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What explains the transposition behavior of states with EU directives?
- A case study on Germany and France regarding the Family Reunification Directive (2003/86/EC).

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Abstract

This thesis aims to investigate whether the misfit theory (Börzel, 1999; Börzel & Risse, 2000; Börzel, 2003) and the world of compliance typology (Falkner, Treib *et al.*, 2005) can explain France's and Germany's legal transposition behavior concerning the Family Reunification Directive. The validity of these approaches is tested through a qualitative, comparative case study investigation of European and national legal documents. It is found that France and Germany comply with major delay. However, both countries only exhibit minor legal misfit compared to the EU directive. This implies that the misfit theory may not explain the compliance patterns of those countries. The assumption that domestic issues may be linked to delay in transposition appears to be confirmed in the case of Germany. It is determined that the procedural characteristics of the world of compliance typology apply and consequently indicate that the world of compliance typology seems to explain the compliance behavior of the two EU member states. The findings of this study encourage further research on EU directives in the area of migration and asylum, using a bigger sample and investigating state-based approaches.

Key words: legal compliance, misfit theory, world of compliance typology, Family Reunification Directive, (non-) compliance, directive implementation, European Integration

Content

List of abbreviations

Abbreviation	Meaning
CDU	Christian Democratic Union
CEAS	Common European Asylum System
CSU	Christian Social Union in Bavaria
EC	European Commission
EU	European Union
FDP	Free Democratic Party
FRD	Family Reunification Directive
IA	Immigration Act
MS	Member states of the European Union

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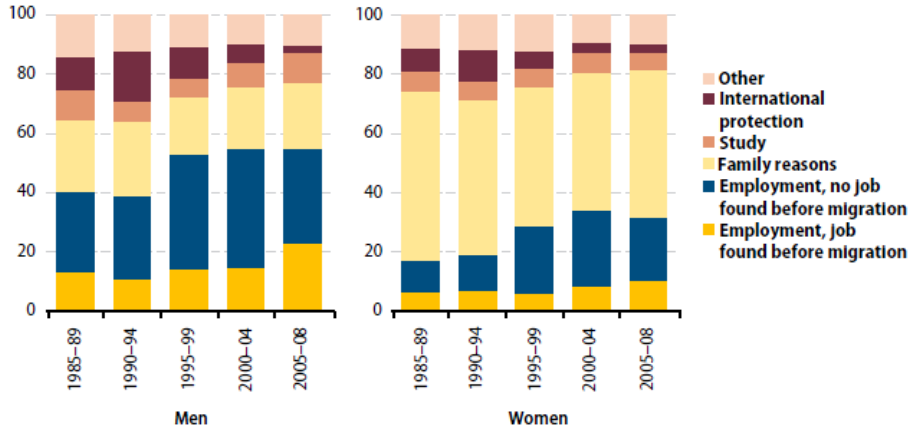
Chapter 1: Introduction

"The low-level binding character of the (Family reunification) directive leaves Member States much discretion and in some Member States the results has even been lowering the standards when applying "may" provisions of the directive on certain requirements for the exercise of the right to family reunification in a too broad or excessive way." (European Communities, 2008, p.14)

1.1 Research Background and Aim

There is barely a month passing by without headlines about refugees that are drowning in the attempt to arrive in the European Union (EU). Most recently, an incident close to Lampedusa gained public attention when over a hundred of refugees died in the Mediterranean Sea (SPIEGEL ONLINE, 2013). Debates around migration management in the EU evolved, calling for strengthened rights for migrants (SPIEGEL ONLINE, 2013). One of the predominant legal grounds for immigration in the EU has so far been family reunification (Union, 2011). In order to strengthen migrants' rights in the area of family reunification, the Family Reunification Directive (FRD) was issued in 2003. Although the directive set out to secure the family unit, it is assumed by the European Commission that the strict conditions introduced in the past years have led to a decrease in the percentage of family reunifications (Commission, 2011).

Figure 1: Foreign-born population
aged 25-54 that entered the receiving country aged 15 and over by reason for migration and duration of residence in the receiving country, EU-27, 2008 (Union, 2011)



The FRD is one of many directives the EU passes yearly. Although member states (MS) command some maneuver concerning the instruments they use to implement the directives, transposition of EU directives into national law may pose a challenge to the MS. This particularly applies if transposition requires major changes in national law and costs are created (Börzel & Risse, 2003; Börzel & Risse, 2000; Duina, 1997; Héritier, 1996). These challenges may result in incomplete or delayed transposition, threatening both EU efficiency and the legitimacy of policy-making within the EU (Chalmers, Davies *et al.*, 2010; Mbaye, 2001; Perkins & Neumayer, 2007).

So far, several studies have been conducted on the compliance behavior of MS with EU directives (e.g. Angelova, Dannwolf *et al.*, 2012; Berglund, Gange *et al.*, 2006; Chayes & Chayes, 1993). This also applies specifically to compliance behavior of MS with the FRD (Communities, 2008; Foundation, Centre *et al.*, 2011; Groenendijk, Fernhout *et al.*, 2007 etc.; Labayle & Pascouau, 2007; Pascouau & Labayle, 2011). Although the existing studies examine the compliance behavior of different countries, there are few studies attempting to explain those patterns (Duina, 1997).

Although noncompliance has not risen significantly over time some countries frequently do not comply with EU directives, posing a challenge to the effectiveness of EU law (Börzel, Hofmann *et al.*, 2010) (see Figure 3, Annex). Consequently, academic debates arouse on the reasons for varying compliance patterns. While some scholars argue (e.g. Coyle, 1994; Falkner, Treib *et al.*, 2005; Lampinen & Uusikylä, 1998; Levy, Levy *et al.*, 1995; Mbaye, 2001; Pridham, 1994) that if and how an EU country will comply with EU laws depends on the country in question other scholars (e.g.Börzel & Risse, 2003; Falkner, Falkner *et al.*, 2004; Fearon, 1998; Héritier, 1996; Jr., 2000; Mbaye, 2001; Treib, 2003) claim that compliance behavior depends on the content of the EU law. This study tests the validity of the world of compliance typology and the misfit theory on the case of the Family Reunification Directive. The misfit theory is based on the assumption that the bigger the gap between EU law and national law is, the more problems will arise in compliance, whereas the world of compliance typology claims that EU countries can be divided into four different worlds of compliance- with each world being characterized by different patterns of how strictly EU law is followed (Falkner, Treib *et al.*, 2005).

Although a vast number of studies (e.g. Coyle, 1994; Falkner, Treib *et al.*, 2005; Pridham, 1994 ; Sand, 1996) has been conducted on different policy areas, so far little is known about compliance patterns with directives related to migration in the EU. This thesis therefore attempts to partially close this gap by enhancing knowledge on compliance in relation to migration policies in the EU. By examining factors influencing compliance, this

thesis is a contribution to Europeanization as well as to compliance theory, implementation research and policy analysis.

1.2 Research Approach and Outline

In order to test the theoretical approaches for their validity, a qualitative desktop study is conducted. It is investigated in-depth which factors influence MS's compliance with directives. This is done by examining the two cases Germany and France regarding the FRD. For this purpose, legal misfit between EU law and French and German law are investigated and it is determined whether their level of misfit or their respective worlds of compliance serve to explain their compliance behavior in the case of the FRD. Data, as provided from EU documents, national documents, parliamentary debates, media reports, experts and prior studies on legal compliance with the directive, is analyzed and embedded into the context of the two theoretical approaches mentioned above. The study focuses on the timeframe between 1999 and 2007- the period of time between the first draft of the directive and the latest point of time when the directive was transposed into national law.

The following chapter provides background information on the EU and on the FRD. Thereafter, the theoretical approaches that are used to explain differing levels of compliance are introduced following an overview over the methodology used to address the research question. Chapter 5 presents the data: after the MS' levels of compliance with the FRD as well as influential factors are investigated it is tested to which extent the hypotheses apply on the case of France and Germany. Finally, in chapter 6 conclusions will be drawn based on the findings of this paper.

Chapter 2: The Family Reunification Directive

This chapter provides a background to family reunification in the EU. After elaborating on the objective of the FRD, a short summary on the content of the directive is provided.

2.1 Objective of the FRD

There are several types of EU laws: directives, decisions and regulations. For this study, directives are of particular interest. They are the *"most powerful and probably the most common used legal tool"* (Duina, 1997, p. 156) in the EU.

The FRD is one of those directives. Passed in 2003, the FRD is part of the Common European Asylum System (CEAS), and is therefore supposed to lead to the creation of more *"common criteria"* as determined in Art. 6 of the directive (OJ, 2003). This particularly concerns the standardization of criteria based on which third- country nationals can exercise

their right to family reunification (Commission, 2011). If more favorable rules than the ones dictated by the directive are in place nationally they do not have to be precluded due to the directive (Commission, 2013b). The European Commission (2011) furthermore mentions that integration of third-country nationals that meet those criteria shall be facilitated through the directive: "*The objective is to protect the family unit and to facilitate the integration of nationals of non-member countries"* (Commission, 2013b). The directive shall, furthermore, serve to protect the family life with special focus laid on refugees (OJ, 2003, pp. 1, (1)).

2.2 Content of the FRD

The Family Reunification Directive includes both mandatory and optional provisions. Whereas the mandatory provisions have to be fulfilled by MS, optional provisions allow for more maneuvering room. The FRD contains a list of conditions under which third-country nationals may apply for family reunification and regulates the way MS have to deal with applications.

If a third-country national possesses a residence permit that is effective for more than one year in a MS and if this person could get long-term residence in the EU the third-country national may submit an application for family reunification as a sponsor (Commission, 2013b; Communities, 2008). Family members of EU citizens are not entitled to family reunification based on the FRD[1] (Communities, 2008). The family members that are eligible for family reunification include the spouse of a sponsor, minors of a couple or of one parent having custody (Commission, 2013b). Further family members may be authorized to apply for family reunification if the respective MS allow it (Commission, 2013b). The directive does not allow family reunification for more than one partner (Commission, 2013b).

Amongst others, the directive stipulates how long MS may longest take to make their decision on the application, based on which grounds they can do so, which materialistic means applicants have to dispose of to be eligible for family reunification, how long the third-country nationals must have resided in the MS as well as which integration measures may be asked to be fulfilled for successful application (Union, 2003). Furthermore, it includes provisions on which evidence may be required to be presented as proof of the relationship between the family members that are to be joined (Union, 2003). It also stipulates that the family members that are willing to come to the EU must reside outside the MS when the application for family reunification is submitted (Union, 2003). Additionally, according to the directive a MS can refuse entry and/or residence of the family member if internal security, public policy or public health would be affected negatively (Commission, 2013b; Communities, 2008). Refusal of an application may also occur in case of fraudulent

[1] Family members of EU citizens that wish to apply for family reunification may apply on the basis of Directive 2004/38/EC

applications which may include misleading documentation or marriages conducted only for family reunification purposes (Union, 2003). These reasons can also lead to the redemption of an already granted permit (Commission, 2013b).

The directive includes special provisions on refugees. This includes the definition of family members as well as the documents needed to proof family ties (Commission, 2013b). Moreover, conditions and adherence to integration measures are dealt with differently from other third-country nationals (Commission, 2013b). Overall, the provisions concerning refugees are formulated more advantageous and allow for exemption from major restrictions that are in place for other third-country nationals (ECRE, n.d.).

According to the directive, family members that are joined with third-country nationals in the EU may receive a residence permit of the same length as the sponsor as well as the same right to access to work, education and training (Union, 2003).

Chapter 3: Theoretical Approaches

Academic scholars (König & Mäder, 2013; Thomson, Torenvlied *et al.*, 2007) provide different approaches and explanations regarding MS's compliance with EU directives. There appear two main approaches within the academic debate: 1) state-based approaches: a certain member state has in general a tendency to comply with directives or not and 2) preference-based approaches: a country may comply with one directive but not with another one. This chapter introduces the two theoretical approaches that this study is testing: The misfit theory and the world of compliance typology.

3.1 The Misfit Theory

The misfit theory states that the more misfit there is between existing national law and new EU law, the greater the difficulties of the country to comply with the new law (Auel, 2005; Börzel, 1999). It also states that only if there is incompatibility between EU and national law, pressure to adapt national legislation will be created (Börzel & Risse, 2003). Misfit in this case means that *"one can expect a smooth implementation process if a directive requires only small changes to the domestic arrangement. Implementation problems, by contrast, are expected if considerable misfit must be rectified by a member state"* (Falkner, Treib *et al.*, 2005, p.27). When conceptualizing misfit, one usually differentiates between the legal misfit and the procedure-related misfit (Falkner, Treib *et al.*, 2005). Whereas the legal misfit refers to the gap between national law and European law, the procedure-related misfit refers to differences in enforcement and application of the respective rules. A further element that helps to estimate the level of misfit are financial costs related to implementing the new law

(Falkner, Treib *et al.*, 2005). Due to limited scope and resources of this study, only legal misfit is investigated.

The misfit theory assumes that a country will comply better with a directive where the level of misfit is minor whereas it might have difficulties complying with a directive where the level of misfit is high. This is due to the fact that a high level of legal misfit occurs when significant national institutions or procedures face a challenge in adaption (Duina, 1997; Falkner, Treib *et al.*, 2005). Moreover, proponents of the theory suggest that parliaments are more likely to adopt policies that are in line with existing national legislation whereas they are prone to oppose laws that are known to undermine national interests (Duina, 1997).

Based on the misfit theory the following hypothesis can be made*: "when a directive is in line with the current policy legacy of a country and with the organization of interest groups, it is well implemented. When it envisions major policy shifts and the re-organization of interest groups, it suffers from poor implementation"*[2] (Duina, 1997, p.158). Already the partial legal compliance with new EU law lowers the costs of transposing the directive into national law and hence makes it more likely that a proper legal compliance will occur (Duina, 1997).

3.2 The World of Compliance Typology

According to Duina (1997) *"the attitude of a country towards the idea of Europe determines its (the country's) willingness to transpose and apply a directive and therefore the likelihood that the directive is well implemented" (p.160).* The typology of Falkner, Treib *et al.* (2007) builds upon this statement. This approach categorizes the MS into three worlds of compliance: *"a world of law observance, a world of domestic politics, and a world of neglect*" (Toshkov, 2007, p. 934). Based on the countries' national cultures concerning adjustment requirements to EU law this categorization was developed (Falkner, Treib *et al.*, 2005). It assumes that compliance behavior depends on the state rather than on the directive in question. The different worlds of compliance are claimed to explain the occurrence of (non)compliance (Falkner, Treib *et al.*, 2005).

3.2.1 The World of Law Observance

Since this category is not investigated in greater depth within this study it is only introduced briefly. In countries belonging to the world of law observance, the prevailing goal is to comply with EU law (Falkner, Treib *et al.*, 2005). This goal is prioritized over national concerns (Falkner, Treib *et al.*, 2005). According to Falkner, Treib *et al.* (2005) a country

[2] The focus of this study will be purely legal misfit. Hence, interests of interest groups will not be focused on.

belonging to this category will usually transpose EU directives timely and correctly, regardless of whether national interests or ideologies exist.

3.2.2 The World of Domestic Politics

According to Falkner, Treib *et al.* (2005) in the world of domestic politics the transposition of EU law into national law is only one of many aims. Typically, in countries of this category, domestic interests are given higher priority than concerns on EU level (Falkner, Treib *et al.*, 2005). Falkner, Treib *et al.* (2005) find that compliance usually occurs only if the content of EU law is in line with national interests. In case that there is a conflict in interests between national and EU law or in case that costs of transposition are considered high, delayed or incorrect transposition may occur (Falkner, Treib *et al.*, 2005).

3.2.3 The World of Neglect

Falkner, Treib *et al.* (2005) find that in a country belonging to the world of neglect, compliance with EU law itself is not an aspiration per se. These countries usually tend to neglect obligations deriving from EU laws, resulting in inactivity or ignorance of EU legislation (Falkner, Treib *et al.*, 2005). Therefore, these countries usually do not comply in time or correctly (Falkner, Treib *et al.*, 2005).

The following table summarizes the characteristics of the three worlds of compliance:

Table 1: Three worlds of compliance

Table 15.1 *Three worlds of compliance*

	World of law observance	World of domestic politics	World of neglect
Political importance of compliance with EU law	Highly valued, typically overrides domestic concerns.	One ambition among many, domestic concerns frequently prevail.	Not an aspiration per se.
Transposition is typically . . .	. . . on time and correct (even where conflicting domestic interests exist).	. . . on time and correct only if there is no conflict with domestic concerns.	. . . late and/or 'pro forma'.
Factors facilitating compliance	Culture of good compliance as a self-reinforcing social mechanism.	Fit with preferences of government and major interest groups.	Accelerating issue linkage with domestic reforms, high profile of particular cases.
Conditions of non-compliance	Unawareness; otherwise non-compliance occurs rarely and briefly.	Political failure (lack of compromise among conflicting interests or compromise against the terms of EU law). If non-compliance occurs, it tends to be rather long-term.	Bureaucratic failure (inefficiency, overload, non-attention). Non-compliance is the rule rather than the exception.
Predominant logic	Cultural.	Pursuit of political interests.	Pursuit of interests within the administration.
Typical process	Dutiful adaptation.	Conflict / compromise.	Inertia.

Source: based on (Falkner, Treib *et al.*, 2005)

3.3 Research Questions and Hypotheses

Based on the theoretical approaches the following overall research question is tackled in this study:

What explains the compliance behavior of states with EU directives?

The main goal of this research is to assess whether the two theoretical approaches, the misfit theory and the world of compliance typology, are valid in case of Germany's and France's compliance with the FRD. Therefore, the following questions are investigated in this paper:

1) *Does the misfit theory explain the compliance behavior of states with EU directives?*
2) *Does the world of compliance typology explain the compliance behavior of states with EU directives?*[3]

Resulting from the above mentioned research questions the following hypotheses are tested:

H1: The compliance of a country depends on the level of legal misfit between national law and EU law. The less legal misfit there is between national legislation and new EU law the better the compliance of the state with the law.

H2: The compliance of a country depends on which world of compliance the country belongs to. A country belonging to the "world of domestic politics" is likely to comply better than a country belonging with the "world of neglect".[4]

[3] The research questions focus on the transposition phase within the total compliance that has to occur (see Figure 7, Annex).

[4] This applies unless domestic preferences of a country belonging to the world of domestic politics are not in line with EU law. If this is the case, a country belonging to the world of domestic politics is expected to transpose the directive with delay- like a country belonging to the world of neglect.

Chapter 4: Methods

This chapter introduces the methodology used to conduct this study. The study's design, the way data is collected and analyzed, the sample used to examine the research question, the operationalization of the variables and the limitations are also presented.

4.1 Design

The design of this study is of (dis)confirmatory nature: Rather than exploring new factors that are related to the level of member state compliance, existing theoretical approaches are tested in the context of EU migration and asylum law.

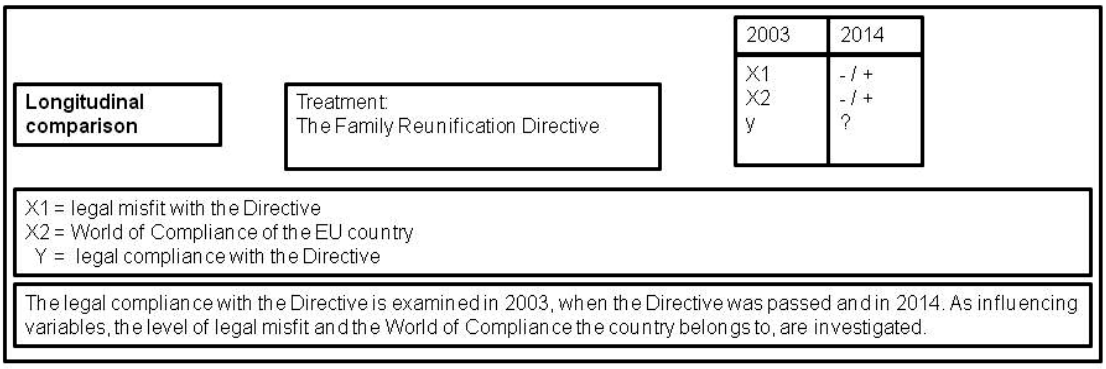
For a number of reasons the study is designed as a qualitative comparative case study. Firstly, according to Yin (2009) case studies facilitate research on *"how*" (p.2) and *"why"* (p.2) questions. Since this study aims to identify factors facilitating MS' compliance and how they do so, this method seems to be appropriate. Secondly, if the researcher has limited or no control over events a case study is a suitable design to choose (Yin, 2009). The compliance of MS cannot be regulated by the researcher in any way, which promotes the choice of a case study in this case. Thirdly, a case study allows the study of a contemporary issue embedded in a real-life context (Yin, 2009). The compliance with directives is an ongoing challenge that is still existing and faced by politicians and various other stakeholders in daily life. Fourthly, it is a qualitative method investigating a small number of cases and one certain example- in this case the behavior of Germany and France regarding the FRD (Gerring, 2004) (see Table 8, Annex). The case study, however, allows to understand *"a larger class of (similar) units"* (Gerring, 2004, p. 342). Focusing on two countries and one directive should facilitate the understanding of a greater number of countries and their compliance behavior concerning a larger sample of directives.

According to Gerring and McDermott (2007) there is one case study design that does not entail a control group: the longitudinal comparison. This is the design used for this study. This paper analyzes the legal frameworks in the two MS before the directive was introduced and after it was introduced by examining data of conducted studies, such as the study conducted by Groenendijk, Fernhout *et al.* (2007). This study displays a major source for this paper. Although the study looks at the changes retrospectively, it allows for conclusions about legal changes made- considering the directive as the treatment (see Figure 2).

Gerring (2010) is pointing out that a case study unit is framed by space and time. The units of this research, Germany and France, are spatially bound by being nation states. The time that is being looked at is from 1999, before the issuing of the FRD, and changes made afterwards until 2007. Particular attention is paid to the first year of implementation since the

data of the study conducted by Groenendijk, Fernhout *et al.* (2007) provides sufficient data on that.

Figure 2: Longitudinal Comparison in case studies



Source: based on Gerring and McDermott (2007)

4.2 Cases

The study focuses on the FRD and how it was implemented in Germany and France. Data availability on this directive is high, allowing for the measuring of compliance with it as well as the analysis of legal efforts undertaken to comply with the FRD. Furthermore, as stated above, there is little literature on compliance with directives stemming from the field of migration. Data availability of this directive is hence a key factor that was taken into consideration when choosing the directive. Moreover, the small amount of mandatory articles in the directive allows studying the compliance with the directive within the limited scope of this study.

For the case study, the two EU- MS Germany and France are analyzed. Those two MS were deemed most suitable for a number of reasons. Firstly, for research purposes it is essential to have access to the data of the units to be investigated (Yin, 2009). Different studies on the compliance with the directive as well as EU documents contain information about Germany and France and their compliance patterns (Commission, 2013a; EUR-Lex, 2013; Foundation, Centre *et al.*, 2011; Groenendijk, Fernhout *et al.*, 2007; Kreienbrink & Rühl, 2007; Labayle & Pascouau, 2007; Pascouau & Labayle, 2011). Secondly, due to time and resource constraints relevant documents could not be translated from their original languages. The study therefore is delimited to countries where the documents in question existed in French, German or English. Finally, both Germany and France are in absolute numbers the main receivers of migrants for reasons of family reunification, hence two the two countries appeared to be suitable for this study (Network, 2012).

The units of analysis are the compliance patterns of France and Germany regarding the FRD, whereas the units of observation are the respective national laws and influencing factors of compliance.

4.3 Operationalization

In order to answer the above mentioned research questions, it is important to operationalize the variables. This section identifies the variables and explains how they are measured in this study.

4.3.1 Operationalization of Compliance

For both research questions it is essential to operationalize "compliance". Compliance in this study is understood as the compatibility of member state law with the directive: *"Policy misfits essentially equal compliance problems*" (Börzel & Risse, 2003, p. 61). In order to comply with EU law, MS[5] either have to adapt their national law or their law might already be in line with the directive. It is important to note that compliance does not have to lead to any changes in conditions for asylum seekers or to guarantee success of a directive. Typically, compliance can happen in different phases of implementation, namely: 1) law-making, 2) controlling the application of these laws, 3) enforcement of the application of laws (Hartlapp & Falkner, 2008) (see Figure 4, *Annex*). This research focuses only on step 1) the transposition of EU law into national law. This focus is chosen based on the limited data on practical implementation and difficulties in accessing existing data. Furthermore, the limited scope and resources available for the study do not allow for compliance as a whole process to be investigated.

This is, in line with existing literature, done by examining how long it took for the MS to convert the directive into MS law, and by investigating the way in which it was incorporated (Hartlapp & Falkner, 2009). According to Hartlapp and Falkner (2008) this can be summarized under the terms *"timeliness"* (p.2) and *"correctness"* (p.3) of the legal transposition. The national execution measures as well as the findings of studies are used to measure the time needed to comply with the directive (EUR-Lex, 2013).

4.3.2 Operationalization of Legal Misfit

The first research question requires the operationalization of the term legal misfit. One can talk of a *"high degree of legal misfit if there are completely new legal rules, far-reaching gradual changes and/or important qualitative innovations. […] Otherwise, only a medium (or even low) degree of legal misfit will result"* (Falkner, Treib *et al.*, 2005, p.28). This is the definition of legal misfit that this study uses. It is consequently investigated if there are new

[5] Within this study, the compliance behavior of EU citizens shall not be given further attention.

rules that were implemented in France and Germany, if changes occurred in national legislation and if so, to what extent. The focus of this study is formed by the mandatory provisions of the directive since those are the rules that have to be transposed into national law, whereas the "may" provisions allow MS to decide what rules they would like to transpose.

4.3.3 Operationalization of the Worlds of Compliance Argument

For the second research question it is crucial to determine whether the characteristics set out in the worlds of compliance typology apply in case of Germany and France. Falkner, Treib *et al.* (2005) determined that Germany is part of the "world of domestic politics" whereas France is part of the "world of neglect". This study is passed on the assumption that this categorization also applies for the FRD. The typology put forward by Falkner, Treib *et al.* (2005) suggests a list of characteristics that relate to the respective worlds of compliance. Those characteristics are displayed in this table:

Table 2: Compliance behavior of different worlds of compliance

	Behavior predicted for "world of domestic politics"	**Behavior predicted for "world of neglect"**
Compliance	Compliance occurs if directive is compatible with domestic interests	EU law is neglected
Political priority of compliance with directive given	Domestic concerns prevail	Compliance with EU law is not an aim
Typical transposition behavior	Timely and correctly if compatible with national interests	Late compliance to the mandatory extent
Facilitating compliance factors are given	national government's/interest groups' preferences are in line with the directive	Domestic reforms can facilitate compliance
Non-compliance factors are given	Lack of compromise of conflicting interests; long-term noncompliance if noncompliance occurs	Bureaucratic failure leads to noncompliance; Noncompliance is not an exception but the rule
Predominant logic is given	Political interests are pursued	Administrative interests are followed
Typical process is given	Conflict/compromise	Slow process
Issue linkage	simultaneous domestic issues (reforms etc.) may influence compliance	

Source: based on (Falkner, Treib *et al.*, 2005)

According to Falkner, Treib *et al.*'s (2005) typology, Germany belongs to the "world of domestic politics". As a member of this world one of the various goals is to comply with EU

law (Falkner, Treib *et al.*, 2005). However, national issues are of higher priority (Falkner, Treib *et al.*, 2005). Therefore, compliance depends on which national parties were in power at the time at the directive was passed (Falkner, Treib *et al.*, 2005). Moreover, national politics are also influenced by other actors such as important interest groups and their preferences (Falkner, Treib *et al.*, 2005). Particularly center-right coalitions seem to show patterns of resistance or delay contrasted with red-green coalitions that comply in time and with a proper extent (Falkner, Treib *et al.*, 2005). Duina (1997) states that *"directives in line with the interests of leading political actors are well implemented. Directives that challenge these interests are altered and transposed with delays. They are only partially and belatedly applied" (p.160).* This statement reinforces the assumption of Treib (2004, 2008) and Falkner, Treib *et al.* (2005) that party politics and national preferences do influence compliance behavior. Alternative factors that may lead to (non)compliance are legislative opponents. Consequently, if the goals of a directive are identical with the government parties' preferences the likelihood of compliance increases: the national political interests are followed through, regardless of the EU guidelines dictated. Usually, this either results in a conflict or the reaching of a compromise (Falkner, Treib *et al.*, 2005).

According to Falkner, Treib *et al.* (2005), it is crucial to investigate the reasons why compliance did (not) occur in order to verify the argument. Falkner, Treib *et al.* (2005) explain that parallel domestic processes, such as large reforms, can be linked to compliance behavior. If a country does not comply in time with the directive it is therefore possible that other issues that happened simultaneously played a role in compliance with the directive. This phenomenon is referred to as "*issue linkage*" (Falkner, Treib *et al.*, 2005, p. 313). There are two possible ways linkage can derive from: *"deliberate decisions by national governments and linkage stemming from material interdependencie*s" (Falkner, Treib *et al.*, 2005, p. 313). Issues occurring at domestic level can often be dealt with on top of transposing EU law into national law or, in some cases, rather than transposing EU directives- leading to delay in transposition. Since national legislation reform or issues may occur within another time frame than the transposition deadline dictates, the result is timely delay. This, however, only occurs if the domestic reform is not entirely in line with the changes dictated by the EU directive (Falkner, Treib *et al.*, 2005).

Based on the typology suggested by Falkner, Treib *et al.* (2005), France belongs to the "world of neglect". In the field of social policy, France showed behavior patterns that were seen as a result of *"national arrogance"* (Falkner, Treib *et al.*, 2005, p. 338). However, Falkner, Treib *et al.* (2005) stress that France might not show this arrogance in other policy areas, such as in case of migration policies. It is stated, that in the social policies, France is indeed amongst the worst compliers in Europe. The underlying reasons for this behavior are

administrative incapability, ignorance or arrogance regarding EU law. Consequently, in France compliance with EU law is not the first priority. Transpositions usually occur with delay and to the minimum extent it is required. If, however, domestic reforms happen which are of a similar character as the directive, compliance can be facilitated (Falkner, Treib *et al.*, 2005).

It is typical for France that non-compliance occurs whereas, according to the suggested typology, Germany would be expected to comply with a greater extent with the directive to- unless political parties or interest groups greatly hampered the process in Germany. In this paper it is investigated to which extent those characteristics are fulfilled in the case of Germany and France regarding the FRD. This helps to determine whether the theory can explain their compliance behavior.

4.4 Data collection

The qualitative comparative case study is based on a desktop study and document analysis. This allows gaining data for analysis. For this purpose, legal documents, including directives and regulations in the area of asylum in the EU, are studied. Furthermore, documents, such as action plans, discussion papers, reports, academic articles and studies are also included. A further contribution is made by national and EU documents, e.g. National Execution Measures (EUR-Lex, 2013) as well as various media reports. Those documents partly collected indicators for different compliance outcomes and partly analyzed those differences.

One main source of this thesis is the study compiled in Nijmegen in 2007 (Groenendijk, Fernhout *et al.*, 2007). Researchers sent a questionnaire to all MS with different questions about the implementation and compliance with the FRD. All countries completed the questionnaire. The questionnaire reveals not only information about detailed legal adaptations that had already happened or were planned, but also influential factors on implementation, such as public debate. An overview of questions asked in this study can be found in the Annex (Figure 5).

The following table shows how the different indicators were measured and which sources were used in order to conduct the data analysis.

Table 3: Operationalization of the research question and method

Sub-question	**Indicator and operationalization**	**Source of information/ research method**
1) Do the MS fully comply with the directive?		
Was the directive converted into member state law in satisfying time?	Length of time (in months) needed for conversion	First year : (Groenendijk, Fernhout *et al.*, 2007) (Nijmegen., 2007) 2012 : (Network, 2012), European Commission
Was the directive converted into member state law in the correct way?	Introduced national migration policies with reference to the FRD	Experts in first year : (Groenendijk, Fernhout *et al.*, 2007; Nijmegen., 2007), European Commission, national documentation, parliamentary debates
2) Which factors play a role in the extent MS comply with the directive?		
Does the misfit theory explain the compliance behavior of MS with EU directives?	Misfit: adapted or added national migration policies and extent to which changes occurred nationally	First year : (Groenendijk, Fernhout *et al.*, 2007) (Nijmegen., 2007) 2012 : (Network, 2012) (Communities, 2008), national documentation, parliamentary debates
Does the world of compliance typology explain the compliance behavior of states with EU directives?	world of compliance and respective characteristics (see chapter 3), issue linkage, characteristics mentioned above (chapter 3)	(Falkner, Hartlapp *et al.*, 2007; Toshkov, 2007), national documents, media reports

4.5 Limitations

In order to determine the meaningfulness of this study, it is important to raise awareness to the study's limitations. The limitations include the construct validity, the internal validity, the external validity and the reliability of the findings.

4.5.1 Construct Validity

Construct validity means *"identifying correct operational measures for the concepts beings studied"* (Yin, 2009, p. 40). According to Hartlapp and Falkner (2008) the correct measurement of compliance includes various levels and steps. However, due to limited time, monetary resources and scope of this work, only legal compliance is examined. This means that rather than drawing conclusions on compliance, the focus of this study should be seen on transposition.

A further limitation of the study is the data used and analyzed to draw conclusions. First of all, the data focuses on the mandatory provisions of the directive; "may" provisions are not investigated in detail. Secondly, a major part of the data relies on the expertise of country experts (Groenendijk, Fernhout *et al.*, 2007; Pascouau & Labayle, 2011) whereas other reports rely on information provided by the countries themselves (Communities, 2008). This can lead to biased or incomplete information. Moreover, in relation to the data from the study conducted by Groenendijk, Fernhout *et al.* (2007) it should be noted that not all changes mentioned by the respondents were necessarily due to the directive. Some changes may have happened simultaneously or independently from the directive. Different interpretations of the same questions cannot be ruled out either since this thesis relies on information and surveys without having information on pre-tests etc. (Bhattacherjee, 2012). Since those risks can neither be confirmed nor ruled out they should be considered when reading the paper.

A further factor that should be considered is the measurement of the time needed to implement the directive. As mentioned above, mainly national execution measures and studies are used to measure the time needed to implement the directive. However, *"although we can identify the exact transposition deadline for almost every directive, and although we have a record of national transposition measures applicable to these directives, there is no official indication for the adequate completion of the transposition process"* (König & Luetgert, 2009, p. 169). Therefore, it cannot be ruled out completely that the countries complied at an earlier or later stage than assumed.

Due to the outlined problems with the operationalization and measurement tools it cannot be said with certainty that the data provided shows exactly what needs to be measured. Consequently, the level of construct validity in this study encourages to interpret the findings as displaying tendencies rather than definite answers (Hartlapp & Falkner, 2008).

4.5.2 Internal Validity

If there is internal validity for explanatory studies, *"certain conditions are believed to lead to other conditions, as distinguished from spurious relationships"* (Yin, 2009, p. 41). Concerning the testing of relationships between the degree of compliance and the world of compliance or the level of misfit and the degree of compliance respectively, it can be assumed there is a relationship but since there is no control group, it cannot be determined to which degree there might be an influence from one variable onto the other one. This thesis tries to take into account various potential variables. However, case studies usually do not allow for conclusions about cause and effect since third variables cannot be ruled out. Consequently, internal validity might not be fully given in this study.

4.5.3 External Validity

External validity means *"defining the domain to which a study's findings can be generalized"* (Yin, 2009, p. 40). The study is, due to its scope, based on the sample of two out of 28 EU countries with the examination of one directive in the field of migration studies, the FRD. The focus is laid onto mandatory provisions rather than on all rules entailed by the FRD. This is done looking at the timeframe 1999 to 2007. It should be considered that the selection of the sample is limited by language skills and availability of data. Consequently, the case selection is not random, creating a risk for bias (Angelova, Dannwolf *et al.*, 2012). Additionally, solely transposition, not full compliance, is assessed. Since the world of compliance only accounts for aggregate findings but not for single cases as it is the case in this paper, this study can show trends but cannot indicate general compliance patterns of France, Germany or even the EU. It should, in this context, be noted that the aim of the world of compliance typology is to show how different MS *"typically react"* (Falkner, Treib *et al.*, 2005, p.341); to be precise one has to consider the typology to show tendencies, not general conclusions. The *"categorization […] cannot reliably predict each and every individual case of implementation that might be observed in any of the countries"* (Hartlapp & Falkner, 2009, p.341). However, trends and possible relationships in the case of France and Germany can be identified and taken up in future research. Moreover, because of limited scope of the study, only the factor of fitting preferences with the EU law is investigated- the factors culture and administrative non-action are not included (Toshkov, 2007). Further research should include more cases, policies of a wider range, e.g. all directives in the context of the CEAS, and the conduction of a representative amount of interviews.

4.5.4 Reliability

The reliability of a study includes the *"demonstrating that the operations of a study- such as the data collection procedures- can be repeated with the same results"* (Yin, 2009, p. 40). If the same reports and sources are used and analyzed the results of this study are anticipated to be duplicated with great likelihood. Since all data is provided through the internet and already existing, an intervention or influence deriving from the research or researcher can be ruled out. Hence, the reliability of this research is expected to be high.

Overall, despite risks of decreased validity, great efforts were undertaken to measure the variables carefully and to carefully assess legal transposition behavior as well as underlying causes. Although generalizations to all EU countries and all directives should be made carefully, trends and in-depth analysis of the two cases allows for insights into transposition behavior and conclusions. Moreover, the paper encourages conducting further research in the area of migration policies that can serve to close the existing research gap in this area.

Chapter 5: Data Analysis

This chapter presents the collected data and investigates to which extent the above mentioned theoretical approaches explain compliance patterns of MS with directives. After determining the compliance patterns that the sample countries display in regard to the FRD, the legal misfit and the worlds of compliance are investigated. This is followed by the testing of the hypotheses brought forward in the beginning of this thesis.

5.1 Level of Compliance with the Directive

A number of laws and directives are passed yearly at the EU level. They must, within some margin of the MS, be translated into national law and then be applied. It may apply that national legislation is already compatible with EU law. In that case compliance is given. In case the national laws are not compatible with EU law the directive must be incorporated into national law and get applied (see Figure 4, *Annex*). In many cases, national laws diverge from newly passed EU laws. Therefore, compliance as a cause of national adaptation efforts represents a challenge for the MS. However, in order to guarantee an efficient EU system it is crucial that MS comply with EU standards (Mbaye, 2001; Perkins & Neumayer, 2007).

A considerable amount of research has been conducted on legal compliance with the FRD (e.g. Communities, 2008; Foundation, Centre *et al.*, 2011; Groenendijk, Fernhout *et al.*, 2007; Kreienbrink & Rühl, 2007; Labayle & Pascouau, 2007; Pascouau & Labayle, 2011). Although many new rules have been adapted, the way this is being done still varies between different MS (Groenendijk, Fernhout *et al.*, 2007; Pascouau & Labayle, 2011). Whereas some countries adopted more flexible rules, a variety of countries have, within the CEAS harmonization process, implemented stricter national rules and added detailed conditions for reunification (Pascouau & Labayle, 2011). Germany and France are both countries where the *"conditions have clearly been made more difficult to fulfill"* (Pascouau & Labayle, 2011, p. 111).

The first part of this section investigates to which extent Germany and France comply with the FRD. This means that it is examined whether the German and the French national law are compatible with the FRD. The second part of this section examines the efforts undertaken by Germany and France to adapt their national law. For this purpose, the conditions dictated by the directive on which grounds family reunification can occur and how that can happen are investigated and compared to the respective national rules in Germany and France.

5.1.1 Germany

Germany only legally complied on the 19th August 2007 although compliance was due on the 3rd October 2005 (Labayle & Pascouau, 2007; Peers & Rogers, 2006; Perkins & Neumayer, 2007).

In Germany, detailed conditions concerning appropriate accommodation, health insurance, consistent and regular resources and adherence to integration matters were established as an option suggested in Art. 7 of the directive (European Labayle & Pascouau, 2007; Union, 2003).

In contrast to various other MS, German officials do not investigate under which conditions marriages were conducted although Art. 16 of the directive would allow this procedure (European Labayle & Pascouau, 2007; Pascouau & Labayle, 2011; Union, 2003). Additionally, although family reunification of unmarried partners may underlie specific conditions, as laid out in Art. 4 of the directive, Germany does not have a procedure to examine the partnership's validity (Pascouau & Labayle, 2011). Moreover, Germany has no restrictions when it comes to family reunification with the child of a second spouse, as defined in Art. 4 of the directive (European Labayle & Pascouau, 2007; Pascouau & Labayle, 2011; Union, 2003).

However, there are also areas where Germany introduced strict rules compared to other states. For example, in Germany, minors that are older than 16 years when entering the country with their parents have to fulfill integration standards, such as German language skills, level of education etc. (AGF, 2012). Also, in Germany the federal states have different procedures to prove the link between parents and children (Pascouau & Labayle, 2011). Whereas Art. 5 of the directive makes it optional to use investigations, Germany makes use of this method to assess the family ties and additionally uses official documents and DNA tests. Furthermore, due to the directive, Germany has now introduced the minimum waiting time of the sponsor Germany that is optional as set in Art. 8 of the directive. It also introduced a minimum age of the spouse which did not exist prior to the introduction of Art. 4 § 5 of the directive. Finally, Germany introduced a rule connected to Art. 7 § 1c of the directive which requires the person applying for family reunification to have sufficient income. However, the rule does not specify the sum of said income (OJ, 2003). It only states that the applicant must be able to provide for himself/herself and his/her family (Groenendijk, Fernhout *et al.*, 2007; Pascouau & Labayle, 2011).

To conclude, although Germany today complies legally with the directive, it took a long time and process until this was the case. Many of the directive's provisions are optional and were used to adapt particularly restrictive family reunification rules in Germany. As a consequence, rules in Germany have, overall, become stricter than they had been prior to the directive.

5.1.2 France

France today complies legally with the directive (Pascouau & Labayle, 2011) . However, like Germany, France complied very late. Although full compliance was due on the 3rd October 2005 it only occurred on the 24th November 2007 (Labayle & Pascouau, 2007). It is to be noticed that although many provisions were already in place in France in 2003 when the EU passed the directive, it was noted in 2007 that the reference in national law to the directive- which was required by Art. 20 of the directive- were not made (European Groenendijk, Fernhout *et al.*, 2007; Poelemans, 2014; Union, 2003). However, it is crucial to include this reference in national law changes so that the EU can monitor whether EU law is adapted timely France or not (Communities, 2008). Indeed, in the study conducted by Groenendijk, Fernhout *et al.* (2007) which collected data in the end of 2006 and beginning of 2007, the national expert still wrote that *"there is no influence on the national law"*[6] (section A.1) by the directive (Centre for Migration Law, 2007). A detailed examination demonstrates that whereas Art.10 §3 (a), Art. 14 §1, Art. 16 §1 (b) and Art.18 were already correctly transposed at the end of 2006, the transposition of Art. 5 §5 was unclear, and Art. 11, Art.13 §1) and Art. 17 were not transposed yet[7] (Centre for Migration Law, 2007).

According to Pascouau and Labayle (2011) France is seen as *"a good example"* (p. 36) concerning the creation of detailed rules for dealing with minors younger than 18 years, children of the couple, children of the sponser, children of the spouse or children from a former relationship as well as adopted children that apply for family reunification (Pascouau & Labayle, 2011).

There are some areas where France behaves stricter in comparison to the other MS. For example, based on the condition that the applicant's partner seeking family reunification has to be at least 18 years old (Art. 4, § 5 of the directive) when the reunification is to happen, France automatically rejects all applications where this criterion is not met. However, according to the European Court of Justice, MS' authorities are to examine applications for family reunification on an individual basis (Pascouau & Labayle, 2011).

Throughout the transposition process, it was noted that the provision laid out in Art. 5 of the directive, concerning the best interest of the child, was not explicit enough (Hardy, 2012). This article, however, was one of the few mandatory articles of the directive (Hardy, 2012).

Moreover, strict integration measures, particularly concerning French language skills prior to the arrival on French territory, were established. Also, the optional conditions defined in Art. 7 of the directive were all implemented with the exception of health insurance. France

[6] Translated by the author
[7] For details on the content of the directive see Figure 7, Annex.

does, additionally, have strict rules in place concerning evidence of marriages and circumstances under which they occurred. Indeed, the recognition of marriages can be rejected if documents are not provided or invalid. Considering that a big amount of documents need to be translated into French and get certified, this is likely to create problems for the applicants. Furthermore, France examines applicants' claimed intentions to get married in France and the validity of existing marriages in great detail. Family reunification of unmarried partners as suggested in Art. 4, § 3 of the directive are not accepted in France. France is considered to be strict when it comes to proofing the relation between parents and children. A number of documents have to be handed in as evidence of the relationship. However, although a number of documents need to be provided, DNA testing and further investigations are not used to determine links between the two family members that are to be joined. Due to the directive, the waiting period of a sponsor as suggested in Art. 8 of the directive was implemented in France (European Union 2003, Commission of the European Communities 2008, Groenendijk, Fernhout *et al.* 2007, Pascouau and Labayle 2011).

5.1.3 Conclusion

In sum it can be argued that the low binding effects of the directive, with few mandatory and many optional provisions facilitated compliance with the directive (Hailbronner & Carlitz, 2010; Hardy, 2012; Labayle & Pascouau, 2007). Nevertheless, both Germany and France complied significantly late. Whereas Germany complied 27 months late, France complied 30 months late. It is also to be noticed that both countries used the optional provisions to implement strict conditions (Labayle & Pascouau, 2007).

5.2 Factors influencing the compliance with the directive

This section examines which factors influenced compliance with the directive. Based on the theoretical approaches mentioned above, firstly the legal misfit, and secondly the world of compliance the two countries belong to, are investigated

5.2.1 Legal misfit between EU law and national law

As outlined above, according to the misfit theory major legal misfit between national law and new EU law can influence compliance behavior negatively. This section investigates the degree of legal misfit in Germany and France concerning the FRD.

5.2.1.1 *Germany*

In Germany, the Immigration Act (IA) had to be prepared and introduced to bring German law in line with EU law (Groenendijk, Fernhout *et al.*, 2007). Several requirements had to be amended (Pascouau & Labayle, 2011, see Figure 13, annex). However, Germany played a

major role in the decision-making process of the directive and was successful in enforcing own ideas in such a way, that, overall, it had to make only minor adaptations to its national law (Kreienbrink and Rühl 2007). Indeed, Germany intimidated discussions on the directive not only by its size but also by holding long speeches and displaying solidified attitudes (Strik, 2011). On top of hampering the negotiation process, the German delegation was not open towards proposals from the European level (Strik, 2011). This behavior indeed led to acceptance of Germany's suggestions and objections throughout the drafting of the FRD (Strik, 2011). As a consequence, Germany reached its goal of shaping the FRD in such a way that it would be *"compatible with our (Germany's) draft of an Immigration Act"* (Bundestag, 2003c, p. 2286). This ambition is reflected by the number of national execution measures that were reported to have happened in the context of the directive: Germany only reported two laws that were changed[8] (EUR-Lex, 2013). One report on the FRD mentions that *"three member states (Austria, Germany, the Netherlands) 'uploaded' their national law to European Law"* (Zhelyazkova & Torenvlied, 2009, p. 60). Consequently, the legal misfit of German national law was minor. Particularly optional articles led to a change in national legislation. However, this was only done to implement stricter rules and not to fulfill the compliance requirements.

5.1.1.*2* France

In France, many articles of the directive were already in place in national law. However, the reference to the directive that was required was missing (Groenendijk, Fernhout *et al.*, 2007). Indeed, many parts were already included in national law in 2003 because it was expected that the directive would be adopted (Groenendijk, Fernhout *et al.*, 2007). France itself reported four laws to have changed according to the directive[9] (EUR-Lex, 2013). In comparison to the other MS the legal misfit was minor (EUR-Lex, 2013). France used some

[8] Namely: Immigration Act (IA) „Gesetz über den Aufenthalt, die Erwerbstätigkeit und die Integration von Ausländern im Bundesgebiet (Aufenthaltsgesetz - AufenthG) = Artikel 1 des Zuwanderungsgesetzes […] Entry into force: 01/01/2005; Reference: (MNE(2005)54525) " and "Gesetz zur Umsetzung aufenthalts- und asylrechtlicher Richtlinien der Europäischen Union vom 19. August 2007 […] Entry into force: 28/08/2007; Reference: (MNE(2007)56609) " (EUR-Lex, 2013)

[9] Namely "Décret n° 2005-253 du 17/3/2005 relatif au regroupement familial des étrangers pris pour l'application du livre IV du code de l'entrée et du séjour des étrangers et du droit d'asile. […] Reference: *(MNE(2006)51215)*", "Arrêté du 6/7/1999 relatif au contrôle médical des étarngers autorisés à séjourner en France.[…] Reference: *(MNE(2006)51218)* ", "Loi relative à la motivation des actes administratifs et à l'amélioration des relations entre l'administration et le public.[…] Reference: *(MNE(2006)51220)*", Loi n° 2006-911 du 24 juillet 2006 relative à l'immigration et à l'intégration (1) […] Reference: *(MNE(2006)56584*"

of the optional articles to implement stricter rules concerning Family reunification (see Table 9, Annex).[10]

5.1.1.3 Conclusion

In sum, both Germany and France commanded minor legal misfit between national law and the directive. Whereas France envisioned that the directive would be adopted and preventively amended national law, Germany played a major role in the decision-making process and hence had the possibility to include positions that were in line with German law[11].

5.2.2 Worlds of compliance

This section investigates the worlds of compliance that Germany and France belong to and to which extent they fulfill the characteristics suggested by Falkner, Treib *et al.*'s typology (2005).

5.2.2.1 Germany

As mentioned above, according to Falkner, Treib *et al.*'s typology (2005), Germany belongs to the "world of domestic politics", suggesting that local policies have priority as compared to EU law. According to the above mentioned typology, Germany would be expected to behave as follows:

5.2.2.1.1 Domestic Concerns Prevail Compared to EU law

It must be noted that Germany had great influence on the content of the directive which led to only minor amendments of national law (Kreienbrink & Rühl, 2007; Strik, 2011). The aim was to make the FRD compatible with the draft version of the IA[12] that aimed to reform immigration law in Germany (Bundestag, 2003c). Those concerns that were not included in the FRD led to major debates in the German government, particularly between different parties (e.V., 2003). One example is the following quote: *"Since those rules (on European level), to some extent, are neither compatible with the existing (national) legislation nor with the draft of the Immigration Act, reservations were also voiced in the (European) Council. […]*

[10] The trend of implementing stricter rules regarding family reunification has continued in 2011 when the amount of residence permits issued for family related reasons was decreased and new laws were passed to avoid fraudulent marriages (Network, 2012)

[11] Although a higher degree of legal misfit can be found in the optional provisions of the directive, this will not be a focus of this study since this was over-compliance rather than mandatory compliance.

[12] The IA, amongst others, includes the "Aufenthaltsgesetz" which was the part to be revised in order to comply with the FRD.

The amendment of the drafted Immigration Act is not envisaged"[13] (Bundestag, 2003b, p.13). This indicates that domestic issues were prioritized compared to the directive, implying that Germany behaved as the typology brought forward by Falkner, Treib *et al.* (2005) suggests.

5.2.2.1.2 Full and Correct Transposition Only Occurs if the Content of the EU Law is in Line with National Interests

Although Germany influenced the directive's content greatly, correct transposition into national law occurred with great delay[14]. This might be due to the fact that despite many domestic interests being pushed through on European level, several amendments were not in line with the newly drafted IA (Bundestag, 2003b, 2003c). It can consequently be assumed that those disparities in interest between EU law and national law led to a delayed legal transposition. Germany, in this regard, behaves as the argument by Falkner, Treib *et al.* (2005) argues.

5.2.2.1.3 Compliance is Facilitated if the MS's Preferences are in Line with the Directive

This predicted behavior connects to the former assumption: national preferences can significantly influence the compliance behavior of a country (König & Mäder, 2013). Indeed, the anticipated elements of the FRD as well as elements that were in Germany's interest were complied with in time (Bundestag, 2003b, 2003c). The remaining aspects took more time to be converted into national law. Therefore, it can be assumed that those elements that were included in the draft IA and the FRD facilitated compliance to some extent whereas the elements that were not present in existing German law posed difficulties in transposition. Germany therefore behaved as expected.

5.2.2.1.4 If there is a Lack of Compromise Noncompliance will Occur

There was an ongoing conflict between the Social Democrats (SPD) and Green party that formed the red-green coalition and the Christian Democratic Union (CDU) and Christian Social Union in Bavaria (CSU) which formed the opposition from 1998 to 2005. The opposition parties opposed the draft bill and lodged and action against the proposal (Bundestag, 2000). This ongoing conflict was only resolved when the coalition changed into the big coalition between CDU, CSU and SPD in 2005. Once the strong opposition by the CDU and CSU was abandoned, the IA came to effect, leading to a greater level of

[13] Translated by the author
[14] Germany complied 27 months after the deadline for transposition of the Directive (Labayle & Pascouau, 2007)

compliance with the FRD. The conflict that went on between the parties seems to have led to the noncompliance as the typology by Falkner, Treib *et al.* (2005) suggested.

5.2.2.1.5 If Noncompliance Occurs, it is Long-term

The great delay of over two years it took Germany to legally comply with the FRD indicates the long-term noncompliance with the directive. This characteristic outlined in the typology (Falkner, Treib *et al.*, 2005) is therefore fulfilled.

5.2.2.1.6 Political Interests are Pursued

A long and intense debate took place around the FRD and the reformed bill of the IA that was pending in 2007 (Centre for Migration Law 2007). Particularly interests of the opposition parties in 2003 hampered progress strongly (Bundestag, 2000). One explanation for the heavy debates were the upcoming elections as well as issues connected to the national identity (Kruse, Orren *et al.*, 2003). Particularly bearing the elections in mind, the German government followed its interests thoroughly when discussing and delaying the issuing of the IA as it was expected.

5.2.2.1.7 Either a Conflict or a Compromise are Reached

As stated above, the German law adaptation took place in the context of a general immigration legislation alteration (Groenendijk, Fernhout *et al.*, 2007). An important step towards German compliance with the EU directive was the preparation and introduction of the IA (Groenendijk, Fernhout *et al.*, 2007): Only when a compromise on the bill was reached was it possible for Germany to adapt its national law as required by the FRD and thus, to fully comply with the FRD. This behavior was in accordance with the expectations deriving from Falkner, Treib *et al.*'s (2005) typology.

5.2.2.1.8 Issue Linkage

As stated above, domestic processes, such as major reforms, can hamper the transposition of EU directives into national law if they are not in line with domestic interests. In case of Germany this reform was the issuing and reforming of the IA. Kruse, Orren *et al.* (2203) referred to this as a *"reform package"* (p.131) that was to be developed by the red-green coalition. Instead of solely transposing the FRD into national law, a debate covering wider issues started and it took several years before an agreement was reached (Lutz, 2002; Stern, 2003): the IA served the transposition of EU law into national law, also, but not solely, concerning family reunification (Müller, 2005). Next to the adaptation to the FRD it was supposed to serve the "the steering and limitation of immigration" (Bundestag, 2003a, p.7;

Müller, 2005). Consequently, compliance was one of several aims when reforming German immigration law.

Despite efforts undertaken by the Federal Democratic Party (FDP) and the Federal Assembly, a compromise was difficult to be reached (Bundestag, 2003d). Whereas CDU and CSU aimed at reducing migration to Germany, the Green Party wished to increase migration. CDU and CSU feared that the drafted IA as proposed by the coalition parties would lead to increasing migration (Bundestag, 2000). Consequently, in *"early 2002, the CDU/CSU demanded some 91 changes to the defunct immigration law"* (Kruse, Orren *et al.*, 2003, p. 134). Since there was not even agreement within the opposition parties the coalition parties accused the strong opposition by the CDU and CSU as an act of *"stonewalling*" (e.V., 2003).

In fact family reunification was discussed with a focus on forced marriages. (Groenendijk, Fernhout *et al.*, 2007) Germany had faced problems with fraudulent family reunifications which may be one of the reasons why debates around the topic evolved (Hailbronner, 2001; Kruse, Orren *et al.*, 2003). Moreover, integration conditions were made stricter which may have served the purpose of decreasing the number of residence permits based on family reunifications in Germany. Nevertheless, the discussion was not solely about family reunification (Hailbronner, 2001; Kruse, Orren *et al.*, 2003). Whereas it was expected at that time that immigration caused by family reunification decreased, the opposition parties still argued that migration, as a whole, might increase as a result of the suggested IA (Kruse, Orren *et al.*, 2003). This strong delay in the passing of the IA which was necessary for compliance with the FRD resulted from the overall *"immigration reform failure*" (Kruse, Orren *et al.*, 2003, p. 141).

Notwithstanding, the delay in passing the second measure, meaning an additional national law which was necessary to transpose the FRD into German law, also played a role: a law that was supposed to transpose several EU directives regarding migration and asylum into national law[15]. This law did not only serve the purpose of transposing various EU directives at the same time but also included lessons learnt from the evaluation of the IA (n.a., 2007; Özcan, 2007; Schneider, 2007). During the law making process several critical opinions were voiced by migrant organizations, refugee organizations, welfare organizations and the opposition (Der Beauftragte für Flüchtlings-, 2006; Gewerkschaftsbund, 2007; Menschenrechte, 2006; n.a., 2007; Schneider, 2007). This mainly concerned the strict rules envisaged concerning family reunification (Der Beauftragte für Flüchtlings-, 2006; Gewerkschaftsbund, 2007; Menschenrechte, 2006; n.a., 2007; Schneider, 2007).

[15] "Gesetz zur Umsetzung aufenthalts- und asylrechtlicher Richtlinien der Europäischen Union vom 19. August 2007"

In sum, the diverging interests between the different German parties led to a major delay in the passing of the national laws that were needed for the complete transposition of the FRD. Domestic preferences and political aims were the most important goal in this process as well as the major reform of the IA. Consequently, indicators show that the linkage of domestic issues was present and may have influenced German compliance behavior. Consequently, it appears that Germany behaved as Falkner, Treib *et al.*'s (2005) typology suggest it.

Table 4: Germany's compliance behavior

	Behavior predicted for "world of domestic politics"	**Germany**
Compliance	Compliance if directive is compatible with domestic interests	Full compliance with significant delay
Political priority of compliance with directive given	Domestic concerns prevail	Yes
Typical transposition behavior	Timely and correctly if compatible with Germany's interests	Time: yes Manner: yes
Facilitating compliance factors are given	German government's preferences are in line with the directive	Time: yes Manner: yes
Non-compliance factors are given	Lack of compromise of conflicting interests; long-term noncompliance if noncompliance occurs	Yes
Predominant logic is given	Political interests are pursued	Yes
Typical process is given	Conflict/compromise	Yes
Issue linkage	Domestic issues may lead to timely delay	Yes

Source: based on Falkner, Treib *et al.* (2005)

5.2.2.2 France

As stated above, based on the typology used by Falkner, Treib *et al.* (2005), France belongs to the "world of neglect". This means that national law is usually followed strictly whereas EU law is being neglected. This section examines to which extent this assumption holds for France regarding the legal transposition of the FRD.

According to the mentioned typology (Falkner, Treib *et al.*, 2005), France would be expected to behave as follows:

5.2.2.2.1 Compliance with EU Law is not an Aim

In France, reforms were already taking place when the directive was passed, anticipating the changes made (European Migration Network 2012). Although, only small legal changes

therefore had to be made, it took France a considerable time to comply with the directive[16]. Amongst others, it may have been a signal that in domestic law barely any reference to the FRD was made (Centre for Migration Law, 2007; Poelemans, 2014). This could indicate the little importance attributed to EU law in France. According to a national expert, Poelemans (2014), *"France did not desire to integrate the rules of the directive which could, in certain points, have turned out to be more favorable for immigrants"*[17]. In this sense, it can be assumed that there was little importance awarded to the aspiration of transposing EU law into national law.

5.2.2.2.2 Late Compliance to the Mandatory Extent

In addition to transposing mandatory articles, France implemented some of the optional rules by introducing strict rules (Communities, 2008). However, rather than over complying, France followed its aim of making family reunification more difficult for immigrants since none of the options to soften the rules were used[18] (see Table 9, Annex). Overall, France complied almost two years later than dictated by the directive, hence, late as the typology (Falkner, Treib *et al.* , 2005) suggests.

5.2.2.2.3 If Domestic Reforms are in Place that Facilitates Compliance

The domestic reforms that took place in anticipation of the directive seem to have facilitated compliance (Groenendijk, Fernhout *et al.*, 2007). This would imply that the characteristic of domestic reforms facilitating compliance applied in this case as expected.

5.2.2.2.4 Bureaucratic Failure leads to Noncompliance

None of the sources used for this thesis provide evidence that the noncompliance occurred due to bureaucratic failure. However, there is also no proof that the timely delay in transposition was not due to bureaucratic failure. At this point, there is not enough accurate data available to answer this question clearly.

5.2.2.2.5 Noncompliance is the Rule

In case of the FRD, noncompliance occurred; confirming the hypothesis that noncompliance is not an exception but a rule in case of France (Falkner, Treib *et al.* 2005).

[17] Translated by the author from: « France ne désirait pas intégrer des normes de la directive qui sur certains points pouvaient s'avérer plus favorables aux étrangers » The entire information the expert provided can be read in Figure 6 in the Annex.
[18] According to the expert Maiténa Poelemans (2014), the aim was to reduce the immigration flow.

5.2.2.2.6 Interests of the Administration are followed

Whereas the data provided clearly that the interests of the government were followed to a large extent in the decision-making process and the transposition of the directive, no data on the interests of the administration could be found. Consequently, it is not possible to draw conclusions about this indicator. It is possible that non-attention did play a role in the timely delayed transposition of the directive.

5.2.2.2.7 Slow Transposition Process

As the late compliance date indicates the transposition process was slow. Furthermore, when comparing the reports by Groenendijk, Fernhout *et al.* (2007) with the reports provided by the Commission of the European Communities (2012), Pascouau and Labayle (2011) and the European Migration Network (2012), hence texts that were produced with 4-5 years time span in-between, it is evident that many content-related uncertainties were still existing in the end of 2006 when the data for the study by Groenendijk, Fernhout *et al.* (2007) was collected. Consequently, the process of transposing the directive into national law was slow (see table 9 in the Annex) (Falkner, Treib *et al.*, 2005).

5.2.2.2.8 Issue Linkage

Whereas data was found on a public debate that occurred in 2007, no relevant data was found on domestic issues that could be linked to the late compliance (Groenendijk, Fernhout *et al.*, 2007; Network, 2012; Pascouau & Labayle, 2011). Therefore, no issue linkage could be detected for France.

Table 5: France's compliance behavior

	Behavior predicted for "world of neglect"	**France**
Compliance	EU law is neglected	Yes
Political priority of compliance with directive given	Compliance with EU law is not an aim	Yes
Typical transposition behavior	Late compliance to the mandatory extent	Yes, optional articles were used to implement strict rules
Facilitating compliance factors are given	Domestic reforms can facilitate compliance	Yes*
Non-compliance factors are given	Bureaucratic failure leads to noncompliance; Noncompliance is not an exception but the rule	Yes*
Predominant logic is given	Administrative interests are followed	Yes*
Typical process is given	Slow process	Yes
Issue linkage	Connection to domestic reforms	Yes*
* It is to be noted that data availability on these aspects was limited		

Source: based on Falkner, Treib *et al.* (2005)

5.2.2.3 Conclusion

This study indicates that both France and Germany showed compliance patterns as their respective worlds of compliance would dictate it. In Germany, domestic preferences may have led to delay in transpositions. France also seems to have displayed the typical ignorance of EU law as it would have been expected.

5.3 Testing of Hypotheses

This section serves to test the above mentioned hypotheses. Whereas the first hypothesis states that a country's compliance behavior depends on the legal misfit between existing national law and EU law, the second hypotheses claims that a country's compliance depends on the world of compliance it belongs to.

5.3.1 A Country's Compliance Behavior Depends on the Legal Misfit between existing National Law and EU Law.

According to the misfit theory, the minor legal misfit that was present in Germany and France concerning the FRD should have led to a smooth and fast transposition process. Falkner, Treib *et al.* (2004) state that the lack of national protest against the directive should have allowed *"unproblematic"* (p.454) implementation in the two countries. Although both countries comply with the directive in the end, they both demonstrated significant delay in the transposition of the directive. Consequently, this study finds that the degree of legal misfit

does not explain France and Germany's compliance behavior. It can thus be concluded that this theory is not valid in the case of Germany and France.

Table 6: Compliance behavior and level of legal misfit Germany & France

	Germany	**France**
Compliance	Full compliance with significant delay	Full compliance with significant delay
Level of legal misfit	Minor legal misfit	Minor legal misfit

5.3.2 A Country's Compliance Depends on its World of Compliance

According to the world of compliance typology, if the countries fulfill the characteristics the typology prescribes, they should show according compliance patterns (Falkner, Treib *et al.*, 2005). This implies that Germany should, if it is in line with national preferences, comply better with the directive than France does. However, the FRD was not in line with Germany's national preferences to comply with the directive and therefore there was a delay in transposition

Accordingly, it is typical for France as a country belonging to the world of neglect, to comply late and/or only to the extent it has to. This appeared to be the case regarding the FRD. Germany, as well, complied late as it could be expected, since domestic interests were in conflict with EU law and therefore prioritized. Once non-compliance occurred in Germany, it was long-time, confirming the outlined argument by Falkner, Treib *et al.* (2005). Consequently, the above outlined indicators and characteristics seem to apply for both Germany and France.

Table 7: Germany's & France's compliance and worlds of compliance

	Germany	**France**
Compliance	Full compliance with significant delay	Full compliance with significant delay
Political priority of compliance with directive given	Yes	Yes
Typical transposition behavior	Yes	Yes
Facilitating compliance factors are given	Yes	Yes*
Non-compliance factors are given	Yes	Yes*
Predominant logic is given	Yes	Yes*
Typical process is given	Yes	Yes
Issue linkage	Yes	Yes*
* It is to be noted that data availability on these aspects was limited		

Both Germany and France complied late. However, the typology (Falkner, Treib *et al.*, 2005) provided reasons for this behavior that are found to apply in this case. Consequently, the result of this study indicates that the world of compliance typology (Falkner, Treib *et al.*, 2005) seems to explain the compliance behavior of both Germany and France.

Chapter 6: Conclusion

The FRD is a directive that has few binding elements (Communities, 2008). However, compliance with the mandatory rules of the directive posed challenges to Germany and France.

Based on two competing theoretical frameworks, this paper set out to address two questions regarding MS's compliance behavior:

1) *Does the misfit theory explain the compliance behavior of states with EU directives?*

2) *Does the world of compliance typology explain the compliance behavior of states with EU directives?*

Those two questions were formulated on the basis of the hypotheses that the level of misfit influences compliance of a country with EU law and that the world of compliance a country belongs influences its compliance behavior. In order to answer the questions, a qualitative, comparative case study based on national and EU documents was conducted. Using several studies on the compliance behavior of Germany and France concerning the FRD and investigating the process of legal transposition through the analysis of national documentation and studies the level of compliance, level of misfit and the procedural requirements of the worlds of compliance argument were examined. This chapter serves to summarize the findings and to draw conclusions for legislators and future researchers.

According to the misfit theory, the bigger the gap between national law and EU law, the more difficult would compliance with the directive be. The analyzed data provides evidence that both in Germany and France, legal misfit with the directive was minor. Therefore, both countries should have complied fully and in time. However, both countries complied almost two years later than it was dictated by the directive. It can therefore be concluded, that the findings of this paper disconfirm the validity of the misfit theory in case of Germany and France regarding the FRD.

According to the world of compliance typology both countries were expected to comply late: France would comply late because it would ignore EU law, whereas Germany

would comply late because in this case, national preferences were not in line with the directive and a major reform took place. Both countries seem to fulfill a number of characteristics that are suggested by the typology brought forward by Falkner, Treib *et al.* (2005). It was found that France did ignore EU law and did not include references in national law that would indicate efforts to comply with the directive. Additionally, a major legislative reform in Germany did hamper transposition of the directive into German national law. It can therefore be concluded, that the findings of this paper confirm the validity of the world of compliance typology. Whether and how a country complies with EU directives seems to indeed depend on the world of compliance it belongs to.

Hence, the typology by Falkner, Treib *et al.* (2005) seems to not only apply to social policies but can also explain behavior patterns in the area of migration policies. This insight stresses the meaningfulness of the typology in EU policy research and confirms other findings that political choice constitutes a bigger influential factor on compliance than the gap between national and European law (Strik, 2011).

For future research on compliance with EU directives it would be advisable to conduct in-depth interviews with experts and to investigate the validity of the misfit theory and the world of compliance typology on a larger number of cases. If further directives from the area of asylum and migration and other policy areas would be investigated and all various spheres of compliance, such as enforcement and application efforts, would be examined, the significance of research could be enhanced (Angelova, Dannwolf *et al.*, 2012). Furthermore, since the state-based approach of the world of compliance typology offered explanations of MS's compliance behavior, it is recommendable to prove further state-based approaches for their validity. If this attempt succeeds, an essential contribution can be made to EU compliance research and hence help legislators to not only develop feasible directives but also to set foundations for their successful implementation in the MS.

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Appendix

Figure 3: Annual violations
Concerning directive implementation by members state, 1986-1999 (Börzel, Hofmann *et al.*, 2010)

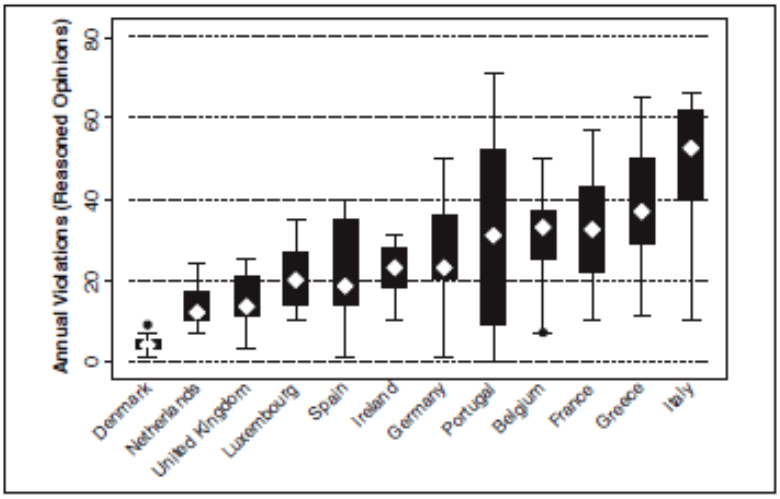

Figure 4: directives in the European multi-level system
(Falkner, Treib *et al.*, 2005)

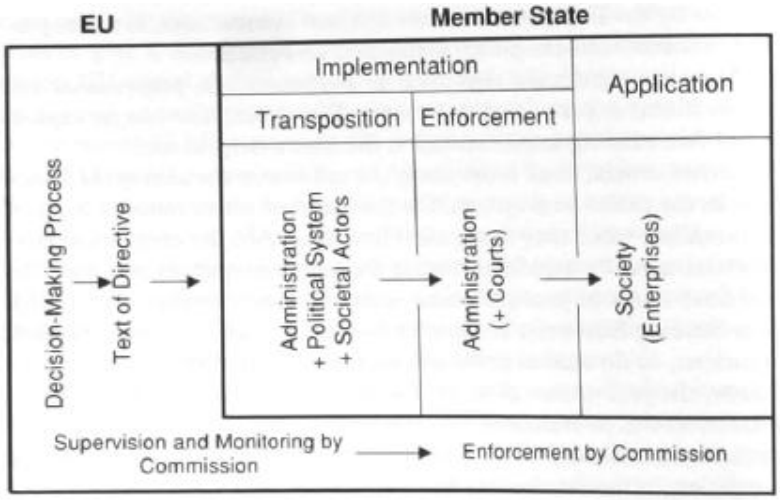

Figure 1.1 Directives in the European multi-level system

Table 8: Main research designs
(Dassen & Kolk, 2011)

Table 4: The main research designs

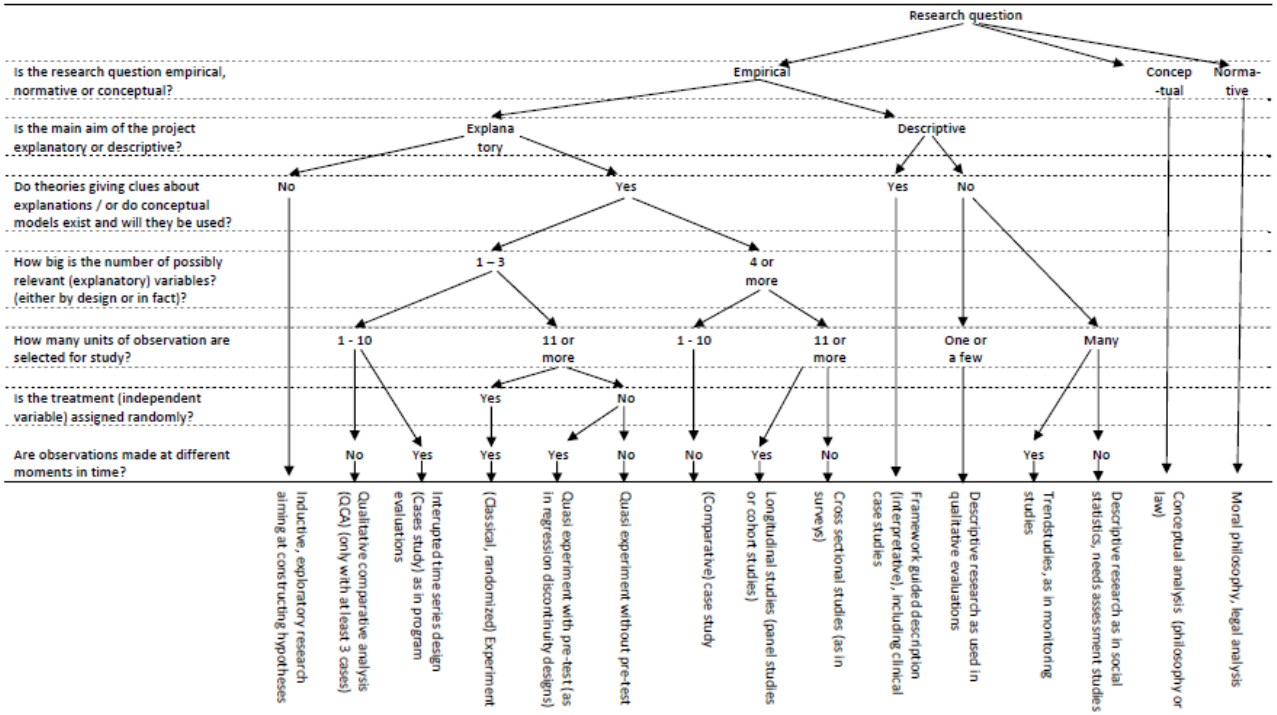

Figure 5: Survey by Groenendijk, Fernhout et. al. (2007)

Annex III
Questionnaire for the comparative study on the implementation of the Family Reunification Directive 2003/86/EC in Member States

A. General questions

Please type your answers under each question in English or French

- Has the Directive been implemented in your country? If so, please add the references and the texts of relevant legislative and administrative measures and the dates they entered into force.
- Has there been a political or public debate on the implementation of the Directive? If so, please summarize the main issues of the debate.
- What have been the main changes in the national law or practice due to the Directive. Please indicate for each change whether it improved or deteriorated the legal status of third country nationals and their family members? Did it make the national rules more strict or more liberal?
- Are there already judgments of national courts applying or interpreting the Directive? If so on which issues?
- Did the judgment of the Court of Justice of 27 June 2006 in the case Parliament v. Council (C-540/03) already have any effect on the implementation of the Directive, the national practice or case-law or the legal literature? If so, please specify the effects.
- In case the Directive has not yet been implemented in your country or your country is not bound by the Directive (Denmark, Ireland and the UK), please answer the following questions on the basis of the existing national legislation.

B. Questions on specific provisions

Article 3(1)

- How is the clause "who has reasonable prospects of obtaining the right of permanent residence" implemented in the national law?

Article 3(3)

- Will a third country national also having the nationality of your country be able to rely on the Directive?
- Are nationals of your country and their third country national family members entitled to the same treatment, to a more privileged treatment or to less favourable treatment as provided in the Directive? Please specify the differences.

Article 4(1)

- Has the right to family reunification of spouses and minor children been codified in national law? If so, please mention the relevant provisions of national law.

Article 4(1) and 4(6) (children over 12 or 15 years)

- Does the national law of your country provide special rules concerning the admission of children aged over 12 or 15 years?
- If children over 15 are prevented from applying for family reunification under what conditions are they entitled to reside considering the obligation for Member States second sentence of Article 4(6)?
- Is your country barred from using the exceptions in Article 4(1) last sentence and Article 4(6) by the standstill-clauses in those two provisions?

Article 4(3) (unmarried partners)

- Has the provision on the admission of unmarried partners been implemented in national law? If so, under what conditions do they have a right to family reunification?

Article 4(5) (minimum age spouse)

- Does the national law require a minimum age for the admission of spouses that is higher than 18 years? If so what is the minimum age?

Article 5(2) (documents and fees)

- What kind of documentary evidence has to be presented with a family reunification application?
- Does the applicant have to pay any fees and, if so, what is the (total) amount of those fees?

Article 5(3) (place of application)

- May an application be submitted when the family members are already residing in the Member State?

Article 5(4) (length of the procedure)

- Is there any time limit for the decision on the application by the administration?

Article 5(5) (interest of the child)

- How is the provision that Member States "shall have due regard to the best interests of minor children" implemented in national law?

Article 6 (public policy exception)

- How has the public policy and public security exception been implemented and defined in the national law?
- What are the similarities and differences compared to the definitions of the same notions in the context of free movement of EU citizens?

Article 7(1)(a) and (c) (income and housing)

- How is the income requirement specified in the national law?
- What is the level of net monthly income required (in euros)?
- Is there a housing requirement in force, and if so, what is the minimum surface of the accommodation (in square meters)?

Article 7(2) (integration measures)

- Are family members required to comply with integration measures? If so, do they have to comply before or after admission and what are they actually required to do (follow a course, pass a test, etc.)
- Are there any positive or negative sanctions (privileges, subsidies, fines, residence rights or other) attached to the integration measures?
- Does the national law distinguish between the concepts 'integration conditions' and 'integration measures' (compare Article 4(1) last indent and 7(2))?

Article 8 (waiting period)

- Is there any waiting period before the family reunification application can be filed?

Article 9(2) (privileges for refugees)

- Which privileges granted by the Articles 10-12 are in the national law limited to family relationship that predate the entry of the refugees?
- Do other protected persons than Convention refugees benefit from the provisions of Chapter V of this Directive?

Article 10(3) (family members of unaccompanied minors)

- Are the parents, legal guardians or other family members of a refugee who is an unaccompanied minor, entitled to a residence permit under national law?

Article 11 (lack of documents)

- Which rules on alternatives to official documents in case of lack of official documents proving the family relationship are provided for in the national law?

Article 12 (exemption from requirements)

- From which requirements for family reunification, mentioned in Article 7 or Article 8, are refugees or their family members explicitly exempt by national law?

Article 13(1) (visa facilitation)

- How has the obligation to grant third country family members "every facility for obtaining the required visas" been implemented in national law?

Article 14 (equal treatment)

- How has the right of admitted family members to "access to employment and self-employment in the same way as the sponsor" been implemented in national law?
- Did your country make use of the exception to that equal treatment allowed under Article 14(2) of the Directive?

Article 15 (autonomous residence permit)

- After how many years are spouses, unmarried partners and children entitled to an autonomous residence permit under national law? What other conditions are they required to fulfil in order to obtain such a permit?
- Under what conditions can an autonomous residence permit be obtained before the period of time normally required under national law?

Article 16(1)(a) (resources)

- Is the income of family members taken into account for the calculation of the sufficient resources at the time of the renewal of the permit?

Article 16(1)(b) (real family relationship)

- Does the national law allow for refusal or withdrawal of a residence permit on the ground that the family member does no longer live in a real marital or family relationship? If so, which criteria have to be fulfilled under national law?
- Is the ground applicable to the relationship between parents and minor children?

Article 16(4) (marriage of convenience)

- Does the national law contain provisions on fraud or on marriages or partnerships of conveniences? Is so are the definitions, checks and practices in conformity with Article 16(4)?

Article 17 (relevant considerations)

- How has this clause, requiring that certain specific elements are to be taken into consideration in the decision making on residence permits and removal orders, been implemented in the national law?

Article 18 (judicial review)

- Are the sponsor and his family members entitled to have a negative decision reviewed by a court or independent tribunal? If so, please specify the relevant provisions in the national law and the scope of the judicial review (full review, review on legality or marginal control only)?
- Is (publicly funded) legal aid available for an appeal against a decision to refuse family reunification or to withdraw the residence permit of a family member?

C. Final questions

What are in your view the main strengths and weaknesses of the Directive?

Please add any other interesting information on the Directive or its implementation in your country that might be relevant for our study.

Please send us copies of the relevant laws and regulations, of any legal or other publications on the Directive or of judgments of national courts applying or interpreting the Directive, if possible in electronic form.

We prefer texts in English, French, German, Spanish or Dutch. We do appreciate (unofficial) translations, and we will do our best to understand texts in other languages.

D. Table

This table refers only to mandatory provisions of the Directive. Please choose for each article one of the four alternative labels:

correct transposition/ no transposition/ violation of the Directive/ unclear.

If you choose the label "violation' or "unclear", please add a footnote with a short explanation.

ARTICLES OF THE DIRECTIVE	OPINION ABOUT TRANSPOSITION
5 (5)	
10 (3) (a)	
11	
13 (1)	
14 (1)	
15	
16 (1) (b)	
17	
18	

Figure 6: Information provided by the national expert on France
Maiténa Poelemans

Longtemps resté un droit non réglementé en France mais pratiqué depuis longtemps, le regroupement familial n'a été reconnu qu'en 1976, par un très court décret qui accordait un titre de séjour au conjoint et aux enfants d'un immigré installé depuis un an et disposant de ressources stables et suffisantes et d'un logement adapté. Mais depuis trente ans, le regroupement familial n'a cessé d'être restreint par une douzaine de modifications de la réglementation entre 1974 et 2006 et le débat politique a toujours porté sur le choix entre l'application d'un grand principe des droits de l'homme, garanti par la Constitution française et la CEDH, et la tentation d'interdire l'entrée aux femmes et enfants d'étrangers sous prétexte de maîtriser les flux migrateurs. La dernière modification, apportée par la loi n°2006-911 du 25 juillet 2006 prend appui sur la directive communautaire 2003/86 qu'elle transpose.

La directive 2003-86 n'a pas fait l'objet d'une transposition spécifique par le biais d'une loi unique, portant sur le thème du regroupement familial, certaines dispositions ayant fait l'objet d'une transposition anticipée. Ainsi, sur le plan législatif, la Loi n°2003-1119 du 26 novembre 2003, complétée par le décret n°2005-253 du 17 mars 2005 qui porte sur le regroupement familial des étrangers pris pour l'application du livre IV du code de l'entrée et du séjour des étrangers et du droit d'asile (CESEDA).

Suite à une mise en demeure de la Commission européenne à la France le 5 décembre 2005, la Loi n°2006-911 du 25 juillet 2006 relative à l'immigration et à l'intégration (JO du 25 juillet 2006, p. 11066) vient compléter cette transposition de la directive, et plus particulièrement son article 10§3a) relatif au regroupement familial des mineurs réfugiés.

Mais il est symptomatique que ni au niveau législatif ni au niveau réglementaire, il n'y a de référence à la directive du 22 septembre 2003. Il suffit pour illustrer ce propos de citer l'exemple de la circulaire interministérielle du 17 janvier 2006 (Circ. DPM/DMI2, n° 2006/26, 17 janvier 2006) spécifique au dispositif de regroupement familial issu de la loi du 26 novembre 2003 qui ne fait aucune référence à la directive communautaire pourtant adoptée près de deux années auparavant (et qui aurait dû être transposée avant le 22 octobre 2005). Ou lorsqu'elle mentionne le droit communautaire c'est pour spécifier que jusqu'à présent il « n'a pas eu d'influence sur le droit national ».

L'idée en France consistait à restreindre autant que de possible le regroupement familial et ce, depuis 1993 avec la loi Pasqua, qui exclut les unions polygames du regroupement familial. À partir de 2003 et l'arrivée de Nicolas Sarkozy au ministère de l'Intérieur, plusieurs critères supplémentaires ont fait leur apparition, visant à réduire le flux migratoire. La carte de séjour délivrée à un bénéficiaire du regroupement familial n'est plus automatiquement de dix ans, même si le conjoint possède une carte de résident valable dix ans. La durée de résidence minimale passe également de douze à dix-huit mois. La loi Hortefeux de novembre 2007 a quant à elle instauré un examen de connaissances de la langue et des valeurs de la République. Elle prévoit également une formation sur les droits et devoirs pour les parents d'enfants ayant bénéficié de la procédure, et elle fixe des seuils de ressources supplémentaires. Le texte prévoyait des tests ADN visant à prouver la filiation, mesure finalement abandonnée.

Tout ceci explique que la France ne désirait pas intégrer des normes de la directive qui sur certains points pouvaient s'avérer plus favorables aux étrangers.

Figure 7: Directive 2003/86/EC on family reunification
Source: (OJ, 2003)

L 251/12 EN Official Journal of the European Union 3.10.2003

COUNCIL DIRECTIVE 2003/86/EC
of 22 September 2003
on the right to family reunification

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Article 63(3)(a) thereof,

Having regard to the proposal from the Commission (1),

Having regard to the opinion of the European Parliament (2),

Having regard to the opinion of the European Economic and Social Committee (3),

Having regard to the opinion of the Committee of the Regions (4),

Whereas:

(1) With a view to the progressive establishment of an area of freedom, security and justice, the Treaty establishing the European Community provides both for the adoption of measures aimed at ensuring the free movement of persons, in conjunction with flanking measures relating to external border controls, asylum and immigration, and for the adoption of measures relating to asylum, immigration and safeguarding the rights of third country nationals.

(2) Measures concerning family reunification should be adopted in conformity with the obligation to protect the family and respect family life enshrined in many instruments of international law. This Directive respects the fundamental rights and observes the principles recognised in particular in Article 8 of the European Convention for the Protection of Human Rights and Fundamental Freedoms and in the Charter of Fundamental Rights of the European Union.

(3) The European Council, at its special meeting in Tampere on 15 and 16 October 1999, acknowledged the need for harmonisation of national legislation on the conditions for admission and residence of third country nationals. In this context, it has in particular stated that the European Union should ensure fair treatment of third country nationals residing lawfully on the territory of the Member States and that a more vigorous integration policy should aim at granting them rights and obligations comparable to those of citizens of the European Union. The European Council accordingly asked the Council rapidly to adopt the legal instruments on the basis of Commission proposals. The need for achieving the objectives defined at Tampere have been reaffirmed by the Laeken European Council on 14 and 15 December 2001.

(4) Family reunification is a necessary way of making family life possible. It helps to create sociocultural stability facilitating the integration of third country nationals in the Member State, which also serves to promote economic and social cohesion, a fundamental Community objective stated in the Treaty.

(5) Member States should give effect to the provisions of this Directive without discrimination on the basis of sex, race, colour, ethnic or social origin, genetic characteristics, language, religion or beliefs, political or other opinions, membership of a national minority, fortune, birth, disabilities, age or sexual orientation.

(6) To protect the family and establish or preserve family life, the material conditions for exercising the right to family reunification should be determined on the basis of common criteria.

(7) Member States should be able to apply this Directive also when the family enters together.

(8) Special attention should be paid to the situation of refugees on account of the reasons which obliged them to flee their country and prevent them from leading a normal family life there. More favourable conditions should therefore be laid down for the exercise of their right to family reunification.

(9) Family reunification should apply in any case to members of the nuclear family, that is to say the spouse and the minor children.

(10) It is for the Member States to decide whether they wish to authorise family reunification for relatives in the direct ascending line, adult unmarried children, unmarried or registered partners as well as, in the event of a polygamous marriage, minor children of a further spouse and the sponsor. Where a Member State authorises family reunification of these persons, this is without prejudice of the possibility, for Member States which do not recognise the existence of family ties in the cases covered by this provision, of not granting to the said persons the treatment of family members with regard to the right to reside in another Member State, as defined by the relevant EC legislation.

(1) OJ C 116 E, 26.4.2000, p. 66, and OJ C 62 E, 27.2.2001, p. 99.
(2) OJ C 135, 7.5.2001, p. 174.
(3) OJ C 204, 18.7.2000, p. 40.
(4) OJ C 73, 26.3.2003, p. 16.

(11) The right to family reunification should be exercised in proper compliance with the values and principles recognised by the Member States, in particular with respect to the rights of women and of children; such compliance justifies the possible taking of restrictive measures against applications for family reunification of polygamous households.

(12) The possibility of limiting the right to family reunification of children over the age of 12, whose primary residence is not with the sponsor, is intended to reflect the children's capacity for integration at early ages and shall ensure that they acquire the necessary education and language skills in school.

(13) A set of rules governing the procedure for examination of applications for family reunification and for entry and residence of family members should be laid down. Those procedures should be effective and manageable, taking account of the normal workload of the Member States' administrations, as well as transparent and fair, in order to offer appropriate legal certainty to those concerned.

(14) Family reunification may be refused on duly justified grounds. In particular, the person who wishes to be granted family reunification should not constitute a threat to public policy or public security. The notion of public policy may cover a conviction for committing a serious crime. In this context it has to be noted that the notion of public policy and public security covers also cases in which a third country national belongs to an association which supports terrorism, supports such an association or has extremist aspirations.

(15) The integration of family members should be promoted. For that purpose, they should be granted a status independent of that of the sponsor, in particular in cases of breakup of marriages and partnerships, and access to education, employment and vocational training on the same terms as the person with whom they are reunited, under the relevant conditions.

(16) Since the objectives of the proposed action, namely the establishment of a right to family reunification for third country nationals to be exercised in accordance with common rules, cannot be sufficiently achieved by the Member States and can therefore, by reason of the scale and effects of the action, be better achieved by the Community, the Community may adopt measures, in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty. In accordance with the principle of proportionality as set out in that Article, this Directive does not go beyond what is necessary in order to achieve those objectives.

(17) In accordance with Articles 1 and 2 of the Protocol on the position of the United Kingdom and Ireland, annexed to the Treaty on European Union and to the Treaty establishing the European Community and without prejudice to Article 4 of the said Protocol these Member States are not participating in the adoption of this Directive and are not bound by or subject to its application.

(18) In accordance with Article 1 and 2 of the Protocol on the position of Denmark, annexed to the Treaty on European Union and the Treaty establishing the European Community, Denmark does not take part in the adoption of this Directive, and is not bound by it or subject to its application,

HAS ADOPTED THIS DIRECTIVE:

CHAPTER I

General provisions

Article 1

The purpose of this Directive is to determine the conditions for the exercise of the right to family reunification by third country nationals residing lawfully in the territory of the Member States.

Article 2

For the purposes of this Directive:

(a) 'third country national' means any person who is not a citizen of the Union within the meaning of Article 17(1) of the Treaty;

(b) 'refugee' means any third country national or stateless person enjoying refugee status within the meaning of the Geneva Convention relating to the status of refugees of 28 July 1951, as amended by the Protocol signed in New York on 31 January 1967;

(c) 'sponsor' means a third country national residing lawfully in a Member State and applying or whose family members apply for family reunification to be joined with him/her;

(d) 'family reunification' means the entry into and residence in a Member State by family members of a third country national residing lawfully in that Member State in order to preserve the family unit, whether the family relationship arose before or after the resident's entry;

(e) 'residence permit' means any authorisation issued by the authorities of a Member State allowing a third country national to stay legally in its territory, in accordance with the provisions of Article 1(2)(a) of Council Regulation (EC) No 1030/2002 of 13 June 2002 laying down a uniform format for residence permits for third country nationals [1];

[1] OJ L 157, 15.6.2002, p. 1.

(f) 'unaccompanied minor' means third country nationals or stateless persons below the age of eighteen, who arrive on the territory of the Member States unaccompanied by an adult responsible by law or custom, and for as long as they are not effectively taken into the care of such a person, or minors who are left unaccompanied after they entered the territory of the Member States.

Article 3

1. This Directive shall apply where the sponsor is holding a residence permit issued by a Member State for a period of validity of one year or more who has reasonable prospects of obtaining the right of permanent residence, if the members of his or her family are third country nationals of whatever status.

2. This Directive shall not apply where the sponsor is:

(a) applying for recognition of refugee status whose application has not yet given rise to a final decision;

(b) authorised to reside in a Member State on the basis of temporary protection or applying for authorisation to reside on that basis and awaiting a decision on his status;

(c) authorised to reside in a Member State on the basis of a subsidiary form of protection in accordance with international obligations, national legislation or the practice of the Member States or applying for authorisation to reside on that basis and awaiting a decision on his status.

3. This Directive shall not apply to members of the family of a Union citizen.

4. This Directive is without prejudice to more favourable provisions of:

(a) bilateral and multilateral agreements between the Community or the Community and its Member States, on the one hand, and third countries, on the other;

(b) the European Social Charter of 18 October 1961, the amended European Social Charter of 3 May 1987 and the European Convention on the legal status of migrant workers of 24 November 1977.

5. This Directive shall not affect the possibility for the Member States to adopt or maintain more favourable provisions.

CHAPTER II

Family members

Article 4

1. The Member States shall authorise the entry and residence, pursuant to this Directive and subject to compliance with the conditions laid down in Chapter IV, as well as in Article 16, of the following family members:

(a) the sponsor's spouse;

(b) the minor children of the sponsor and of his/her spouse, including children adopted in accordance with a decision taken by the competent authority in the Member State concerned or a decision which is automatically enforceable due to international obligations of that Member State or must be recognised in accordance with international obligations;

(c) the minor children including adopted children of the sponsor where the sponsor has custody and the children are dependent on him or her. Member States may authorise the reunification of children of whom custody is shared, provided the other party sharing custody has given his or her agreement;

(d) the minor children including adopted children of the spouse where the spouse has custody and the children are dependent on him or her. Member States may authorise the reunification of children of whom custody is shared, provided the other party sharing custody has given his or her agreement.

The minor children referred to in this Article must be below the age of majority set by the law of the Member State concerned and must not be married.

By way of derogation, where a child is aged over 12 years and arrives independently from the rest of his/her family, the Member State may, before authorising entry and residence under this Directive, verify whether he or she meets a condition for integration provided for by its existing legislation on the date of implementation of this Directive.

2. The Member States may, by law or regulation, authorise the entry and residence, pursuant to this Directive and subject to compliance with the conditions laid down in Chapter IV, of the following family members:

(a) first-degree relatives in the direct ascending line of the sponsor or his or her spouse, where they are dependent on them and do not enjoy proper family support in the country of origin;

(b) the adult unmarried children of the sponsor or his or her spouse, where they are objectively unable to provide for their own needs on account of their state of health.

3. The Member States may, by law or regulation, authorise the entry and residence, pursuant to this Directive and subject to compliance with the conditions laid down in Chapter IV, of the unmarried partner, being a third country national, with whom the sponsor is in a duly attested stable long-term relationship, or of a third country national who is bound to the sponsor by a registered partnership in accordance with Article 5(2), and of the unmarried minor children, including adopted children, as well as the adult unmarried children who are objectively unable to provide for their own needs on account of their state of health, of such persons.

Member States may decide that registered partners are to be treated equally as spouses with respect to family reunification.

4. In the event of a polygamous marriage, where the sponsor already has a spouse living with him in the territory of a Member State, the Member State concerned shall not authorise the family reunification of a further spouse.

By way of derogation from paragraph 1(c), Member States may limit the family reunification of minor children of a further spouse and the sponsor.

5. In order to ensure better integration and to prevent forced marriages Member States may require the sponsor and his/her spouse to be of a minimum age, and at maximum 21 years, before the spouse is able to join him/her.

6. By way of derogation, Member States may request that the applications concerning family reunification of minor children have to be submitted before the age of 15, as provided for by its existing legislation on the date of the implementation of this Directive. 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.

CHAPTER III

Submission and examination of the application

Article 5

1. Member States shall determine whether, in order to exercise the right to family reunification, an application for entry and residence shall be submitted to the competent authorities of the Member State concerned either by the sponsor or by the family member or members.

2. The application shall be accompanied by documentary evidence of the family relationship and of compliance with the conditions laid down in Articles 4 and 6 and, where applicable, Articles 7 and 8, as well as certified copies of family member(s)' travel documents.

If appropriate, in order to obtain evidence that a family relationship exists, Member States may carry out interviews with the sponsor and his/her family members and conduct other investigations that are found to be necessary.

When examining an application concerning the unmarried partner of the sponsor, Member States shall consider, as evidence of the family relationship, factors such as a common child, previous cohabitation, registration of the partnership and any other reliable means of proof.

3. The application shall be submitted and examined when the family members are residing outside the territory of the Member State in which the sponsor resides.

By way of derogation, a Member State may, in appropriate circumstances, accept an application submitted when the family members are already in its territory.

4. The competent authorities of the Member State shall give the person, who has submitted the application, written notification of the decision as soon as possible and in any event no later than nine months from the date on which the application was lodged.

In exceptional circumstances linked to the complexity of the examination of the application, the time limit referred to in the first subparagraph may be extended.

Reasons shall be given for the decision rejecting the application. Any consequences of no decision being taken by the end of the period provided for in the first subparagraph shall be determined by the national legislation of the relevant Member State.

5. When examining an application, the Member States shall have due regard to the best interests of minor children.

CHAPTER IV

Requirements for the exercise of the right to family reunification

Article 6

1. The Member States may reject an application for entry and residence of family members on grounds of public policy, public security or public health.

2. Member States may withdraw or refuse to renew a family member's residence permit on grounds of public policy or public security or public health.

When taking the relevant decision, the Member State shall consider, besides Article 17, the severity or type of offence against public policy or public security committed by the family member, or the dangers that are emanating from such person.

3. Renewal of the residence permit may not be withheld and removal from the territory may not be ordered by the competent authority of the Member State concerned on the sole ground of illness or disability suffered after the issue of the residence permit.

Article 7

1. When the application for family reunification is submitted, the Member State concerned may require the person who has submitted the application to provide evidence that the sponsor has:

(a) accommodation regarded as normal for a comparable family in the same region and which meets the general health and safety standards in force in the Member State concerned;

(b) sickness insurance in respect of all risks normally covered for its own nationals in the Member State concerned for himself/herself and the members of his/her family;

(c) stable and regular resources which are sufficient to maintain himself/herself and the members of his/her family, without recourse to the social assistance system of the Member State concerned. Member States shall evaluate these resources by reference to their nature and regularity and may take into account the level of minimum national wages and pensions as well as the number of family members.

2. Member States may require third country nationals to comply with integration measures, in accordance with national law.

With regard to the refugees and/or family members of refugees referred to in Article 12 the integration measures referred to in the first subparagraph may only be applied once the persons concerned have been granted family reunification.

Article 8

Member States may require 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.

By way of derogation, where the legislation of a Member State relating to family reunification in force on the date of adoption of this Directive takes into account its reception capacity, the Member State may provide for a waiting period of no more than three years between submission of the application for family reunification and the issue of a residence permit to the family members.

CHAPTER V

Family reunification of refugees

Article 9

1. This Chapter shall apply to family reunification of refugees recognised by the Member States.

2. Member States may confine the application of this Chapter to refugees whose family relationships predate their entry.

3. This Chapter is without prejudice to any rules granting refugee status to family members.

Article 10

1. Article 4 shall apply to the definition of family members except that the third subparagraph of paragraph 1 thereof shall not apply to the children of refugees.

2. The Member States may authorise family reunification of other family members not referred to in Article 4, if they are dependent on the refugee.

3. If the refugee is an unaccompanied minor, the Member States:

(a) shall authorise the entry and residence for the purposes of family reunification of his/her first-degree relatives in the direct ascending line without applying the conditions laid down in Article 4(2)(a);

(b) may authorise the entry and residence for the purposes of family reunification of his/her legal guardian or any other member of the family, where the refugee has no relatives in the direct ascending line or such relatives cannot be traced.

Article 11

1. Article 5 shall apply to the submission and examination of the application, subject to paragraph 2 of this Article.

2. Where a refugee cannot provide official documentary evidence of the family relationship, the Member States shall take into account other evidence, to be assessed in accordance with national law, of the existence of such relationship. A decision rejecting an application may not be based solely on the fact that documentary evidence is lacking.

Article 12

1. By way of derogation from Article 7, the Member States shall not require the refugee and/or family member(s) to provide, in respect of applications concerning those family members referred to in Article 4(1), the evidence that the refugee fulfils the requirements set out in Article 7.

Without prejudice to international obligations, where family reunification is possible in a third country with which the sponsor and/or family member has special links, Member States may require provision of the evidence referred to in the first subparagraph.

Member States may require the refugee to meet the conditions referred to in Article 7(1) if the application for family reunification is not submitted within a period of three months after the granting of the refugee status.

2. By way of derogation from Article 8, the Member States shall not require the refugee to have resided in their territory for a certain period of time, before having his/her family members join him/her.

CHAPTER VI

Entry and residence of family members

Article 13

1. As soon as the application for family reunification has been accepted, the Member State concerned shall authorise the entry of the family member or members. In that regard, the Member State concerned shall grant such persons every facility for obtaining the requisite visas.

2. The Member State concerned shall grant the family members a first residence permit of at least one year's duration. This residence permit shall be renewable.

3. The duration of the residence permits granted to the family member(s) shall in principle not go beyond the date of expiry of the residence permit held by the sponsor.

Article 14

1. The sponsor's family members shall be entitled, in the same way as the sponsor, to:

(a) access to education;

(b) access to employment and self-employed activity;

(c) access to vocational guidance, initial and further training and retraining.

2. Member States may decide according to national law the conditions under which family members shall exercise an employed or self-employed activity. These 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.

3. Member States may restrict access to employment or self-employed activity by first-degree relatives in the direct ascending line or adult unmarried children to whom Article 4(2) applies.

Article 15

1. Not later than after five years of residence, and provided that the family member has not been granted a residence permit for reasons other than family reunification, the spouse or unmarried partner and a child who has reached majority shall be entitled, upon application, if required, to an autonomous residence permit, independent of that of the sponsor.

Member States may limit the granting of the residence permit referred to in the first subparagraph to the spouse or unmarried partner in cases of breakdown of the family relationship.

2. The Member States may issue an autonomous residence permit to adult children and to relatives in the direct ascending line to whom Article 4(2) applies.

3. In the event of widowhood, divorce, separation, or death of first-degree relatives in the direct ascending or descending line, an autonomous residence permit may be issued, upon application, if required, to persons who have entered by virtue of family reunification. Member States shall lay down provisions ensuring the granting of an autonomous residence permit in the event of particularly difficult circumstances.

4. The conditions relating to the granting and duration of the autonomous residence permit are established by national law.

CHAPTER VII

Penalties and redress

Article 16

1. Member States may reject an application for entry and residence for the purpose of family reunification, or, if appropriate, withdraw or refuse to renew a family member's residence permit, in the following circumstances:

(a) where the conditions laid down by this Directive are not or are no longer satisfied.

When renewing the residence permit, where the sponsor has not sufficient resources without recourse to the social assistance system of the Member State, as referred to in Article 7(1)(c), the Member State shall take into account the contributions of the family members to the household income;

(b) where the sponsor and his/her family member(s) do not or no longer live in a real marital or family relationship;

(c) where it is found that the sponsor or the unmarried partner is married or is in a stable long-term relationship with another person.

2. Member States may also reject an application for entry and residence for the purpose of family reunification, or withdraw or refuse to renew the family member's residence permits, where it is shown that:

(a) false or misleading information, false or falsified documents were used, fraud was otherwise committed or other unlawful means were used;

(b) the marriage, partnership or adoption was contracted for the sole purpose of enabling the person concerned to enter or reside in a Member State.

When making an assessment with respect to this point, Member States may have regard in particular to the fact that the marriage, partnership or adoption was contracted after the sponsor had been issued his/her residence permit.

3. The Member States may withdraw or refuse to renew the residence permit of a family member where the sponsor's residence comes to an end and the family member does not yet enjoy an autonomous right of residence under Article 15.

4. Member States may conduct specific checks and inspections where there is reason to suspect that there is fraud or a marriage, partnership or adoption of convenience as defined by paragraph 2. Specific checks may also be undertaken on the occasion of the renewal of family members' residence permit.

Article 17

Member States shall take due account of the nature and solidity of the person's family relationships and the duration of his residence in the Member State and of the existence of family, cultural and social ties with his/her country of origin where they reject an application, withdraw or refuse to renew a residence permit or decide to order the removal of the sponsor or members of his family.

Article 18

The Member States shall ensure that the sponsor and/or the members of his/her family have the right to mount a legal challenge where an application for family reunification is rejected or a residence permit is either not renewed or is withdrawn or removal is ordered.

The procedure and the competence according to which the right referred to in the first subparagraph is exercised shall be established by the Member States concerned.

CHAPTER VIII

Final provisions

Article 19

Periodically, and for the first time not later than 3 October 2007, the Commission shall report to the European Parliament and the Council on the application of this Directive in the Member States and shall propose such amendments as may appear necessary. These proposals for amendments shall be made by way of priority in relation to Articles 3, 4, 7, 8 and 13.

Article 20

Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive by not later than 3 October 2005. They shall forthwith inform the Commission thereof.

When Member States adopt these measures, they shall contain a reference to this Directive or be accompanied by such a reference on the occasion of their official publication. The methods of making such reference shall be laid down by the Member States.

Article 21

This Directive shall enter into force on the day of its publication in the *Official Journal of the European Union*.

Article 22

This Directive is addressed to the Member States in accordance with the Treaty establishing the European Community.

Done at Brussels, 22 September 2003.

For the Council

The President

F. FRATTINI

Table 9: France's & Germany's compliance with the FRD's mandatory rules

	Mandatory/ Optional	**France (Groenendijk, Fernhout *et al.* 2007)**	**France 2011/12 (Communities, 2008; Network, 2012; Pascouau & Labayle, 2011)**	**Germany (Groenendijk, Fernhout *et al.*, 2007)**	**Germany 2011 (Communities, 2008; Pascouau & Labayle, 2011)**
Art. 3 §3	Mandatory		No dual nationals	No dual nationals	
Art. 8	Optional, but may not exceed 2 years		Yes		Yes
Art. 4	Mandatory		Yes, clear rules on divorced parents or adopted children		No, restriction to children until 16, not 18, afterwards integration criteria
Art. 5 §2	Mandatory: documents; travel documents possible; interviews and investigations Optional		Yes, documents, no investigations, no DNA tests		Yes, documents, investigations, DNA tests, different procedures in different federal states
Art. 4 §1c	Mandatory		Yes, family reunification of children possible whose parents both reside in France.		no
Art. 4 §1	Mandatory	Yes		Yes, partially	
Art. 3:	Mandatory: one year validity		Yes, not about nature of residence permit but legal stay of at least 18 months		Yes, specific criteria concerning types of residence permits that allow family reunification
Art. 3	Optional, however forbidden to exceed 2 years		Yes, 18 months		Yes, 24 months =full time allowed in directive
Art. 5	Mandatory to have guidelines		Yes, must be handed in by the sponsor		Yes, must be handed in by the family
Art. 5 §2	Mandatory, interviews optional			Yes, general requirements	
Art. 5 §3	Mandatory	Yes	Yes, derogations are possible	Yes	Yes, derogations are possible
Art. 4 §3	Mandatory, optional: in territory		Yes, France		Yes, country of origin

Art. 5 §4	Mandatory with exceptions	Yes	Yes, 6 months	No	6 months, has shortest delays
Art. 5 §4	Mandatory, Optional to extend 9 months		Yes, no decision in time= rejection		yes , no decision in time= no sanctions, new deadline will be set
Art. 10 §3	Mandatory Optional	Yes No		No specific regulations	
Art. 11	Mandatory	No specific regulations → no		No specific regulations	
Art. 12	Mandatory	No		No	
Art. 13 §1	Mandatory	No		No	
Art. 14 §1b	Mandatory	yes	Yes, condition of labor market test	Partial/not fully correctly transposition, still under discussion	yes
Art. 15 §3	Optional, if so mandatory to have provisions in place	Yes, but no provisions		Yes, in case of death, divorce	
Art.16	Mandatory	Yes, under certain conditions	No rules		
Art. 17	Mandatory	No	Yes		yes
Art. 5 §5	Mandatory	Unclear : no explicit rules	Yes	No	Yes (already in 2008)
Art. 17	Mandatory	No		No	
Art. 18	Mandatory	Yes, after administrative review, legal aid is available		No concerning visas, review by administrative courts in case of sponsors and family members, no legal aid is provided	
Timely Transposition		Transposed by end of 2007 (Labayle & Pascouau, 2007) 24.11.2007 (Labayle & Pascouau, 2007), transposition process finalized by end of 2006	Little reference to the directive in national law	Pending bill before parliament, drafted in 2006	Not yet by end of 2006 but by end of 2007 (Kreienbrink & Rühl, 2007; Labayle & Pascouau, 2007) 19.08.2007 (Labayle & Pascouau, 2007)

Declaration of Academic Honesty

I hereby declare to have written this Bachelor Thesis on my own. All parts that have been copied from academic books, papers, the internet or other sources are clearly identified and the references fully cited.

Münster, 03.04.2014

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Christina Uhlig