable conditions, as in, for example, France, Germany and Sweden, somewhat reduces the added value of the Blue Card.

In contrast, all national regimes lack the possibility of intra-European mobility contained in the Directive. According to the Committee on Civil Liberties, Justice and Home Affairs rapporteur, it is in the freedom of movement to another Member State after 18 months that the Directive's added value principally lies.\textsuperscript{480} However, rather than constituting a permit that can be used in order to reside and work in different Member States, as the concept of an EU Blue Card implies, it remains a document issued by national authorities in compliance with largely nationally-determined rules. Since applicants moving to a second Member State have to fulfil the same conditions as those for initial admission, they effectively have to apply for a second Blue Card. There are also great insecurities for the skilled migrant and his family involved with the prospect of moving to another Member State under the Blue Card scheme,\textsuperscript{481} which makes it questionable whether the possibility will appear attractive to highly skilled migrants. This, together with the fact that intra-community mobility will effectively require obtaining separate Blue Cards, limits the value of the Blue Card, in comparison with applying for two

\textsuperscript{476} Hansen & Hager p. 180.
\textsuperscript{477} See section 2.4.4.
\textsuperscript{478} See Wiesbrock p. 601, Guild, CEPS p. 6
\textsuperscript{479} OJ C 257/20 p. 25
\textsuperscript{480} PE409.459 p. 32.
\textsuperscript{481} See section 2.4.4.
residence permits under national legislation. Even with regard to the deficiencies of these two features of the Blue Card, they are likely to have some effect in making the EU more interesting for skilled migrants.

**Economic factors**

However, according to the interviews in the present study, the main factor determining migration of skilled Malians is of a different nature than these two main successes of the Blue Card. A vast majority of the persons interviewed stated that the availability of qualified work was the single most important reason which determined where they would settle. The attractiveness of the EU to skilled Malian migrants is thus closely linked to the availability of qualified work opportunities, and consequently the attractiveness of third country skilled labour to EU employers. The Blue Card scheme being demand-driven, the propensity of employers to hire third-country labour is naturally fundamental for increasing the size of migration into the community.

According to the CEPS, the most frustrating aspects of labour migration for companies across the EU are: lack of clarity in the rules; lack of consistency in the application of the rules and uncertainty of the time scale within which a work permit and visa will be issued. All these factors result in an uncertainty when (and indeed if) the individual will be able to start work in the right country at the right time for the business to succeed in its program.\(^{482}\) The key elements the Blue Card must possess in order to increase the attractiveness of third-country labour to EU employers is thus rule clarity and foresee ability. Indeed, the literature has found that the most significant advantage of the Blue Card Directive is that it constitutes a harmonization of immigration rules for skilled immigrants in the European Union. A complete harmonization of immigration rules would undoubtedly lead to better clarity and foresee ability, and the Blue Card could be seen as a step in the right direction. However, the Blue Card Directive only provide for a limited level of harmonization. The literature finds that the Directive as it stands today is far from establishing the kind of legal certainty, clarity and predictability in terms of national procedures that would have been desirable.\(^{483}\) It is unlikely that the Blue Card Directive will increase rule clarity and foresee ability for prospective employers in such a way that migration is increased on this basis.

This deficiency in rule clarity set aside, there are certain other elements of the Blue Card that might increase the interest for hiring third-country labour. The first one is the salary threshold as a main criterion for the granting of a permit, which was well received by the literature and EU consultative bodies. Also when it comes to the criteria for granting a permit, the key is foresee ability for the business. As the CEPS points out, before a business makes the decision of which employee to take on or to move around the world, it needs to be certain that it will be able to do so and will not run into insurmountable (and incomprehensible) obstacles from the state authorities.\(^{484}\) According to the CEPS, businesses can make these decisions based on salary levels. However, they need to have very precise rules. In this regard, it was not wise to leave it to the member states to set higher levels than those set out in the Directive. However, the minimum salary level is set at a level that is lower than the one set out in national legislation of some Member States. If it is applied by these Member States, it would make it more attractive for businesses there to hire third-country labour. One such Member state where the minimum salary threshold is set at a higher level than in the Blue Card Directive is Germany.

\(^{482}\) Guild, CEPS p. 3.  
\(^{483}\) Wiesbrock p. 602.  
\(^{484}\) Guild, CEPS p. 5.
When the German government, in response to severe shortages of engineers, proclaimed in 2007 that it would lower the income requirements for highly skilled workers to the current 63,600 euro, it was met with measured approval, as firms maintained that this salary was still well above the industry standard. In contrast, German employers such as the VDI and Deutsche Industrie und Handelskammern (DIHK), which represent numerous smaller businesses, appreciated the Blue Card scheme with its considerably lower minimum salary level. The German employers did not honestly press for a European solution, due to the fact that the scheme leaves open the possibility of setting higher salary level, but they did invoke the Blue Card in the discourse as a means of critiquing national policy. Even though the member states remain free to apply higher salary thresholds, the fact that the Blue Card sets out a salary level that is favourable for the hiring of third-country labour may be used by employers to persuade Member State Governments to develop their national legislation in this direction too.

Another element of the Blue Card that could increase the interest for hiring third-country labour is the possibility of replacing a higher education qualification with professional experience, when it comes to determining the eligibility of a third-country national for a Blue Card. The CEPS deemed this possibility wise in order to meet business needs. According to the CEPS, such a flexibility may help to resolve the problems of recognition of qualifications as it could be easier to prove that the individual had three years professional experience abroad – often a related business has employed the individual itself in the capacity for more than three years – than to go through what may become complicated recognition of qualification procedures. However, it has to be assessed under the Directive what level a professional experience has to be at to be comparable to higher education qualifications and this might cause trouble for prospective employers wishing to hire a third-country national on the basis of his professional experience. Also, in several Member States, such as France and Germany, the possibility of replacing a higher education qualification with professional experience already exist under current national legislation and the Blue Card will thus not provide any added value in this regard.

All in all, the failure of the Directive to increase rule clarity and foresee ability for the businesses, as well as the lack of comprehensive harmonization, makes it questionable whether the Blue Card will increase the attractiveness of hiring third-country labour, even at a time of a higher labour demand. Wiesbrock came to an adjacent opinion, stating that it is rather doubtful whether relying on the economic factors, such as favourable employment opportunities and remuneration alone, would render the EU successful in recruiting highly skilled workers in direct competition with traditional immigration countries such as the US, Canada or New Zeeland.

**The Residency Factor**

In addition to the economic incentives for skilled migration, the Blue Card scheme could attract qualified migrants by making use of other factors. The literature has put forward the increased importance of inter-jurisdictional competition in immigration law and policy, arguing that policy makers make use of the 'tool' of residence and citizenship policies as a way of attracting immigrants. The opportunity to secure a permanent membership, through perma-

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485 Caviedes p. 76.
486 See section 2.4.2.
487 Guild, CEPS pp. 3-4.
488 Wiesbrock p. 601.
489 Wiesbrock p. 600.
nent residence or eventually citizenship, in a prosperous and stable country may, according to this literature, in certain cases be even more important than economic incentives.\textsuperscript{490}

The question thus arises as to whether or not the Blue Card Directive lives up to the model of attracting skilled workers by making use of this residence factor. The provisions allowing highly skilled immigrants to accumulate residence periods in different Member States in order to acquire long-term residence status is an element that might have such an effect. However, the validity of the Blue Card ranges between one and four years and is not renewable. Even after a maximum of four years of employment in the EU, highly qualified third-country nationals will not be able to obtain a long-term residence permit, which requires a residence period of five years. This means that highly skilled migrants will not be able to obtain long-term residence status, regardless of the fact that they may accumulate residence periods in different Member States. Thus, the proposal does not make efficient use of the residence factor in order to compete with traditional immigration countries for the most skilled workers. In many of these countries, such as the US, Canada and New Zealand, permanent immigration programs have been successfully applied for many years.\textsuperscript{491} The same is the case for some EU member states, such as France, Sweden and Germany. Also as regards the residence factor, the Blue Card thus falls short of offering substantially more favourable conditions for third-country workers and will therefore not increase the inflow of skilled migration significantly on this basis either.

\textit{Job searching period in the event of unemployment and the fast-track procedure}

The literature has put forward the application of a three-month job searching period in the event of unemployment, and the accelerated procedure for dealing with applications for a residence permit, as other features of the Blue Card Directive that might increase the attractiveness of the EU as a destination for skilled migrants.\textsuperscript{492} However, as regards the job-searching period if a skilled migrant finds himself unemployed, three months appear insufficient in order to find a new, qualified employment. Furthermore, the labour market can change rapidly and the threat of expulsion as shortly after becoming unemployed may deter skilled workers from moving, possibly with their whole family, to a EU member state. The European Convention on the legal status of migrant workers and the ILO Convention no. 97 Convention both gives the worker at longer periods to find a new job. Besides the valid point that the migrant deserves fair treatment in the event that he or she becomes unemployed, the short period set out in the Directive may also have as a consequence violations of migrant workers rights by giving the employer too strong a position in the immigration status of the individual after he or she moves to the EU.\textsuperscript{493}

As regards the accelerated process, often referred to as a 'fast-track' procedure, it is true that a determined deadline for the treatment of an application would be interesting for both prospective migrants and employers. The final deadline is however set to 90 days, which might be considered a rather long period. In addition, the time required for the recognition of professional qualifications and issuing a visa is added to these 90 days. This makes it harder to predict how long the application process will take. For skilled migrants, and even more so for EU employers, the process of handling Blue Card applications is probably not fast or predictable enough to influence their decisions so as to noticeably increase the inflow of skilled workers into the EU.

\textsuperscript{490} Wiesbrock p. 600.
\textsuperscript{491} Wiesbrock pp. 601- 602.
\textsuperscript{492} Wiesbrock p. 601.
\textsuperscript{493} Guild, CEPS p. 6.
5.1.1.3 Features of the Blue Card diminishing skilled migration into the EU

Several Member States currently have more favourable conditions for skilled migration than the Directive. For example, Sweden applies no minimum salary requirement for admission, and Germany allows for professional mobility for highly qualified workers immediately after admission. Also, France, Germany and Sweden equally grant skilled migrants’ spouses the right to work. Member States may choose to align their national legislation with the Blue Card Directive in these regards, with the consequence that skilled migration into these countries is diminished.

As pointed out above, the employers in the European Union can be suspected to be rather sensitive to rule confusion and lack of foresee ability. Since the Blue Card has actually added another set of rules to the existing ones, the flows of skilled migration into the Union will arguably be diminished, by dissuading certain employers that are particularly sensitive to these issues. However, as regards highly skilled, and as a rule highly motivated, migrants, the findings if this study imply that rule clarity and foresee ability is not a decisive factor in their contemplations regarding migration, and neither will an added element of rule confusion be a significant dissuading factor. None of the persons interviewed in this study stated that rule clarity was a decisive factor in their contemplations regarding migration. Neither did any of the respondents tell me that they understood the migration legislation of one country better than that of another. It is therefore unlikely that Malian migrants will choose one destination country over another based solely on the fact that its migration legislation is easier to understand. Neither will many skilled Malians be dissuaded from making plans of migration, or convinced to abandon such plans, because the migration legislation of this country is too hard to understand. Many Malian migrants set out on migration within the context of a scholarship program. Furthermore, the Malian diaspora posses a significant social capital which is being used to facilitate the migration of others. A prospective migrant who finds it difficult to understand the migration legislation of his chosen country of destination would most likely be able to seek advice from a relative or friend that is already residing there.

Lastly, there is an additional feature of the Directive that is likely to counteract its aim of increasing skilled migration into the Union. This is the possibility for Member States to require that applications must be submitted from outside its territory. This possibility requires that such limitations already existed in national law at the time of the adoption of the Directive, but several Member States have such provisions in place. In Germany and Sweden for example, the application for a residence permit generally has to be filed by the applicant worker in his or her country of origin, even if applications from within the territory is allowed for in certain cases. Since some member states have been very anxious to have the whole of the immigration process situated abroad and have invested heavily in this, it is likely that the possibility to only allow applications from outside their territory will be utilized by several Member States. However, since it is often as a result of an individual studying on the territory or some other encounter on the territory that a business becomes aware of them and decides to hire them, not allowing applications from within the territory will impede labour migration into the community. Both the Committee on Employment and Social Affairs and The Com-

494 Article 10(4), Directive 2009/50/EC.
495 Guild, CEPS p. 6.
496 Guild, CEPS p. 6.
mittee of the Regions, in their opinions on the Blue Card Proposal, found that the Blue Card should be granted to qualified workers applying already resident in a Member State. 497

5.1.1.4 No significant increase of skilled migration into the EU

According to the above, it is unlikely that the Blue Card will increase the size of skilled labour migration into the Union considerately. This conclusion was shared by Wiesbrock, stating that 'all in all, the Blue Card does not seem to represent a very attractive immigration scheme for highly skilled workers', and that it is 'unlikely that the adoption of the highly skilled Directive will lead to a boost in the attractiveness of the European Union.'

5.1.1.5 Increased skilled migration in certain sectors

As regards the salary requirement for eligibility for a Blue Card, the Blue Card Directive allows member states to set a lower minimum threshold for employment of teaching staff and professionals in the fields of physics, mathematics, engineering, life science and health care. 498 The salary threshold has been identified as one of the main features of the Blue Card increasing the attractiveness of third-country labour to the Unions employers. 499 Also, there is a particular need of foreign labour in these sectors within the EU which is probably the reason behind the allowance for a lower salary threshold. This leads to the conclusion that the net size of migration in these particular sectors may in fact be increased by the Blue Card Directive. The call on the Member States in recital 22 of the preamble to refrain from active recruitment, cannot be trusted to mitigate this effect as it is not contingent for the Member State.

5.1.2 Redistribution of migration flows

Even though the directive does not increase the size of migration significantly, it can shift migration flows as regards country of destination. The features of the Blue Card that raises the attractiveness of the EU as a destination may thus cause migrants that would have migrated anyway to choose a Member State of the European Union as opposed to another destination. It has been concluded that the Blue Card Directive will not significantly impact the most decisive factor for migration decisions among skilled migrants (at least from Mali), namely the availability of qualified employment. However, other elements raising the attractiveness of the EU to skilled migrants, like providing for intra-community mobility and facilitated family reunification may cause skilled workers that have the possibility to obtain highly qualified employment in several countries abroad to choose an opportunity in the EU.

5.1.3 Circular migration

In the preamble of the Directive, it is specified that circular and temporary migration could minimise negative and maximise positive impacts of highly skilled immigration on developing countries and turn 'brain drain' into 'brain gain,' 500 and the Blue Card scheme contains several elements likely to promote return of skilled migrants as well as temporary visits to their country of origin.

497 Committee on Employment and Social Affairs, opinion on the proposal for a Council directive on the conditions of entry and residence of third-country nationals for the purposes of highly qualified employment, justification to amendment 18 and OJ C 257/20 p. 24.
498 See section 2.4.2.
499 See section 5.1.1.2.
500 Recital 22 of the preamble, Directive 2009/50/EC.
University graduates

The first crucial point in time of deciding whether to return or not, occur after the completion of university studies abroad. The Blue Card will do little to entice migrants to stay at this point in time. Even though recent graduates will, like other persons lawfully residing within the EU territory,501 be eligible for applying for a Blue Card, and the importance of promoting their insertion in the EU work force was forwarded during the discussions prior to the adoptions of the Directive, the same conditions will apply for them, as to more experienced skilled workers. In contrast with the Directive, some Member States apply less strict conditions for granting of a residence permit to students than to experienced workers - with the view of facilitating their professional insertion after completing university studies in the Member State. Several Member States, such as in France, these provisions are probably more favourable than the ones contained in the Blue Card Directive. If these Member States choose to align their provisions to the Blue Card Directive, it would become harder for third-country university students to stay on their territory in order to take up qualified employment. The Blue Card could therefore lead to more university graduates returning to their countries of origin. However, depending on the determination of these students to remain in the EU, the consequence might also be, that they stay in the EU and take up unqualified work or become unemployed.

Limited period of validity

For qualified workers residing in the EU under the Blue Card Scheme, the return will be promoted by the temporary nature of the Blue Card. The Blue Card is a temporary permit, with a fixed duration of one to four years, and no possibility of renewal. The expiration of the permit will naturally promote the return of the migrant, even if there is, of course the possibility of applying for a second Blue Card (even if, in some countries, the migrant would first have to return to their country of origin) or remaining within the EU under another migration scheme, or remaining without legal grounds. Several Member States accord residence permits of a longer duration, or permanent residence, to skilled workers. For example, highly qualified workers entering Germany under Section 19 AufenthG are granted a permanent residence permit.502 Should the Member States that accord residence permits of a longer duration, or permanent residence, to skilled workers choose to align its legislation with the Blue Card Directive in this regard, it may lead to higher return rates from the Union.

However, the temporary nature of a migration scheme cannot unambiguously be assumed to promote return of skilled migrants. Even if the choice is between returning after the expiration of a residence permit and staying in the country of residence without legal grounds, the second alternative may seem more attractive to some skilled migrants. The statement of one of the professors interviewed in Paris within this study is descriptive in this regard:

Knowing I cannot come back if I go to Mali can dissuade me to go. I may say: "Attention, in Mali you do not know, the situation is not stable. If I go there, and I cannot get a new residence permit, what will become of me", and all that. In fact, this dissuades a lot of students. They have a hard time taking the decision to return to Mali.

For migrants in this situation, the possibility of leaving the country of residence for shorter visits home can facilitate return. These visits home are often a preparation, or even prerequisite, for permanent return. The temporary nature of the Blue Card as well the increased diffi-

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501 With the possible exception of certain Member States, see section 2.4.3.
502 See section 2.3.3.2.
culties it may entail for university students to stay in the EU after graduation could impede such visits home. The fact that the residence permit of a migrant is of a limited duration, or that the expiration is approaching, can make him or her reluctant to leave the country of residence temporarily. This may be because of a feeling that the scarce time allowed in the EU should not be spent on visits home, no matter how short, but also because the limited duration of the permits creates insecurity as to whether visits home are even allowed. The following statement of a professor interviewed in Paris within this study suggests how such insecurity may be prevalent among skilled Malians in France:

‘You cannot really go on a trip, because you tell yourself that if you only have three months, and if [return] falls at a time where it remains only 20 or 30 days, you cannot go. That puts people in an unbelievable situation. . . . There are many Malians who have left with papers with three months remaining, and it then it has been hard for them to return.

As described above, the temporary nature of the Blue Card will promote return, but it may also lead to a situation where more skilled migrant choose to stay in the EU without legal grounds. A key factor preventing this is the propensity of migrants to carry out shorter visits to their country of origin in order to facilitate their return, and the temporary nature of the Blue Card is likely to reduce this propensity. However, the Blue Card contains other elements that will facilitate visits home and subsequently allow for return under conditions that entail more positive impacts for both the migrant and the country of origin. For skilled migrants that had already been legally residing in the EU for some time when they were granted a Blue Card, and accordingly are eligible for long term residence status during the validity period of the Blue Card, the Directive extends the periods that the holder may be absent from EU territory, during the five years before long-term residence status is reached. Also, former Blue Card holders that have long-term residence status will lose this status less easily than other long-term residents, in so that a loss will occur after 24 months of absence from EU territory rather than 12 months. Even if these two benefits for Blue Card holders may be restricted by the Member States to cases where the third-country national has been absent from EU territory to exercise an economic activity in an employed or self-employed capacity, or to perform a voluntary service, or to study in his own country of origin, when they apply, they will allow for longer visits home and a better chance to make preparations for an eventual return.

It could be argued that third-country national that are eligible for, or granted, long-term residence status, with the rights and benefits attached thereto, is not a group that is generally likely to return to their country of origin. However, the reasoning forwarded above apply in this sense to, in so far that migrants that have a secure status in their country of destination, may be more likely to temporarily leave this country to visit his country of residence, as they feel sure about their possibility to return to the country of destination later on. Repeated visits home may provide these migrants with information for making a well-informed decision as to where it is most beneficial for them to settle, with the consequence that more of those for whom returning is more beneficial, choose to do so.

Transfer of pension rights
The right accorded to Blue Card holders to transfer their pensions to their country of origin is also something that is likely to promote their return. Transfer of pension rights accumulated in the country of residence is often recommended in the brain drain policy debate as a means of
promoting the return of skilled migrants.\textsuperscript{503} In its opinion on the Blue Card proposal, the Committee of the Regions called on the Commission to strive to ensure such transfer of pension rights by circular migrants.\textsuperscript{504} The program coordinator for migration of the Commission of the African Union greeted the right of pension transfer as one of the positive aspects of the proposed Blue Card scheme.\textsuperscript{505} This right will not only promote the return of skilled migrants, but also provide for favourable conditions for the return. The fact that the returning migrants will bring with them the pension capital accumulated in their country of destination will benefit both them and their country of origin.

\textit{Call for guidelines and other tools to facilitate circular migration}

In recital 22 of the preamble of the Directive that mechanisms, guidelines and other tools to facilitate circular and temporary migration that would minimise negative and maximise positive impacts of highly skilled immigration on developing countries should be developed and implemented in order to turn 'brain drain' into 'brain gain'. If such tools are developed and successful they would probably have positive impacts in developing countries, such as Mali, and it is positive that the importance of circular migration is forwarded in the Directive. This was also the opinion of the program coordinator for migration of the Commission of the African Union, who mentioned the fact that the Blue Card encourages circular migration as one of its positive aspects when commenting on the proposed Blue Card scheme.\textsuperscript{506} However, since the Blue Card contain no factual obligation to develop such tools, it is difficult to predict what effect this recommendation will have, if any.

\textit{Features of the Directive counteracting return}

The Blue Card affords more favourable rights for Blue Card holders during their residence in the EU than for other categories of migrants, in some aspects. It is logical that strengthening the rights or grant more benefits to migrants during their residence in the destination country would increase their interest in staying there. The way the Blue Card scheme was watered down during the negotiation process, the main feature remaining likely to have such effects is the more favourable right to family-reunification. Intuition tells us that being accompanied by ones closest family members makes residency abroad more agreeable, and research has found that for skilled migrants in the European Union, living with the spouse and one or more children both increases the time to remain abroad and reduces the propensity to return to the country of origin.\textsuperscript{507} The fact that according migrants rights during their time of residence abroad reduces their propensity to return cannot be used as an argument for restricting their rights. It remains a fact, however, that the granting of facilitated family reunification will reduce the propensity to return for some skilled migrants.

It has already been described how the temporary nature of the Blue Card, as well as the possible increased difficulties for recent university graduates to remain in the EU, may impede visits home prior to the expiration of a residence permit, and in some cases lead to migrants choosing to stay in the community illegally after expiration of the permit. There are other elements of the Blue Card that may lead to similar effects, and even more so. In any migration scheme, insecurity among the migrants as to what rules apply to their re-admission to the country of residence if they should leave will result in a reluctance among them to leave the

\textsuperscript{503} European Commission, \textit{Final report: The linkage between migration and development, Operational implications for programming and project development} p. 52
\textsuperscript{504} OJ C 257/20 p. 23.
\textsuperscript{505} Maru p. 6.
\textsuperscript{506} Maru p. 6.
\textsuperscript{507} Dustmann, \textit{Return Migration: the European Experience} p. 232.
country. A migrant that feels that his or her status in the country of destination is insecure, might be impeded from visiting his country of origin for fear that it will make him loose his residence rights in the destination country. The fact that the Blue Card scheme leaves the Member States the possibility, in several aspects, to set their own conditions for eligibility of a Blue Card, and consequently to change these conditions in the future, could very well lead to an insecurity among migrants as to what conditions will apply for being re-admitted to the territory. Also the high flexibility of the Blue Card Scheme in so far that it is designed to respond swiftly to changes in the demands of the Unions labour market, will lead to insecurity as regards the possibility to re-enter the Union under the scheme at a later time. A migrant pleased by his situation at the destination, or uncertain of what future will be like in the country of origin, may choose not to leave the territory after the expiration of his or her permit. Since the migrants have no control over the developments in the legislator field or on the labour market, they may choose to make use of a factor they do have control over – namely returning or not – to obtain certainty about their future. This argument has been forwarded in the literature. Regarding all types of migration, Faini thus argued that Europe, by lacking a clear and consistent immigration policy and repeatedly threatening to close European doors to non-EU migrants, is achieving to undesired objectives: first, the fostering of illegal migration; and second, the discouragement of foreigners in Europe from returning to their country of origin.

Visits home
The limited duration of the Blue Card and the increased difficulties for university students to stay in the EU after graduation as well as the insecurity as to what rules that will apply for temporary absences from the community added by the Directive are likely to lessen the propensity among skilled migrants to carry out visits to their country of origin. However, for those migrants that are granted Blue Cards, the Directive contains important derogations from the long-term residency directive allowing for more and longer visits home. The Directive may thus lead to more visits home among migrants holding Blue Cards of a long duration and who have spent several years in the Union, whereas it may lessen the propensity of university students and migrants holding Blue Card with a short period of validity to carry out visits to their country of origin.

Increased return
The facts that the Blue Card scheme is of a more temporary nature than several national schemes, that it provide for no facilitated conditions for recent graduates and that member state may choose to align their legislation with the Blue Card Directive in these regards so as to abolish existing special provisions facilitating the remainder of university graduates or limit the duration or permanent character of the permits granted to skilled workers, is likely to raise return rates among skilled migrants in the Union. However the migrants affected by these factors may also choose to stay in the EU illegally. The fact that the Directive facilitates shorter visits to the country of origin prior to the expiration of their residence permit helps counteract this unwanted effect. In spite of the facilitated family reunification and uncertainty of the future possibilities to return under the scheme the Directive will most likely lead to slightly higher return rates among skilled labour migrants in the Union.

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508 Faini, discussant on Dustmann, Return Migration: the European Experience pp. 247-248
5.2 Consequences in countries of origin

5.2.1 The absence of skilled workers

At the University of Bamako, the negative effects of the absence of the skilled workers pursu-
ing migration is currently offset by the positive impacts of the phenomenon, but even a smaller change in migration outflow may shift the balance and lead to a situation where skilled migration has serious negative effects on the country. Beine, Docquier and Rapoport have found that Mali with its migration rate of 15%\textsuperscript{509} is experiencing a beneficial brain drain, whereas countries with migration rates from 20% are negatively affected by the outflow of skilled workers.\textsuperscript{510} An increase of 5% in the migration flows from Mali might, according to this, entail negative effects for the country. Such an increase may seem considerable and unlikely to be brought on by the Blue Card Directive, but it should be considered that due to the scarcity of highly qualified workers in the first place, such an increase does not represent more than approximately 1,100 skilled migrants.\textsuperscript{511} With this in mind, it is not too unlikely that the Blue Card will have a relevant effect. Also, because of the importance of the specialized skills of certain Malian workers, the additional migration of even one individual, or a small group, brought on by the Blue Card Directive could have important negative effects. This holds particularly true for the Malian system for higher education, where the migration of a single individual could bring the education of a certain subject to a complete halt, thus impeding the future availability of these qualifications in Mali.

*Increased skilled migration in specific sensitive sectors*

With regard to the scarcity of qualified teaching staff in many developing countries, such as Mali, it is highly problematic that the Blue Card may very well increase the net size of migration as regards teaching staff and professionals in the fields of physics, mathematics, engineering, life science and health care.\textsuperscript{512} The concern is equally, or even more valid for the fields of life science and health care, regarding which brain drain concerns are often and loudly voiced. In fact, in recital 22 of the preamble of the Blue Card Directive, where Member States are urged to refrain from pursuing active recruitment in developing countries in sectors suffering from a lack of personnel, the health sector, as well as the education sector, is specified as key sectors. Even if not investigated in this study, the statements of medical students and other persons in Bamako suggest that the medical system is suffering from a perilous lack of qualified personnel. The notion is highly disturbing, as these very sectors are highly vulnerable in Mali. It is not likely that Mali is unique in this regard. The above leads to the conclusion that even though the Blue Card Directive will not, on an overall level, fulfil its aim to increase highly skilled migration into the community, it might hit developing sending countries in the sectors where it hurts the most. This study has found that the absence of qualified Malian teachers have serious negative impacts on the system for higher education, which would be amplified by the Blue Card scheme if the suspicion that this scheme will increase emigration rates in the educational sector is correct. Provided that the suspicion is correct, the Blue Card, by aggravating the lack of qualified teaching staff at the University of Bamako, will among other things: Cause classes to be even more over-crowded and teachers even more over-worked, worsen the quality of the education and possibly stop education in some disci-

\textsuperscript{509} Docquier & Marfouk, appendix, Table A.2-2
\textsuperscript{510} Beine, Docquier, Rapoport, p. 631.
\textsuperscript{511} The estimation is based on the figure of 22,000 highly-skilled working-aged citizens in Mali, see Docquier & Marfouk, appendix, Table A.1-2, and the assumption that this figure will remain the same.
\textsuperscript{512} See section 5.1.1.5.
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5.2.2 The prospect of migration

The Blue Card is a scheme for migration for the purposes of highly qualified employment. The mere fact that a EU-wide scheme of this type is launched could increased the expected return on education in developing countries. Furthermore, the Directive provides for very clear criteria for what type, and how many years of education that is required. It is thus set out that 'higher education qualification' means the degree of diploma obtained after the completion of a post-secondary course of higher education of at least three years. Citizens of developing countries can thereby learn how a post-secondary education of three years can allow them to obtain a Blue Card, entailing admission to the EU and certain rights and benefits.

In Mali, the possibility of skilled migration seems to have a substantial effect on the decision-making of Malian university students as it motivates many to study hard. Today, this is closely linked to obtaining scholarships for higher education abroad. There is evidence to suggest that the positive impacts thereof are threatened by increasing corruption within the distribution of Malian state scholarships. Many Malians are interested in migrating to the European Union, and the criteria for obtaining a Blue Card may very well, in a similar way as the criteria for obtaining scholarships, motivate Malians in their pursuit of higher education. Furthermore, the granting of Blue Cards is not sensitive to corruption in the same manner that scholarships are. In conclusion, the Blue Card may very well increase the expected return on education in developing countries and serve as a motivation to pursue tertiary education.

5.2.3 The role of the diaspora

Different elements of the Blue Card Directive may have impacts on the length of time migrants spend abroad, where they go and their propensity to carry out visits home. These factors have impacts on the role the diaspora plays for those that remain behind in countries of origin.

As regards the first factor, both the limited duration of residence permits under the Blue Card Scheme and the fact that the Directive applies equally strict conditions for eligibility to recent university graduates as to more experienced professional will probably lead to migrants returning at an earlier stage than under existing national schemes in several Member States. By promoting a younger constitution of diaspora communities, this may lead to an increased diasporas activeness in countries of origin. Kapur and McHale thus writes: 'the greater the vintage of a diaspora, the less intimate are its links with its country of origin.' If the Blue Card leads to more migrants returning before their links to the country of origin grows weaker, it could lead to more active diasporas (assuming that they are replaced by other migrants who also return before links to the country of origin grow weaker). However, this impact would probably be limited in the case of Mali. The present study has shown that the Malian diaspora plays an active role in many ways, in spite of its relative vintage and no evidence has been found that diaspora members that have spent several years in their country of residence are less active than those that are more newly arrived. However, the fact that the Blue Card Directive may make it harder for third-country university students to stay in the EU after graduation may have important impacts on the activeness of the Malian diaspora. The present study has found evidence that there might be a temporary rupture in the contacts with those remaining in the country of origin when young migrants go from being students to being professionally...

\[513\] Kapur & McHale, Give us your best and brightest p. 120.
Where the Blue Card leads to fewer university graduates staying abroad for work after graduation, this rupture may be avoided. If these recent graduates return to the EU at a later stage instead, when they have been professionally active in their country of origin and have forged professional relationships there, it is likely that they will play a more active role during their time abroad. The literature has found that the older the migrant is at entry, the stronger and more established are his links to the home country, and that migrant who are older at entry are less likely to lose their links to the country of origin. Evidence to support this theory has also been found in the present study, as the interactions with people in Mali described by diaspora members in France, who had resided abroad since recently after graduation, seemed to be of a more personal character than the contacts with diaspora members described by professors interviewed in Mali, for whom these relations had in a majority of cases been forged in a professional context. Furthermore, the literature argues that the older the migrant is at entry, the less likely is he or she to acquire human capital specific to the country of destination.

In chapter 4.4.5.2, it has been described how Malians experience difficulties in applying human capital acquired abroad to the Malian context. If the Blue Card leads to young migrants returning to their country of origin and pursue qualified employment abroad only after spending some time in the country of origin, as opposed to doing so directly after graduation, their contribution to the society at home as diaspora members may both be more frequent, and more valuable, as the human capital they acquire abroad is less specific to their destination.

As regards the second factor, that is, in what country the diaspora members are residing, the Blue Card may also have tangible impacts. The main country of destination for Malian migrants is already a Member State of the European Union – France. According to the sources available to the author, the other most preferred destinations are USA, Ivory Coast, Tunisia, Canada, Togo, Germany and Burkina Faso. If the Blue Card makes migrants choose the EU before northern America or an African country to a larger extent, it may have impacts on the role the Malian diaspora plays. As described in chapter 4.4.4.6, there are indications that the Malian diaspora living in North America is more active than the one in Europe. If the Blue Card shift migration flows from North America to the EU it might thus lead to a decrease in diaspora activeness.

However, there are also indications that the European diaspora is significantly more active than the one in Africa. If more highly skilled Malians choose to go to the EU as opposed to an African country the overall diaspora activeness may thus be increased. The elements of the Blue Card that raises the attractiveness of the EU as a migration destination is, more likely to measure up in the competition with countries in Africa than with the traditional immigration countries USA and Canada. Accordingly, any shift in migration flows brought on by the Blue Card will most likely be from African countries towards the EU rather than from North America. The Blue Card may thus lead to a strengthened role of the Malian diaspora. As pointed out in chapter 4.4.4.6, cautiousness is called for as regards the findings above of where the Malian diaspora is most active. The findings can merely serve as indications. However, in certain aspects, it also seems logical that a shift in migration flows from Africa towards the EU would lead to an increased diaspora support. One important aspect of this support is the transfer of financial capital. Even though the present study has not found that the higher salary levels in France unambiguously leads to migrants here being able to send more money home,
collecting materials such as computers and educational literature to send home is most likely easier in European countries that in at least some African destination countries. Also serving as intermediaries for funding or donations from institutions or businesses abroad is most likely easier in the more salient European countries of destination. However, as regards human capital, the findings of this study suggest that a shift in migration flows from Africa towards the EU may have negative effects. In section 4.4.5.2 it has been described how many persons interviewed has experienced difficulties in applying the human capital acquired abroad to the Malian context. In all these cases, the human capital in question has been obtained in a western country. It is not likely that this problematic apply equally to human capital acquired in African countries, at least not as regards Mali’s neighbouring countries. The Blue Card Directive may thus, by causing more killed migrants to fare to the EU as opposed to African countries, lead to the diaspora acquiring human capital that is less adapted to Malian conditions.

Finally, as regards the third factor, the Blue Card will promote both more and longer visits home among skilled migrants that have spent several years in the Union. A skilled migrant visiting the country of origin may be very beneficial to this country, for example as access to the knowledge and skills of this migrant are significantly facilitated. The present study has shown how visits of skilled migrants, which are mainly taking place within the TOKTEN program, are in many aspects very beneficial to the University of Bamako. If the Blue Card leads to more skilled migrants being available to visits home and the TOKTEN program, these positive effects will be amplified. However, the same will be the case for the negative effects the TOKTEN program may have. As described in section 4.4.4.2, a bit of caution may be called for as regards whether visitors within the TOKTEN program are replacing or competing with Malian teachers and whether the TOKTEN visits have negative effects on the possibility for Malian teachers to succeed in their struggle for higher salaries. However, there is no evidence that these impacts do occur. A more certain negative impact of the TOKTEN visits is that they disturb the organisation of other education in some cases. This disturbance could probably be diminished if the visits were longer. Since the Blue Card will promote longer visits home, it may thus diminish the negative impact TOKTEN visits have by disturbing the organisation of other education.

5.2.4 The role of returning migrant

A crucial question as regards the implications of skilled migration in Mali is whether or not the skilled workers return to Mali later on, since any negative of their absence from the country would then be compensated by making the enhanced skills and other capital accumulated by the migrant abroad available to it. Also, the strategy of sending university graduates abroad to acquire certain competences needed at the University of Bamako, as well as in other sectors, is indispensable, since the education needed is not supplied in Mali. One can thus not sensibly argue that it is at the exit from Mali that the negative impacts of the absence of these intellectuals are realized, but for the purposes of Malian migration policy, the real loss caused by their absence occurs at a time when they decide not to return after their studies, or to later on make their migration decision permanent.

The Blue Card Directive will most likely lead to slightly higher return rates among skilled labour migrants in the Union. A skilled migrant returning to the country of origin has numerous positive impacts on society there. In the case of Mali, these positive impacts, in the form of diffusion of financial capital but foremost knowledge and skills, are substantial. In developing countries where skilled workers often are scarce, society will benefit from every single additional return the Blue Card leads to. Also, the fact that skilled migrants under the Blue
Card scheme will be able to carry out visits home in order to prepare their return and transfer the pension rights accumulated in the EU to their home countries allows for return to take place under more favourable conditions and add to the positive impacts upon return. In this context, the EU and Mali’s joint Migration Information and Management Centre (CIGEM) may also play a positive role, through its activities in offering job placement and training services for migrants returning to Mali.\textsuperscript{518}

However, the Blue Card may also have a certain negative effect in this regard. By causing more skilled migrants to fare to the EU as opposed to African countries, the Directive may lead to the diaspora migrants acquiring human capital that is less adapted to Malian conditions. Consequently their positive impacts on Malian society upon return may be diminished.

5.2.5 Sociopolitical impacts

The impulses, ideas and motivations for change stemming from skilled workers going abroad are an important sociopolitical factor in Mali. The diversity in ideas and impulses is important for a rich political debate. The Blue Card redirecting migration flows to the EU from other destinations may affect the pluralism of ideas and diversity of the debate negatively. Today, the majority of skilled Malian migrants go to the EU. If this trend is reinforced, the inflow of ideas and experiences from other migration destinations may be weakened. However, the possibility of intra-community movement contained in the Directive may have a positive impact on the sociopolitical debate. Several migrants interviewed within this study described how they had gained valuable insights by comparing the reality in their different places of residence. The Blue Card may provide a valuable tool for these migrants to critically analyze different thought models and systems. The Blue Card Directive thus has both mechanisms plausible of diminishing the plurality of the sociopolitical debate in Mali, and of enriching the inflow of ideas. It is difficult to determine which impact that will be prevalent.

5.2.6 Brain waste

There are certain elements of the Blue Card that may lead to an increase in cases where the human capital of the skilled migrant is not benefiting any economy, neither in the country of origin, nor in the destination. The literature refers to this highly problematic phenomenon as brain waste.\textsuperscript{519} The Blue Card Directive may make it harder for third-country university students to stay in the European Union after their graduation in order to take up qualified employment. This may lead to more young migrants remaining in the Union, take up unqualified work or become unemployed. This would be a very serious implication. However, according to the findings of this study, the main determinant of the migration decisions of skilled Malians is the availability of qualified work. In fact, several respondents stated that, if offered a similarly qualified, or unqualified, employment in Mali and abroad, they would choose to work in Mali. None of the persons interviewed stated that they were interested in going or staying abroad to take up unqualified work, except for one male University student in Paris, who stated that he wanted to take up any kind of employment for a few months following his graduation in order to save money for his return to Mali. There are naturally skilled Malians that would pursue unqualified work abroad, and some respondents expressed concern that the skills of former fellow students were wasted as they worked with, for example, security or cleaning abroad. There are thus just causes for the fear that the hindering for university gradu-


\textsuperscript{519} See for example Spring, Globalization of education: an introduction p. 51.
ates to remain in the Union to take up qualified employment will lead to a somewhat increased brain waste.

Furthermore, the fact that the Directive may shift migration flows from non-European migration destinations towards the Union could lead to increased brain waste through two mechanisms. For one, the higher living expenses in the Union as opposed to certain other migration destinations may force more University students to take up work during their studies in order to support themselves. These jobs will with few exceptions be unqualified and the work-load reduces the chances of the young migrants to succeed in their studies.

Secondly, there are findings in the present study suggesting that it is more difficult to obtain and take up qualified employment in the European Union in comparison with other migration destination, notably the United States and Canada. A Malian professor interviewed in Paris thus stated:

But if you look to Canada and USA, once you have finished your education and they want to employ you, the companies can organise the papers easily. But in France, only a few rare cases like others and mine. . . . You see engineers who work with security or doctors who are nurses in France.

Both these mechanisms may lead to a certain increase in the cases where the human capital of migrants is destroyed or wasted.

5.2.7 Increased violations of migrant workers' rights

The allowed three-month job searching period in the event of unemployment before a Blue Card is withdrawn, has been criticized for being too short. Not only does the period to three months seem somewhat unrealistic, as this length of time appear insufficient for finding an opportunity of qualified employment, which may deter certain migrants from choosing the EU as a migration destination. Furthermore, the labour market can change rapidly and to threaten skilled migrants with expulsion as shortly after becoming unemployed when they have moved across borders, possibly with their whole family, could be considered a rather unfair treatment. It could also play into the hands of unscrupulous employers as it gives the employer a too strong a position in the immigration status of the individual after he or she moves to the EU. A migrant is forced to accept the conditions of his or her employer, as quitting or losing his job may very well lead to a loss of the right to stay in the European Union. The Blue Card could thus have increased violations of migrant workers rights as a consequence.

5.2.8 Increased difficulty for developing countries to tackle brain drain issues

There are developing countries that can address the negative impacts of highly skilled migration through a well-developed infrastructure for training workers in the fields affected by migration. In fact, some countries have adopted a strategy of over-investing in formation of certain skills for the purposes of 'exporting' these competencies through skilled migration. However, both these mechanisms require a generally predictable growth in overseas de-

521 Guild, CEPS p. 6.
522 One example is the training of hospitality workers in Jamaica, see Kapur & McHale, Give us your best and brightest p. 103.
523 An example is Indonesia, see Kapur & McHale, Give us your best and brightest p. 103.
mand. In this aspect, the high level of flexibility of the Blue Card scheme is problematic. The Directive is designed to respond swiftly to changes on the labour markets within the community. Should there be a rise in the demand of labour, the Directive provides for the possibility of a speedy procedure for granting residence permits for the required workers as well as their admittance to the territory. At a time of lower demands, admittance rates will fall instantaneous as the Blue Card grants no right of admission to any skilled migrants. This may make it harder for developing countries to predict the future demand of labour in the EU, and to tackle the outflow of workers at a time of increased demand. In this regard, the Blue Card may undermine developing countries' strategies for handling the outflow of skilled workers.

5.2.9 Contribution to research and policy development

The lack of statistics regarding skilled migration leads to difficulties assessing the scope of the phenomenon and in developing policies in the field. The reporting provisions of the Blue Card Directive could help amend these problems. In fact, in recital 24 of the preamble of the Directive it is stated that reporting provisions should be provided for with a view to identifying and possibly counteract the Directive's possible impacts in terms of brain drain in developing countries. The statistics that will be collected in compliance with the reporting duties of the Member States, comprising, for instance, the volumes of third-country nationals who have been granted an EU Blue Card and, their nationality and their occupation may very well prove useful in the research on skilled migration and subsequently the development of policies to maximize the positive impacts, and mitigate the negatives thereof.

6 CONCLUDING SUMMARY

The following sections provide a summary of the main conclusions drawn in this thesis regarding the current impacts of skilled migration in Mali, the impacts that the Blue Card is likely to have on skilled migration patterns and the subsequent consequences for developing countries of origin.

6.1 Conclusions regarding the impacts of skilled migration in Mali

Firstly, it has been concluded that the absence of skilled workers who pursue migration is probably causing a significant loss at the University of Bamako by contributing to the lack of human resources there. It has thus been argued that skilled migration is depriving the University of certain spillover effects of highly qualified workers on their collegial environment, and in some cases possibly putting a complete halt to the education. As the system for higher education is an important nation building institution the effects are also of an institutional character, threatening the public good and welfare.

However, these negative effects are offset by a number of positive impacts. The prospect of migration seems to have a substantial effect on the decision-making of Malian university students since it motivates many to study hard, thus possibly raising the level of education in the country. However, there is evidence to suggest this effect is threatened by increasing corruption within the distribution of Malian state scholarships.

Furthermore, the diaspora plays an important role to Malian society. Malians abroad transfer significant amounts of financial resources to the country. According to the interviews, profes-

524 Kapur & McHale, *Give us your best and brightest* p. 103.

525 Article 20 (2), Directive 2009/50/EC.
sionally active skilled migrants in France remit at least as often as other migrants, and approximately three times as much. Certain students remit too, but significantly less than the average migrant. The incentives to remit do not seem to be diminished by wealth within the family or family reunification in the country of residence. Remittances to and investments in the University are scarce, but they exist. There is also support for the education of individual students.

There is also a vivid exchange of human capital between the diaspora and the teachers at the University of Bamako. Many of the fruitful relations have been forged through the TOKTEN program, a multilateral cooperation program designed to capitalize on the skills of nationals living abroad. This program has led to the establishment of a directory of at least 525 expatriate Malians volunteering for the programme and numerous visits of these migrants to the University of Bamako. The program is well-known and generally perceived as beneficial among teachers at the University. There is, however, some critique of its organisation. Foremost, the visits are perceived by many as too short, which may have a negative impact on the organisation of other education at the University. Also, the program is less well known among the students at the University. Human capital is also being transferred from the Malian diaspora through participation in scientific forums or conferences and through the public debate in media, even if the latter only to a limited extent. The study has further shown that diaspora members do, in a tangible way, facilitate the migration of others. Also, skilled migrants serve as intermediaries for funding, donations and scholarships and for international cooperation.

The study has found no evidence that the activeness of the diaspora should decline with the length of the migrants' stay abroad, with the exception of a temporary rupture that may take place when a migrant goes from studying abroad to working. However, the possibility of the diaspora members to affect their home country does seem to be dependent on their country of residence. For Mali, migrants living in North American seem to be significantly more active than in other regions, the diaspora in Europe is slightly more active than its size suggest, and the African diaspora seems comparatively very inactive. Also, the propensity of skilled Malians abroad to form networks and associations seem rather low, at least in France.

Skilled Malian migrants in general seem to depart with the outset to return after a certain period of time. Return does thus not seem to be the result of failure abroad. In fact, it has been found that the opposite case could be at hand, where return is the result of a strong determination and ambitious planning. Certain financial capital is accumulated and transferred to Mali in connection to the return of skilled migrants. Even if the amount reaching the University of Bamako in ready money is probably limited, a significant transfer of books and other material is taking place from or through returning migrants. Also, money that the returnees bring with them might be invested in the education of individual students or in private institutions for education. But more importantly, returning Malian migrants bring with them significant human capital in the forms of skills, experience, information and effective methods of working that benefit them in their work as teachers and contribute to the endeavours to improve the University. There are some problems associated with returning migrants making the human capital they have acquired abroad available to the University of Bamako. The knowledge and skills are not always adapted to the Malian context and the diversity causes certain tensions within the teacher body at the University. But, all in all, the human capital the migrants are returning with is substantial, and it has been found that there is a debate and exchange taking place at the University which enables a fruitful adaptation and diffusion of this capital.
As regards the sociopolitical dimension of skilled migration from Mali, the findings of the study indicate that the societal group promoting improvement of the Malian system for higher education is not in surplus. Migration taking place within this group could therefore have a negative effect on the exercise of democratic powers and the driving force for development. The study also provides examples indicating that skilled migration may diminish the driving force for development among those remaining behind. In contrast, the diaspora as a whole is a rather important political factor. However, the part of the diaspora that has a higher education seems to play a comparatively weak political role. The ideas and information stemming from the million of interactions and conversations between migrants and people in Mali probably has an extensive sociopolitical impact. Though the study only provides fragmentary evidence, these are examples that suggest that skilled migration may, by being a vessel for external impulses and information, drop by drop, contribute to the development of Malian society.

All in all, it is concluded that the negative effects on the University of Bamako of the absence of the skilled workers pursuing migration seems to be offset by the gains derived from migrant return, the prospect of migration raising the level of education, the role played by the diaspora and the sociopolitical impacts. However, this balance could be shifted even by a slight change in migration outflow, leading to a situation where skilled migration has serious negative effects on the country. In this regard, Beine, Docquier and Rapoport have found that Mali with its migration rate of 15% is experiencing a beneficial brain drain, whereas countries with migration rates from 20% are negatively affected by the outflow of skilled workers. This suggest that an increase of 5%, in the migration flows from Mali, or 1.100 individuals, may entail negative effects for the country.

6.2 Conclusions regarding the Blue Card`s impacts on skilled migration

Europe is presently emerging from an economic crisis. Due to the present scarcity of employment possibilities and the fact that there is subsequently no large-scale excess demand for labour, the Blue Card Directive will most probably not affect the migration of skilled workers into the Union in a tangible way. The Directive is, however, highly flexible and at a time where the demand for skilled labour rises, it will contribute to shaping the inflow of skilled migration into the Union. However, even at such a time, it is unlikely that the Blue Card will increase the overall size of skilled labour migration into the Union considerately. But due to special rules for employment of teaching staff and professionals in the fields of physics, mathematics, engineering, life science and health care, the Blue Card Directive may lead to an increase of the net size of migration in these particular sectors.

Even though the directive does not increase the size of migration significantly, it can shift migration flows as regards country of destination. The elements raising the attractiveness of the EU to skilled migrants, like providing for intra-community mobility and facilitated family reunification, may cause skilled workers that has the possibility to obtain highly qualified employment in several countries abroad to choose an opportunity in the EU.

The facts that the Blue Card scheme is of a more temporary nature than several national schemes and that it provide for no facilitated conditions for recent is likely to raise return rates among skilled migrants in the union. However the migrants affected by these factors may also choose to stay in the EU illegally. The fact that the Directive facilitates shorter visits to the country of origin prior to the expiration of their residence permit helps counteract this unwanted effect. In spite of the facilitated family reunification and uncertainty of the future possibilities to return under the scheme the Directive will most likely lead to slightly higher return rates among skilled labour migrants in the Union.
6.3 Conclusions regarding the consequences in countries of origin

It has been found that the Blue Card Directive may shift the balance in countries like Mali, where the negative effects of the absence of the skilled workers pursuing migration is currently offset by the positive impacts. Furthermore, if the Directive increases skilled migration in sensitive sectors such as education, the negative impacts of the absence of qualified Malian teachers would be amplified. Thus, the lack of qualified teaching staff at the University of Bamako would be aggravated, leading to among other things: classes being even more overcrowded and teachers even more over-worked, the quality of the education to be worsened and the possibly stopping of education in some disciplines. On a broader scale, it would have far-reaching institutional effects.

In contrast, certain of the positive implications of skilled migration will probably be strengthened by the Directive. By providing clear criteria for the obtaining of a Blue Card the Directive may thus increase the expected return on education in developing countries and serve as a motivation to pursue tertiary education.

Different elements of the Blue Card Directive may have impacts on the role of the diaspora. Firstly, the fact that the Blue Card Directive could make it harder for third-country university students to stay in the EU after graduation may have important impacts. If this leads to young migrants returning to their country of origin, and pursue qualified employment abroad only after spending some time in the country of origin, as opposed to doing so directly after graduation, their contribution to the society at home as diaspora members may both be more frequent, and more valuable. Secondly, the Blue Card may have tangible impacts by making migrants choose the EU before northern America or an African country. As there are indications that the Malian diaspora living in North America is more active than the one in Europe this might thus lead to a decrease in diaspora activeness. However, there are also indications that the European diaspora is significantly more active than the one in Africa. If more highly skilled Malians choose to go to the EU as opposed to an African country the overall diaspora activeness may thus be increased. As the elements of the Blue Card that raises the attractiveness of the EU is more likely to measure up in the competition with countries in Africa than with the traditional immigration countries USA and Canada any shift in migration flows brought on by the Blue Card will most likely be from African countries rather than from North America. The Blue Card may thus lead to a strengthened role of the Malian diaspora. The findings can merely serve as indications. As regards financial capital, however, it also seems logical that a shift in migration flows from Africa towards higher wage EU countries would lead to an increased diaspora support. On the contrary, as regards human capital, a shift in migration flows from Africa towards the EU may have negative effects as the human capital acquired in a western country could be less adapted to Malian conditions. Finally, the Blue Card will promote both more and longer visits home among skilled migrants that have spent several years in the Union. This could amplify the positive effects of the TOKTEN program and diminishing the problem of short full-time TOKTEN-interventions that disturb other education.

The fact that the Blue Card Directive will most likely lead to slightly higher return rates among skilled labour migrants in the Union will strengthen the numerous positive impacts of return. In developing countries where skilled workers often are scarce, society will benefit from every single additional return the Blue Card leads to. Also, the fact that skilled migrants under the Blue Card scheme will be able to carry out visits home in order to prepare their return and transfer the pension rights accumulated in the EU to their home countries allows for
return to take place under more favourable conditions and add to the positive impacts upon return.

As regards sociopolitical impacts, the redirection of migration flows to the EU from other destinations may affect the pluralism of ideas and diversity of the debate negatively. At the same time, the possibility of intra-community movement contained may provide a valuable tool for migrant Malians to critically analyze different thought models and systems. The Blue Card Directive thus has both mechanisms plausible of diminishing the plurality of the sociopolitical debate in Mali, and of enriching the inflow of ideas. It is difficult to determine which impact that will be prevalent.

The Blue Card may also have negative impacts in terms of so called brain waste, where the human capital of the skilled migrant is not benefiting any economy, for example by making it harder for third-country university students to stay in the European Union after their graduation in order to take up qualified employment and thus causing some to remain in the Union and take up unqualified work or become unemployed.

The short period allowed for searching for a new job in the event of unemployment gives the employer a too strong a position in the immigration status of the individual which could have increased violations of migrant workers rights as a consequence.

Finally, it has been argued that the high level of flexibility of the Blue Card will make it harder for developing countries to predict the future demand of labour in the EU, and may thus undermine developing countries' strategies for handling the outflow of skilled workers.. On a positive note however, the statistics that will be collected in compliance with the reporting duties of the Member States may very well prove useful in the research on skilled migration and subsequently the development of policies to maximize the positive impacts, and mitigate the negatives thereof.
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