
Which factors explain Germany's transposition delay of the EU Blue Card Directive?

A qualitative case study of the Council Directive 2009/50/EC (Blue Card) transposition in Germany

Bachelor thesis

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Executive Summary

Transposing EU legislation on national level often leads to a lot of discussions and discrepancies regarding the content and the way it should be implemented amongst the (political) actors involved, especially in quite sensitive policy areas. These disagreements can influence the timely transposition by the member states. The purpose of this study then is to answer the following research question:

'Which factors explain Germany's transposition delay of the EU Blue Card Directive?'

In order to find an answer to this research question a case study of Germany is the basis for analysis. Furthermore, with the qualitative content analysis approach resolutions from the German Bundestag, newspaper articles, the Blue Card Directive itself and the characteristics of Germany as a state are used in order to judge which factors influence the timely transposition of the directive by Germany. Here, the findings are compared with and contrasted to existing hypotheses. This method reveals which factors can or cannot explain Germany's delay in transposition. My analysis shows that, in principle Germany is able to transpose on time but there have a high incentive to deviate from the content of the Blue Card Directive.

The study at hand is thus relevant in a sense that it sheds more light on one single member state and its possible reasons for transposing an EU Directive with delay in the field of labour migration. This can be a first step for further examination of other single cases and to thus improve the situation in a way that the EU integration can be further supported if factors influencing the timely transposition are better understand.

Table of content

Chapter 1: Introduction	Page
1.1. Research question	4
1.2. Social and scientific relevance	4
1.3. Outline of the thesis	5
Chapter 2: The Blue Card Directive & Germany	
2.1. General information about the Blue Card	5
2.2. Germany and its migration	6
Chapter 3: Theoretical framework	
3.1. Literature Review	7
3.2. Selection of theory	9
3.3. Preference based vs state based explanations	9
3.4. Use of theory	11
Chapter 4: Research Methodology	
4.1. Research design	12
4.2. Case selection	12
4.3. Data collection and measurement	13
4.4. Limitations of the research method chosen	15
Chapter 5: Analysis	
5.1. Answer to eight sub questions	17
5.2. Comparison of the findings with hypotheses	22
5.3. Discussion	23
Chapter 6: Conclusion	
6.1. Answer to the research question	25
6.2. Limitations of the research	26
6.3. Recommendation / future research	26
List of References	
Appendix	

Chapter 1: Introduction

In recent years, there has been much discussion but also effort to come up with a solution to regulate the immigration flow to Europe. One major concern here is to take the needs and interests of the member states as a country and an economy into consideration since they have to deal with these flows individually. Especially efforts have been made to attract high skilled workers to the EU and to facilitate them the access to the European labour market (Gümüs, 2010). These efforts should be seen in the context of the problem of an aging population and the emergence of a high skilled labour shortage within Europe which has become more serious. Here, the EU but also the member states have their own programmes and strategies which have the goal to reduce these specific problems. Regarding the upcoming lack of high skilled labour, an inflow of immigrants could help to narrow down this labour shortage gap and thus counteract the recession in workforce (Mosneaga, 2012). However, this challenges the EU in a way that they have to control who is coming into the EU and to further communicate and cooperate with their member states.

Here, attention can be drawn to one effort of the EU, which is the implementation of the so called Blue Card, a working permission for high skilled workers from non EU-states to work in the EU. The aim is to attract foreign high skilled workers and thus to reduce the labour shortage in the countries (Gümüs, 2010). In order to achieve this goal, this EU directive then has to be implemented by the member states.

Concerning the implementation of the Council Directive 2009/50/EC (Blue Card)¹ it can be said that the EU Council approved this directive on 25 May 2009 and it entered into force on 19 June 2009 (Cerna, 2013a). Member states then should bring into force the laws, regulations and administrative provisions required to comply with this directive by 19 June 2011 (COM, 2009). Consequently, they had 2 years' time to transpose this EU legislation.

However, concerning the case of Germany, it has to be said that they only complied after this deadline. More exactly, six member states, where Germany being one of them, have received a letter of formal notice concerning their failure to notify the Commission of measures to take to implement the Blue Card. This is one of the first steps of the infringement procedure. Germany responded to this formal letter of notice but they stated that the new legislation to be implemented would not enter into force until next year (COM, 2011). Finally, Germany transposed the Blue Card Directive with an implementing law of June 1, 2012 into the national law, which entered into force on 1 August 2012 (Eisele, 2013). Thus, there has been a transposition delay of about one year.

This brings us to the purpose of this thesis which investigates the variables that could possibly cause some tension between EU and national level regarding the timely transposition of EU Directives. When implementing directives from the EU level there are regular discussions about the way such a directive should be implemented at the national level. This transposition often causes problems and hence possibly delay since each and every directive is not as suitable or desired in one member state as in another one. Furthermore, the member states also have some individual programmes and policies in different areas. In other words, member states want to keep their sovereignty (Geddes, 2000). Especially in quite sensitive policy fields like labour migration.

Since the implementation of the Blue Card Directive is quite recently more research investigating the factors that may explain the delay in transposition by the member states with this directive is desirable. By using a case study, more information is available about one specific member state. In this case, Germany. Furthermore this study provides more knowledge about what makes countries implementing or not implementing EU Directives on time.

¹ COUNCIL DIRECTIVE 2009/50/EC of 25 May 2009 on the conditions of entry and residence of third-country nationals for the purposes of highly qualified employment [2009] OJ L 155/17

1.1. Research question

After having introduced the research field of interest the resulting main research question is as follows:

Which factors explain Germany's transposition delay of the EU Blue Card Directive?

In order to find an answer to this explanatory question, the following sub questions will guide to the answering. These sub questions are divided according to the characteristics of the member state in relation to the directive, the characteristics of the directive and the characteristics of the member states.

Member state in relation to the Directive:

1. To what extent does the legal text of the Blue Card Directive fit into the German national legislation?
2. To what extent does Germany deviate from the provisions in the Blue Card Directive?

Directive:

3. How much discretion does the Blue Card Directive grant Germany?
4. To what extent can the Blue Card Directive be described as a long directive?

Member state:

5. What is the level of centralization in a state like Germany?
6. To what extent are social partners embedded in the German national policy-making process?
7. How much administrative capacity does Germany as a member state have?
8. In which world of administrative culture can Germany be classified?

When answering these eight sub questions it builds the basis for comparison. To be more precise, after having given the answers to the questions, these empirical findings about Germany and the directive are compared and contrasted to the existing hypotheses derived from the literature. This then reveals which factors² might explain the transposition delay.

1.2. Social and scientific relevance

Regarding the scientific relevance of my study it can be said that there has already been a relatively huge amount of scientific literature (Treib, 2006; Hartlapp & Falkner, 2008) regarding the compliance with EU legislation in general. Especially in the field of social directives (Zhelyazkova, 2013). However, more research should be done in the field of labour migration since this literature is comparatively small until now. Furthermore, in my study, the focus is on Germany and it can give more insights on Germany's position regarding the Blue Card. To justify the social aspect, it is worthwhile to know the factors which might explain the delay in transposition by the member states to get a sense of reasons as to why EU legislations are more likely to be accepted or not by the member states. To tackle e.g. the problem of an aging population and a labour shortage, this is also in the interest of the EU to know about these factors. Additionally, trying to optimize the EU legislation transposition processes can also be seen as a further contribution to the EU integration.

² In this study, the words 'factors' and 'variables' are interchangeably used. Thus, they refer to the same thing

1.3. Outline of the thesis

After having given an introduction to the topic and the research question which should be answered with this study, the remaining structure of my thesis is as follows: In the next section, some general information about the Blue Card Directive are given. Furthermore, in that chapter more light is also shed on Germany as a country and its migration policies to give the reader some background information. In the third chapter, the theoretical framework is outlined. To be more precise, first of all some literature is reviewed regarding EU compliance but also literature on the Blue Card Directive. Further it is argued how the theory at hand is selected and subsequently, eight explanatory variables and their hypotheses which might explain a transposition delay are presented. In the fourth chapter, the methodology to arrive at a conclusion for the research question is outlined. Here, the focus will be on the form of a case study, the qualitative analysis which will be conducted, the data collection and its measurement but also on possible limitations to the research method chosen. After having done that, in the fifth chapter the sub questions will be answered. In a second step, the answers will be compared with the hypotheses derived from theory. These findings will be further discussed. In the conclusion chapter an answer to the main research question is given. In addition to that, limitations of the study at hand but also recommendations for future research are given.

Chapter 2: The Blue Card Directive & Germany

In this chapter general information regarding the content and the purpose of the Blue Card are given. Further, some information about the issued Blue Cards in Germany are presented. After that, some light is shed on the history of Germany's migration policies and its attitudes towards migration.

2.1. General information about the Blue Card

To start with, the purpose of this directive is to define 'the conditions of entry and residence for more than three months in the territory of the member states of third-country nationals for the purpose of highly qualified employment as EU Blue Card holders, and of their family members' but also the 'conditions for these third-country nationals in members states other than the first member state' (COM, 2009). To clarify this description further, one should define who is meant by 'third-country national' and what is meant by 'highly qualified employment'. To begin with, 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' (COM, 2009). Further, 'highly qualified employment' refers to the 'employment of a person who in the member state concerned, is protected as an employee under national employment law and/or in accordance with national practice, irrespective of the legal relationship, for the purpose of exercising genuine and effective work for, or under the direction of, someone else, is paid, and, has the required adequate and specific competence, as proven by higher professional qualifications' (COM, 2009).

The purpose should be seen within the context of the objective of this directive where one can refer to the overall aim of the EU which is stated in the directive itself. Here, attention is drawn to the fact that the Lisbon European Council in March 2000 sets out the objective to 'become the most competitive and dynamic knowledge-based economy in the world, capable of sustainable economic growth and with more and better jobs and greater social cohesion by 2010' (COM, 2009). The Hague Programme, adopted by the European Council on 4 and 5 November 2004, then recognized the need of legal migration in order to enhance the knowledge-based economy in Europe which thus contribute to the Lisbon strategy. Furthermore in this context, it is also important to foster the mobility within the Union of highly qualified workers who are Union citizens. The intention of this directive then is to contribute to these goals and address the labour shortage by fostering the admission and mobility for third-country nationals in order to make the community more attractive to such workers from all over the world and thus to sustain its competitiveness and economic growth (COM, 2009).

Concerning the rights and obligations coming along with the EU Blue Card it can be said that immigrants willing to come to the EU can benefit from a single application procedure. Blue Card holders then reside and work in an EU country for a maximum of four years and move to another member state after eighteen months. However, for that they need to apply for a new permit. Entitled applicants have to prove that they have a recognized diploma or at least five years' of professional experience. Furthermore, holders can bring their families and it is supposed that the application procedure does not take more than three months (Cerna, 2013a).

However, the directive does not create the right of admission. Since the directive is demand-driven, the principle of Community preference and member states' jurisdiction to decide on the number of persons admitted should be respected (Cerna, 2013a).

Regarding the Blue Cards issued in Germany it can be said that, after half a year of implementation, 4126 Blue Cards have been issued to immigrants. These are more than the 3.600 expected for one year (Wirtschaftswoche 02/2013). After one year of implementation the results have been even better. The Blue Card has been called a breakthrough and the moving in for immigrants is connected with nearly any obstacles. This is still seen as a trend (Wirtschaftswoche 8/2013).

2.2. Germany and its migration

Looking at the case of Germany it can be said that it has long struggled with the notion of being 'a country of immigration'. However, due to the decreasing fertility rate, the upcoming demographic changes and the emerging labour shortage, several changes have been made regarding the German labour migration policies (Green, 2013).

Considering the migration flow to Germany, over the last decades Germany has received a very large number of immigrants from different countries with different motives to come (Green, 2013). To give an example of earlier times (1950s and 1960s), guest workers found themselves in so called blue collar jobs to fill the labour shortage gap until the labour market needs changed (Constant, 2011). In these times, there were also not that many regulations for the migration flows. However, since the focus of this study is on the Blue Card, the focus should be more on recent times. Before 2000s, the public policies were mainly managed by individual laws and regulations which were managed separately by different ministries. However, this has improved from the year 2000 onwards where considerable policy changes have been made with regard to e.g. the labour migration, integration and citizenship. One effort in the year 2000 has been the so called 'Green Card' to attract high skilled immigrants which granted temporary immigrant rights to high-skilled migrants in the IT-sector. This scheme specifically focus on the attraction of high skilled immigrants. However, the fact that only two-thirds of the available permits have been issued indicates the relatively low success of the programme (Green, 2013). The relatively low success of this initiative could be due to reasons like economic crises and the experiences with 9/11. Further, the Green Card in Germany could also be compared with the Green Card in the US where only the latter one offers permanent migration which is likely to make the US more attractive for high skilled immigrants. To go further, more emphasis should be on this Green Card initiative since it started a heated discussion about Germany's immigration policies. Within the debate about schemes to attract high skilled workers the question comes up whether immigrants and domestic workers complement or substitute each other (Bauer & Kunze, 2004). In the study by Bauer & Kunze (2004) they showed that firms mostly hire foreign workers that are complement to the domestic workers since they bring knowledge of foreign markets and new technological skills into the firm. However, institutional barriers for international mobility still have to be overcome. These restrictions coming along with the Green Card hamper its success (Bauer & Kunze, 2004).

Nevertheless, a next step towards a Germany which is more open towards immigrants has been the Residence Act in 2005 which permits migration from outside the European Economic Area (EEA). In addition to that, there is also the new anti-discrimination Act in 2006 and the law to ease the recognition of foreign professional qualification in 2012 which are another step to open up Germany for migrants (Green, 2013).

These relatively positive policy changes in favour of the migrants are also outlined by the German federal office of migration and refugees. At the end of the 1990s, the discussion about constructing

schemes to attract high skilled workers has been intensified. The focus should be on appropriate management instruments. Germany should be seen as a welcoming society where the EU Blue Card should be one legal instrument (BAMF, 2013). However, considering the involved potential obstacles and obligations for migrants with the current schemes, one has to see whether the proposed Blue Card will be able to attract more high skilled immigrants to foster Germany's economic position (Green, 2013).

Viewing these policy developments it has to be said that Germany has not openly recognized that the country was de facto an immigration country (Constant, 2011). In the past the policies have been mainly of restrictive and preventive nature since there has not been such a huge need for migrants to build the German nation-state (Green, 2013). However, due to the constant flow of migrants to Germany, and the current problems outlined above Germany and the rest of the world is facing, the minds of the policy makers have to change in a sense that policies nowadays have to be more of an open and welcome nature. The Green Card in this context can then be regarded as a first step towards a more open Germany. However, it has also to be admitted that the Green Card has a selective nature regarding the immigrants who should enter the country. Further, this initiative has not been as successful as expected due to different reasons mentioned above. This leads then to the hope that the EU Blue Card Directive will attract more high skilled immigrants in order to tackle Germany's problems.

Chapter 3: Theoretical framework

This chapter then starts with literature reviewed regarding EU compliance but also literature regarding the Blue Card Directive. Further, it is explained how the theory is approached and at which part of the implementation process is looked at. After that, the variables which are used in this study which might explain the delay in transposition are outlined. With that, also the hypotheses about these variables in relation to their effect on timely transposition are outlined. At the end it is further explained as to how these hypotheses help to answer the main research question.

3.1. Literature Review

In this section literature regarding the compliance with EU legislation but also literature regarding the Blue Card Directive will be reviewed in order to see what other scholars have already found out about this migration directive and to thus further understand the reasons for the delay in transposition by the member states regarding EU legislation to be transposed on national level. This twofold approach to the literature review has been chosen since it allows to get an understanding of both, the factors that are related to and possibly can explain the delay in transposition on the one hand and on the other hand, what has already been investigated regarding the Blue Card Directive.

To start in more general terms, transposing EU legislation on national level does not often go without any difficulties. Letting the member states some discretion to implement EU legislation often leads to discussions among the political actors involved. These discussions can occur due to different notions and interpretations of the legislative text to be adopted.

These problems which can occur when transposing legislations are, for example, covered by Steunenberg & Toshkov (2009) who made a comparison of the transposition of four EU Directives across the EU member states in order to find out about factors which influence EU Directive transpositions. In their study they found out that the discretion and the legal fit are important factors that determine the transposition duration. Discretion is an important factor since it is an indicator that national discussions about the transposition causes delay. In addition, the national legal order has also to be taken into account when searching for factors causing transposition delays.

Zhelyazkova (2013) then investigated the relationship between the characteristics of the process and outcome of EU decision making and the transposition performance of member states. Here, the emphasis is also on the importance of domestic politics in explaining transposition delays.

Furthermore, the author goes into more detail that the state capacity and the willingness also have to

be taken into account when examining possible reasons for delays in transposition.

Another author which deals with the problems of transposition is König et al (2009) who also emphasize the fact that explanatory variables can be both found on the supranational but also on the national level. Furthermore, this study investigates how country-specific factors influence the transposition process and whether the preference constellation and process indicators related to EU and domestic politics may explain whether member states comply with the deadline or not (König et al, 2009).

To go further, and given the fact that the EU Blue Card was approved in May 2009 and Germany only transposed it in August 2012 (COM, 2011), there is not such a huge amount of literature available yet in the field of the Blue Card Directive transposition on national level. However, there are some dealing with the opinions and reactions of the different member states regarding this directive, possible consequences of such a card and the potential effectiveness.

Here, one can draw attention to Cerna (2013a) who discusses the problem of openness and closure towards labour migration policies both at the EU and the national level. One can start with this debate since this also influence the policy process in a way that these tensions can lead to diverse policies. Another argument she gives is that the member states are not generally against immigration but they also consider they own needs and interests. Connected to that is the wish of the member states to maintain some sovereignty and the freedom to transpose the directive into their own versions of this Card. Further, it is also argued that delays in transposition could be due to difficult procedures, disagreements amongst institutional agencies or general lack of support for the Blue Card. Moreover, Cerna also describes that the reactions of the member states towards the Blue Card have been mixed where Germany was amongst the ones who have been requested by the Commission to comply with the rules of the Blue Card (Cerna, 2013a).

Another view which should be considered is the one of Gümüs (2010) who takes a quite critical perspective on the effectiveness of this Blue Card. Even if Gümüs admits that the scheme is a further option and sign to high skilled workers that Europe is open for them she also draws attention to the EU member states which are sceptical about this directive and that there are also (critical) opinions of third countries. Again, the author also points to the fear that the member states do not want the EU to get too much involved in their immigration schemes. Mosneaga (2012) then makes another contribution to this debate in a way that she shows the way this card makes Europe attractive for high skilled immigrants from third countries which should be the common goal of the EU and the member states. In addition, attention is again drawn to the fact that the attractiveness of the Blue Card on behalf of the EU member states vary. Since each member state has different conditions the effectiveness of the Blue Card will also differ (Mosneaga, 2012).

Having this literature overview at the back of one's mind it can further add to the analysis since it revealed some interesting patterns which should be considered when doing the own analysis.

To start with, the review showed that there are different factors like discretion, legal fit of the directive and the compliance culture of a member state can have an influence on the transposition of EU Directives. Furthermore, the reasons for the transposition delay can be found on different levels, e.g. on the supranational and the national level. Regarding the Blue Card Directive and its implementation itself the review has shown that there are different reasons for the reactions towards this EU Directive. This is mostly due to the fact that the member states question the effectiveness of the directive and furthermore the member states are sceptical about the directive since it touches upon the labour migration policy field and here the member states want to keep as much sovereignty as possible in order to regulate the immigration flow on their own. These facts are valuable to know since these characteristics of the directive also influence the transposition process. This knowledge then is useful to be reviewed since it gives clues what variables may be influential and what reactions towards the Blue Card to expect.

Having done this kind of literature review, this thesis then uses a different approach on tackling and covering both of these research areas by combining them which is not often done. However, such approach can then add to the literature of both research areas. Concentrating on the factors that might explain the delay in transposition by the member states with EU legislation, one member state is investigated with regard to the transposition of one specific directive in the field of labour migration.

3.2. Selection of theory

Since the analysis yields at explaining the relation between the type of EU legislation to be adopted and the characteristics/legal composition of Germany with the timely transposition of that legislation, one should first clarify how timely transposition connects to the EU compliance.

Here, one can refer to Treib (2006) who in his work outlines three general stages of policy implementation, which are namely transposition, enforcement and application. However, at the end of his work, Treib (2006) points to the fact that, in an EU context, the transposition phase is most interesting to do research on since this phase represents the potential tensions between EU and national interests most rather than the enforcement and application phase.

Zhelyazkova (2013) also describes compliance in an EU context as ‘the extent to which national actors conform to the EU requirements by incorporating and applying EU laws into national context’ (Zhelyazkova, 2013). Further, the transposition process can be described as the successful application of the EU legislation. However, this is conditional upon the extent to which the member states adequately incorporate the EU requirements in their national legislation (Zhelyazkova, 2013).

Having stated this, for the purpose of this study and in the context of EU compliance, the focus will mainly be on the transposition phase of the EU legislation implementation process since this study investigates potential variables which may explain Germany’s transposition delay with regard to the EU Blue Card Directive. In doing so, compliance is being referred as to one part of the implementation process, namely the EU legislation transposition.³

3.2 . Preference based vs state based explanations

To get to the explanatory factors one can first draw attention to the fact that the literature distinguishes between two different approaches regarding the explanation of variation in compliance. On the one hand, there is the preference-based explanation which emphasize the explanatory power of member states’ preferences in relation to the EU legislation to be transposed and the specific characteristics of those laws. Here, references are often made to the objections made by the member states prior to the adoption of directives. On the other hand, there is the state-based explanation of variation in compliance where references are made to the state characteristics. Here, one e.g. uses administrative efficiency and implementation styles as explanatory factors (Thomson, 2009). This distinction now builds the bridge to the explanatory variables which will be used in this study.

To be more precise, these different variables influencing the timely transposition by the EU member states are also applied in the study by Thomson (2009). He divides the variables he applies into three categories. The distinction is between variables that are related to the member state in relation to the directive and variables that are either related to the directive or the member state. An overview about this distinction can be found in the following:

³ Having stated this, in the following of the thesis the level of compliance and timely transposition are interchangeably used where one can always refer back to the clarification in this theory section

Characteristics of:	Explanatory variables:
Member state in relation to Directive	Misfit and incentive to deviate
Directive	Discretion and length
Member state	Centralization, corporatism, administrative capacity and administrative culture

Table 1: Thomson's (2009) explanatory variables for the member states' compliance with EU legislation divided by categorization

In the following more attention is drawn to the eight explanatory variables in more detail as outlined in the study by Thomson (2009). Here, definitions of these variables are given and furthermore the hypotheses to what extent these variables can explain the level of compliance are also presented.

MISFIT: Concerning the first characteristic of the member states in relation to the directive, namely (legal) misfit, it can be said that it refers to the compatibility between the EU legislation to be transposed and the national legislation in which it has to be incorporated (Thomson, 2009). Interesting to note is that misfit is a popular explanatory factor for the variation in compliance. This fact makes it reasonable to also include this variable in the study. In the literature it is claimed that:

H₁: European directives which require far reaching adjustments to the national legislation are less likely to be complied with on time than directives that are more in line with national legislation

INCENTIVE TO DEVIATE: Regarding the incentive to deviate it can be described as the extent to which representatives of the state disagree with the content of the directive. This variable can further link the decision making stage prior to the adoption of the directive and the implementation stage thereafter. Furthermore, this variable indicates that a member state expressed objections to the directive when it was a legislative proposal and that these objections were maybe unsuccessful if they have not been considered in the final directive. Thus, building on Thomson (2009):

H₂: If there is a strong incentive to deviate, member states are more likely to use more time for the transposition

DISCRETION: Coming to the characteristics of the directive itself one can start with the variable discretion, which is given by the directive and which allows the member states to decide which action to take to transpose the legislation. Directives differ in the amount of discretion they grant to member states. Some directives offer member states a number of alternatives that they could apply when transposing whereas other offer only few alternatives. Even if the effect of discretion is debated in the compliance literature, Thomson (2009) claims that if more discretion is granted, more policies at the national level could be consistent with the directive. Thus, it is suggested:

H₃: The more discretion is granted, the more likely a timely transposition is

LENGTH OF THE DIRECTIVE: The second variable in this context is the length of the directive which can be described as the number of provisions in main body of the legislation. A directive that contains large number of provisions is likely to require more detailed changes to national law. However, many changes do not necessarily mean that the changes need to be big. In other words, fit may be high (Thomson, 2009). However, this measure has to be treated with caution since the length of a directive is not a measure of complexity but of detail. Nevertheless, it is expected:

H₄: The longer the provisions that need to be complied with, the more likely is a delay in transposition

DECENTRALIZATION: The last category then sheds light on the member state and its characteristics. Centralization of a state means that the national level needs less support from regional and local governments to comply with EU Directives. In contrast to that, where formal political authority is shared between levels of government, it may takes more time to comply. Decentralization can especially be a threat to timely transposition since formal authorities to transpose directives are allocated to subnational levels. Thus, centralization is also to be considered as an important explanatory variable in the general literature on compliance. Nevertheless, Thomson (2009) then argues that:

H₅: It is more likely for centralized states to comply on time with international law than decentralized states

CORPORATISM: The level of corporatism refers to the extent to which social partners are embedded in the national policymaking process. In highly corporatist systems, these organizations enjoy close and institutionalized relations with government policy-makers, e.g. through formal representation on bodies with authority to take decisions or make important recommendations. Even if the effect of the level of corporatism is debated in the literature, since the power of social partners in corporatist systems may block policy change, it is assumed by Thomson (2009) that the higher level of corporatism it is beneficial to compliance since such systems provide relatively stable arenas in which the actors can interact. In other words:

H₆: Member states with stronger corporatist patterns are more likely to transpose sooner

ADMINISTRATIVE CAPACITY: The administrative capacity of a member state then refers to the fact that the compliance with EU legislation requires substantial bureaucratic and administrative resources at the national level. Member states vary from each other with regard to their administrative capacities (Thompson, 2009). However, this capacity is needed in order to transpose EU legislation on time. Consequently, it is hypothesized that:

H₇: If there is an existing great administrative capacity, it is more likely that the member states will comply sooner

ADMINISTRATIVE CULTURE: Last but not least, the administrative culture of the member states has also to be taken into account when considering the explanatory variables for compliance. Here, one can refer to the three different worlds of compliance as defined by Falkner (2005). Falkner expects differences in outcomes. To be more precise:

H₈: In the world of law observance, the transposition is typically on time and correct. In the world of domestic politics, it is typically on time and correct only if there is no conflict with domestic concerns where in the world of neglect the transposition is normally late (Falkner, 2005).

3.3 Use of theory

Having outlined the distinction between preference based and state based explanation for the variation in compliance in the beginning one can relate this distinction to the eight explanatory variables presented just before in this section. The first four characteristics which relate to the member state in relation to the directive and the directive itself, as distinguished by Thomson (2009), can be related to the preference based explanations. For example, the incentive to deviate and the discretion given by the directive can both influence the opinion and preferences of the political actors involved in the transposition process. The latter four can be clearly linked to the state based explanations since all touch upon the settings of a member state. This is also in line with the distinction by Thomson (2009).

Concerning the usage of the hypotheses for the analysis it can be said that the empirical findings, which are revealed with the answering of the sub questions, are compared with the hypotheses stated in the theory section. In other words, the outlined hypotheses above will be picked up again in the finding section where they can be falsified or confirmed by the empirical results. With that, one can make up the extent to which each of the eight variables can be judged as an explanatory factor for Germany's transposition delay of the EU Blue Card Directive. However, one also have to go further and investigate possible relations between these variables and how they might influence each other in order to grasp a whole picture about the interrelations which together can explain the delay in transposition.

Chapter 4: Research Methodology

The purpose of this chapter is to firstly outline the research design of the study. Next to that, it is argued as to why this particular sample is selected for this study. Then, the data sources and how the data is going to be measured and coded is presented. In other words, the data collection and its operationalization is outlined. In the last part, the limitations of this research design are presented.

4.1. Research design

To start with, this study is laid out to test hypotheses derived from the existing EU legislation compliance literature. To be more precise, it is tested how much influence the Blue Card Directive to be adopted and the characteristics of Germany as a state have on the timely transposition of that EU legislation. In order to do so, a qualitative single case study design has been chosen.

Several advantages of a qualitative case study have led to the decision to use this particular design. However, it should be first clarified what is meant if we use the term case study. According to Babbie (2010) a case study can be described as “the in-depth examination of a single instance of some social phenomenon, such as village, a family, or a juvenile gang” (Babbie, 2010).

Generally it can be said that case studies are widely used in organizational studies but also in the social sciences. Moreover, using a case study as a research strategy can satisfy the desire of understanding a social phenomenon since case study allow the researcher to retain the holistic and meaningful characteristic of the real-life events (Kohlbacher, 2006). Since this study aims at investigating Germany and its transposition delay of the Blue Card Directive in more detail this method is appropriate because it can provide an analysis of the context and processes which illuminate the theoretical issues, namely the factors that might explain the transposition delay. Furthermore Gerring (2004) refers to the fact that a single unit of case study connotes a spatial bounded phenomenon observed at a single point in time or over some delimited period of time. In this study this would mean that the unit one can refer to is Germany since it is bound by its territory as a nation-state. Concerning the time which is looked at for this study, it can be stated that it already starts before the adoption of the EU Blue Card Directive on 25 May 2009 (COM, 2009) by e.g. the examination of possible objections regarding the content of the Blue Card Directive when it was a proposal. This time period goes on after the implementation, and with that it also considers the transposition delay of the directive by e.g. looking at reactions on the German societal level after the implementation regarding the success of this card.

4.2. Case selection

In order to apply a case study, and with that to find out about the possible factors that influence the transposition time by an EU member state, a selection had to be made which EU legislation from which policy area to choose and which of the member states to investigate. Regarding the policy field and the type of legislation a directive in the labour migration policy field is chosen. This is due to the fact that there is e.g. comparatively much literature on the compliance with e.g. social directives (Zhelyazkova, 2013) but not on labour migration policies. Furthermore, a directive to investigate has been chosen over e.g. regulations since directives – even if they are binding upon member states as to the result to be achieved – leave discretion to the national authorities over how to realise this (Chalmers et al, 2010). This selection will then lead to more space for investigating reasons for the delay in transposition since directives grant these freedom for implementing directives. For the selection purpose of a member state, all EU member states have been considered as possible cases to investigate. However, literature reviews have shown which member state could be more interesting for this study purpose. A number of scholars like Gümüs (2010) have investigated the reactions and opinions of all member states towards the EU Blue Card Directive. Here, it became obvious that some are more in favour and some are more against this directive due to several reasons. One striking member state is Germany where the (political) actors involved stressed a lot of objections to the Blue Card Directive (Gümüs, 2010) which lead to the decision

to investigate the Blue Card Directive transposition of this member state.

Thus, this selection for the case study has been marked as interesting since the labour migration policy area is a quite sensitive one and comparatively less literature can be found on that yet. Further, Germany is chosen because it is a member state had many objections with regard to this directive.

4.3. Data collection and measurement

Generally it can be said that desk research is applied. All data used stem from existing and secondary datasets. Concerning the operationalization I attached a table for clarity in the appendix where the eight variables, which are also applied in Thomson (2009) and which are going to be measured, are outlined. Next to that, the question of how it will be analysed and the measurement scale is also included. In addition, the source of data for each variable is presented (Appendix 1).

Further, a coding scheme has been developed next to the operationalization table to show how the data is coded to come along with an answer to the eight sub questions. Here, a definition of each variable is given. Next to that, the coding rules and the measurement level for the variables are given:

	(Legal) misfit	Incentive to deviate	Discretion	Length of the Directive	Centralization	Corporatism	Administrative capacity	Administrative culture
Definition	The fit between new European legislation and existing national provisions	Extent to which representatives of the state disagree with the (content of) the Directive	The amount of discretion granted by the Directive to the member states	The number of recitals in the text of legislation	Degree of power concentration in the member state	Extent to which social partners are embedded in the national policy-making process	Extent to which the member state works effectively or not	Whether or not legislation is transposed on time according to the worlds
Coding	H: 3 or more amending acts of higher order with many amendments or new acts, M: 1 or 2 amending acts of 1 st or 2 nd order with small, moderate changes S: 1 amending act of lower order with small amendments	L: Mostly negative opinions, some pos, M: 50 : 50 pos/neg: H: More than 50% of neg. opinions or even refusal	Discretion ratio (0-1): L: 0 - 0,3 M: 0,3 - 0,7 H: 0,7 - 1:	Number of recitals: S: 0 - 5, M: 6 -28 L: 29-50	Unitary and centralized (1): high federalist and decentralized (5): low	State as being ranked corporatist (3-5): high ranked as being pluralist (1-2): low	No or some effectiveness (0-30%): low, little but not perfectly effective (30-60%): medium, (nearly) perfectly effective (60-100%): high	Falkner's typology: world of law observance: high, domestic politics: medium, neglect: low
measure	High, moderate and small misfit	Low, medium or high incentive to deviate	Low medium high level of discretion	Short medium long directive	Low or high concentration	High or low level of corporatism	Low medium high level of administrative capacity	Low medium high level of timely transposition

Table 2: Coding schemes for the eight variables under study

To outline the coding scheme a little bit more, in the following attention is drawn to the precise measurement of the eight variables under investigation.

To start with, the measurement for (legal) misfit between the EU legislation and the national legislation will be somewhat modified and conducted as by Steunenberg & Toshkov (2009) in their study to measure the legal fit. Due to the limits of such a bachelor thesis, it is not manageable to conduct a detailed qualitative case study in the member state like Thomson (2009) in his study did.

In the study by Steunenberg & Toshkov then they considered novelty and scope of the legal change. The scope can be described as the number of national transposition measures required and the status of these measures in the national legal order (laws, regulations, ordinances – first, second and third order legislation). The novelty of the transposition refers to the distinction between new and amending acts. Concerning the resulting categorical variables a coding scheme has been developed which distinguishes between high, moderate and small misfit. A high misfit is identified if there are 3 or more amending acts of higher order with a lot of amendments or even new acts. A moderate misfit implies 1 or 2 amending acts of 1st or 2nd order with small or moderate amendments to be made. Lastly, a small misfit is given if there is 1 amending act of lower order (3rd) with small amendments to be made.

The second variable in this context then is the incentive to deviate. In order to measure this variable, a resolution of the German *Bundesrat* is first of all summarized. This type of document is chosen since it reflects opinions of German political actors regarding the content of the Blue Card Directive when it was a proposal. Additionally, German newspaper articles regarding the Blue Card Directive are also collected, summarized and presented. Having done this, these summaries are then investigated with regard to positive and negative statements regarding the (content of) the Blue Card. There is a low incentive to deviate if there are mostly positive statements and only few negative ones. A medium level of incentive to deviate is given if the positive and negative statements are balanced. If there are more than 50% of negative statements and even refusals there is a high incentive to deviate.

In order to measure the discretion, again the method of the study by Steunenberg & Toshkov (2009) is applied. This method is chosen over the method applied in the work by Thomson (2009) since it e.g. also considers the closed statements, which also impose restrictions and guidelines for the member states. To be more precise, they first of all determined for their directives the number of substantive articles and sub articles that are relevant to member states. This means that they choose for articles that provide discretion or guidelines to member states about how to implement the policy specified in the directive. However, they left out the final provisions, especially for directives that have a relatively small number of substantive articles since this would disproportionately reduce the discretion score. In a second step, they classify each sub article as to more close or open statements. Closed statements would include words like ‘restricted’ or ‘prohibited’ whereas open statements are the ones which allow member states to choose between implementing measures (Steunenberg & Toshkov, 2009). On the basis of that, they created an index, where:

$$D_i = O_i / C_i + O_i \text{ (Discretion ratio= open statements/ closed + open statements)}$$

The resulting index then can have scores for discretion which range from zero to one. The higher the value means that the more discretion is granted for the member states.

The length of the directive will be measured like Kaeding (2006) did. He used the number of recitals to measure the amount of detail in law. Recitals state the purpose of the directive and describe each of the main provisions. Thus, this method seems appropriate to see how detailed the directive is. In his study, he made 518 observations, where the minimum of recitals has been 1 and the maximum of 50. The mean for the directive has been 11.38 per recital. On the basis of that, a coding scheme has been developed as follows: 0 – 5 recitals mean a short directive, 6 – 28 mean a medium long directive and from 29 – 50 recitals mean a long directive.

Concerning the state characteristics to be measured it can be said that this study relies on existing and often used measures, indexes and typologies. In order to measure the extent Germany can be described as a centralized state this analysis applies the categorization of countries by Lijphart (2012). According

to Lijphart (2012) federalism can be considered as the most typical and drastic method of dividing power. To be able to categorize all the countries Lijphart developed a five-point scale of federalism and decentralization on the basis of the following characteristics of the concept of federalism: First of all, there is a guaranteed division of power between central and regional government. Furthermore, federalism is described as a spatial or territorial division of power in which the component units are geographically defined (Lijphart, 2012). These characteristics lead to the categorization of all countries under study. The scale constructed ranges from 1 to 5, where '1' means unitary and centralized and '5' means federal and decentralized.

In order to judge to what extent Germany can be regarded as a corporatist state one can refer to the index developed by Siaroff (1999). To start with, Siaroff for his analysis uses the following features of the concept of (liberal) federalism at the national level: 'within an advanced industrial society and democratic polity, the co-ordinated, co-operative, and systematic management of the national economy by the state, centralised unions, and employers, presumably to the relative benefit of all three actors' (Siaroff, 1999). The opposite, the lack of such co-ordinated and co-operative management, can generally be defined as 'pluralism'. Regarding the ranking, Siaroff uses a five point scale, ranging from 1 to 5, where '5' means always being strong corporatism and '1' pluralism.

For the purpose of analysing the administrative capacity of Germany as a state one can also relate to an established index, namely the World Governance Indicator. Amongst other dimensions of governance this indicator looks at the government effectiveness which can be used as an indicator for administrative capacity. This indicator is described as to 'capture perceptions of the quality of public services, the quality of the civil service and the degree of its independence from political pressures, the quality of policy formulation and implementation, and the credibility of the government's commitment to such policies' (Kaufmann, 2011). When visiting the website of the WGI (www.govindicators.org) one can retrieve data for the countries under study.

Concerning the compliance culture, the existing literature distinguishes between three worlds of compliance which categorizes the member states with regard to the extent they are likely to adopt EU legislations. Here, attention is also drawn to the likelihood of correct and timely transposition. These worlds of compliance are namely the one of law observance, of domestic politics and of neglect (Falkner et al, 2007). In the world of law observance the goal to comply with EU legislation is more important than the domestic concerns. The situation of non-compliance is not likely to occur (Falkner, 2007). Here, transposition is typically on time and correct (Falkner, 2005). In the world of domestic politics, complying with EU legislation is then only one goal among many. Domestic concerns are given more priority and if there should be a conflict of interest between national interests and EU Directives a cost benefit analysis is made (Falkner, 2007). Thus, transposition is also only correct and on time if there is no conflict with domestic concerns (Falkner, 2005). The last category here is the world of neglect. As the name suggested, complying with EU law is not seen as a goal. Breaking an EU law is not a crime and as long as there are no powerful actions by supranational actors the obligations for fulfilment are rather ignored (Falkner, 2007). Therefore, transposition in these worlds is typically late and/or pro forma (Falkner, 2005).

4.3. Limitations of the research method chosen

This section now draws attention to the limitations of the study and its methods chosen. To be more precise, possible threats and biases with regard to the construct validity, internal validity, external validity and reliability of the outcomes are presented.

Construct validity

To start with, construct validity can be defined as 'the degree to which a measure relates to other variables as expected within a system of theoretical relationship' (Babbie, 2010). Similar is the

definition by Gerring (2012) who refers to the match between a theory and a research design intended to test that theory as construct validity.

Here, two constraints are the selection of material for this study purpose and the reviewer subjectivity regarding the analysis of the materials chosen. It is up to the researcher which sources of data s/he uses for the study to be conducted. Since the materials are not chosen randomly, this could lead to a selection bias (Gerring, 2012). Furthermore in the context of reviewer subjectivity, there is the possibility that another observer might reach a different judgment of the same situation (Babbie, 2010). Concerning then the materials in this study applied in more detail it has to be considered that, for example, the judgement about and the analysis of the (sub) articles to be relevant in the Blue Card Directive are conditional upon the observer subjectivity. Furthermore, the number of recitals determining the length of the directive are also conditional on the judgment of the researcher. The same goes for the selection of the resolution of the German *Bundesrat* and the newspaper articles regarding this directive. There could also be another selection made regarding the resolution or articles which could lead to another outcome. Regarding the operationalization of the state related characteristics it also has to be said that, even if these operationalization heavily rely on existing indexes, typologies and categorizations, it is in the end up to the researcher who s/he interprets this. To conclude, due to the potential selection biases outlined above attention should be drawn to the fact that it is up to the researcher of how s/he is going to measure the variables. This can be due to the limited time and scope of such a thesis, material availability and other measurement methods which seem to be more appropriate. To overcome the researcher's subjectivity, literature on EU compliance and the Blue Card Directive have been extensively reviewed. Nevertheless, the findings of this study then have to be interpreted with caution and should be more seen as one possible way to come up with an answer to the main research question rather than an optimal way to do so.

Internal validity

Gerring (2012) defines internal validity as 'the truth of a proposition with respect to the chosen sample'. In other words, there might be a possibility that the conclusions drawn from the relationship testing may not tell us the exact relationship between them.

In order to illustrate this possible threat one has to look at the relation to be tested with this study. Since the purpose of this study is to test whether the type of EU legislation to be adopted and the characteristics of Germany as a state have an influence on the timely transposition of the EU legislation or not it has to be taken into account that this might not be the true and only relationship. There could also be some other influential third variables which are not considered here. Thus, and since there is no control group for this study at hand, it is difficult to make deterministic statements about the amount of influence the independent variables used in this study have on the dependent variable, namely the delay in transposition of the Blue Card Directive.

To conclude this part on internal validity it has to be admitted that the level of this type of validity is not that high since this study is not able to cover all possible third variables which might have an influence on the delay in transposition.

External validity

Here, one can again refer to Gerring (2012) who refers to the truth of a proposition with respect to the population of an inference, its generalizability when talking about the external validity of an outcome. Having outlined the purpose of a case study in the research design section, there is still the claim that case studies lack precision and do not address the issue of generalizability (Kohlbacher, 2006). This can be seen as a major threat of this kind of design. Referring this possible threat to this study it can be said that, on the basis of the scope, only one out of the 28 member states is chosen to investigate. Further, only one directive amongst many to be transposed is chosen. In addition, the focus is basically on the transposition phase of the implementation. This together can pose a selection bias since member state, directive and part of the implementation process for the study are not chosen randomly.

Having stated this it is hard to make some judgements about other cases. In this study, this would mean that the findings for Germany do not count for other member states regarding their reasons for a transposition delay with the directive. The same holds true for the directive chosen to be analysed. The

findings for the Blue Card Directive cannot be generalized for other directives which have to be adopted by Germany. Consequently, and as already mentioned, the findings of this study are predominantly valid for this specific case. Future research is needed where the findings of this study could build a starting point for e.g. comparative studies. More research should be done investigating the possible factors which might cause a transposition delay of the Blue Card Directive in other member states.

Reliability

Concerning the reliability of an outcome one can refer to Babbie (2010) who defines reliability as ‘that quality of measurement method that suggests that the same data would have been collected each time in repeated observations of the same phenomenon’. This definition suggest that the results of a study should be the same when repeating it.

When using the same data and sources to conduct the study again there is a relatively great likelihood that the results will be the same or similar. In addition, this kind of research can be classified as ‘unobtrusive research’ which can be defined as ‘the method of studying social behaviour without affecting it’ (Babbie, 2010). Thus, and since the data stems from existing and secondary sources, an influence on behalf of the researcher is not likely to occur. Consequently, reliability of the findings is judged to be high.

Overall, it can be concluded that the presentation of the possible threats to the design chosen reveal that this study can be considered as having a high reliability whereas there have to be some threats regarding the validity to be taken into account. However, despite the possible threats which are listed above and which can occur when conducting such a case study, this study should be seen as a starting point to make some careful predictions about other possible outcomes regarding factors that influence the timely transposition. Therefore, further research with other member states or in other policy areas is explicitly suggested.

Chapter 5: Analysis

In this chapter, first of all the answers to the eight sub questions are given. In a second step, the empirical findings are summarized in a table and at the same time, contrasted to the existing hypotheses derived from the literature. This method will then reveal which variables can explain the delay in transposition or not. These findings are then further analyzed and interpreted. Here, the focus is on possible explanations and relations of the variables which influence the meaning of the findings.

5.1. Answers to the sub questions

The analysis section starts with the answering of the sub questions. In this case this means that the following three subsections are in accordance with the eight sub questions of the bachelor thesis. In order to illustrate the findings some additional information of Germany are given where appropriate.

Member state in relation to the Directive:

1. To what extent does the legal text of the Blue Card Directive fit into the German national legislation?

In order to answer the first sub question which relates to the member state in relation to the directive the focus will be on the scope and novelty of the EU legislation as outlined in the method section and since this gives us information on how much effort a member state has to raise in order to implement such an EU legislation.

To start with, the Blue Card Directive consists of six chapters which deal with the general provisions, the conditions of admission, the European Blue Card, procedure and transparency, the rights of the blue card holders, the residence in other member states and the final provisions (COM, 2009). In the case of

Germany the Blue Card Directive was transposed into the German national law with an implementing law of June 1, 2012, which entered into force on 1 August 2012 (Eisele, 2013). This implementing law contains six articles that requires amendments of the Residence Act, Nationality Act, the social security and other acts (Bundestag, 2012). Among others, there has been a new visa introduced for foreign professionals holding a university degree to look for employment for up to six months. Furthermore, access by foreign students enrolled at a German University to the labour market has been facilitated (Eisele, 2013). In addition, there has been § 19 a integrated, called 'Blue Card EU' which sets out the conditions for a third-national to be met in order to get such a permission (Bundestag, 2012).

Having looked at the implementing law of Germany to transpose the Blue Card Directive one can categorize it, according to the coding scheme, as a moderate misfit. This is due to the fact that, even if is the transposition measure is of high order (law), there has been only one implementing law which contains mainly amendments to the existing national law.

2. *To what extent does Germany deviate from the provisions in the Blue Card Directive?*

The second question which should be answered in order to find an answer to the main research question deals with the incentive to deviate from the provisions proposed in the Blue Card Directive. To give an answer to this two types of materials are used. First of all, a resolution of the German *Bundesrat* regarding the proposed provisions for the Blue Card is chosen. This will then shed light on the EU level as to what has been suggested there. The opinions are summarized in order to show the extent of objections the German political actors involved have regarding this directive. To support the findings and to capture the societal level, German newspaper articles regarding the Blue Card are also summarized and qualitatively examined to the extent Germany expresses objections towards the directive.

To start with, the following summary presents what has been suggested in the meeting of the German *Bundesrat* on the 20th December 2007:

The German *Bundesrat* (2007) admits that the European labour market should be made more attractive for high skilled workers. The market position has to be sustained and further extended. Furthermore, the improvement of the entry conditions for high skilled workers to the European labour market could also fill the upcoming labour shortage in specific sectors (Bundesrat, 2007). In addition, the *Bundesrat* support the competition for the best talents. Moreover, there are in line with the idea to enable high qualified workers, especially scientists and students, a quick and flexible entrance to the national labour market. All this would add to the Lisbon strategy (Bundesrat, 2007).

However, there have also been objections towards the proposal from the European Commission regarding the Blue Card Directive. In their resolution the *Bundesrat* stresses that a selective opening of the labour market is solely an addition and not an alternative to the necessity of qualification and further education of the domestic work force potential. Here, the focus is also on the further education of migrants who already live in the EU. Additionally, the *Bundesrat* refers to the fact that the accommodation capacity is limited. Furthermore, the member states competences and the principle of subsidiarity should be preserved. The politics of the EU should not give an incentive for the massive extension of immigration or the far-reaching immigration of the low-qualified (Bundesrat, 2007). Another point to be considered is that the labour market specific needs of the member states differ and thus EU wide standards should not undermine the principle of subsidiarity and the preservation of competences of the member states. The member states should keep sovereignty in this respect. Concerning the content of the directive the German *Bundesrat* is also quite critical. To be more precise, they are e.g. not in line with the broad definitions of 'high qualified' or 'work experience' which could lead to imprecision and the danger of misuse. These imprecise definitions could also mislead in a sense that high qualified workers will have access to the labour market even if there is potential and qualified work force in the member state (Bundesrat, 2007). Regarding the salary it

would be a wrong signal to stick to the minimum wage rather than to the German average income since this would not be fair regarding the high demand for high qualified workers. Furthermore they refuse the regulation that the competences of the member states, to determine the number of admitted persons to the labour market, will be limited. Rather, they suggest a right for the member states not to introduce a rate. Moreover, the idea that a blue card holder after a two year access in one national labour market can switch to a high qualified employment in another member state is refused by the *Bundesrat* since this would undermine the independent regulations of the other member state. A last point to be mentioned is that there should be a focus on the Brain Drain which could have negative economic consequences for the developing countries which already suffer from an emigration of high skilled workers (Bundesrat, 2007).

In addition to that, the next summary gives an impression of what has been going on the German societal level regarding the Directive. In 2007, EU justice commissioner Franco Frattini stresses the fact that Europe has to be more competitive and that immigration is an inevitable step to fill in the high skilled labour gap. Germany should be more open for immigration but it has to be targeted in a way that it helps Germany to foster the economy (Spiegel 09/2007a). However, this approach was hardly criticized by the German minister of employment Müntefering since this decision should be made with consultation of other actors involved (Spiegel 09/2007b). This opinion is also supported by the Bavarian minister Beckstein who stresses the fact that Germany should keep and support their highly educated employers (Spiegel 09/2007c). In contrast to that the federal research minister Schavan argued that this approach shows that it is a highly important topic and that Germany needs regulations on that (Spiegel 09/2007d). Even after the implementation of the Blue Card in Germany the opinions and the success of the Blue Card are mixed. According to the German magazine 'Wirtschaftswoche' there was only little response and reactions towards the Blue card after a few months of implementation. One major reason mentioned at that time is the image of Germany which suggest an anti-immigrant attitude (Wirtschaftswoche 11/2012).

Having outlined and analysed the resolution of the German *Bundesrat* and the German newspaper articles one can come to the conclusion that Germany overall has had many oppositions against the introduction of the Blue Card Directive and its provisions. Thus, it can be claimed that there is a high incentive to deviate.

Directive:

3. *How much discretion does the Blue Card Directive grant Germany?*

The first variable which deals with the directive is the discretion which is given by the directive to the member states to find a way to implement the measures.

Having conducted the kind of analysis as outlined in the method section it can be first of all stated that they have been 42 (sub) articles identified which all refer somehow to the discretion of the member state. Within these 42 (sub) articles they have been 34 open statements which grant member statements freedom for implementation and only 8 closed statements which issued restrictions or guidelines for the member states. Using the index for the discretion of the directive, the value is 0, 81. Relating this value to the coding scheme one can categorize the Blue Card as a directive with a high level of discretion.

Relating this discretion to the case of Germany it can be said that they take advantage of it in different ways. To begin with, Germany chose to transpose this directive with an implementing law to make amendments to the existing national legislation (Eisele, 2013). Further, one major freedom of choice is given regarding the determination of the volume of admission of third country nationals as outlined in Article 6 of the Directive (COM, 2009). This freedom is particularly welcomed by Germany since they are in favour of a selective opening of the labour market and that the education of domestic workforce should be given priority (Bundesrat, 2007). Another condition which Germany was free to set refers to the criteria's which a blue card holder have to meet as set out in Article 5 of the directive (COM, 2009).

For example, if a Blue Card holder wants to get a settlement permit already after 21 months of legal unemployment, s/he has to proof German language skills of level B1 (Eisele, 2013). Regarding the salary threshold there is also some freedom given. The applicants in Germany need to have a university degree and a proof of earnings of at least €44,800/year (instead of €63,300/year under national policy) (Cerna, 2013b).

4. *To what extent can the Blue Card Directive be described as a long directive?*

Regarding the second question related to the directive itself it can be first of all stated that the directive consists of five main articles, namely the general provisions, the conditions of admission, the European Blue Card, procedure and transparency, the rights, the residence in other member states and the final provisions (COM, 2009). Furthermore, there are also the recitals in the beginning of the directive. Recitals are so specific that they have become almost a third kind of 'law-making'. They state the purpose of the directive and describe each of the main provision of the directive (Kaeding, 2006).

Regarding the Blue Card Directive it can be said that it has 29 recitals. Thus, the conclusion is, with the help of the coding scheme developed which is based on the study by Kaeding (2006), with a number of 29 recitals it has the minimum number of being categorized as a long directive. These recitals then have to be incorporated into the German national legislation. This incorporation has been done through an implementing law which contains six articles that requires amendments of the Residence Act, Nationality Act, the social security and other acts (Eisele, 2013).

Member state:

5. *What is the level of centralization in a state like Germany?*

Concerning the case of Germany it can be said that it has been classified with a 5 regarding their level of decentralization (Lijphart, 2012). Thus, Germany can clearly be seen as a federal and decentralized state. This is also the judgment about Germany as a state regarding this variable. This implies that in Germany, formal political authority is shared between levels of government and a lot of cooperation is needed when implementing EU Directives.

6. *To what extent are social partners embedded in the German national policy-making process?*

Looking at the excerpt from the table regarding the agreed corporatist ranking, which displays the relevant part for this study by Siaroff (1999), it can be recognized that Germany has been categorized as a nation considered to be moderately-to-strongly corporatist with a value of 3.543. Since this study differentiate between corporatist and pluralist, on the basis of this table, one can judge Germany as a corporatist state.

<i>Nations considered to be strongly corporatist:</i>				
Austria	5.000	0.000	(23)	+1.600
Norway	4.864	0.351	(22)	+1.531
Sweden	4.674	0.556	(23)	+1.396
<i>Nations considered to be moderately-to-strongly corporatist:</i>				
Netherlands	4.000	0.989	(23)	+1.006
Denmark	3.545	0.999	(22)	+0.518
Germany (West)	3.543	0.940	(23)	+0.480
<i>Nations considered to be moderately corporatist:</i>				
Finland	3.295	1.043	(22)	+0.427
Belgium	2.841	0.793	(22)	+0.258
<i>Nations considered to be weakly or only somewhat corporatist:</i>				
Ireland	2.000	1.015	(18)	-0.528
New Zealand	1.955	0.907	(11)	-1.106
Australia	1.688	0.873	(16)	-1.025
UK	1.652	0.818	(23)	-0.862
Italy	1.477	0.748	(22)	-0.851

Table 3: Excerpt from the agreed corporatist ranking, Source: Siaroff, A. (1999). Corporatism in 24 industrial democracies: Meaning and measurement. *European Journal of Political Research*, 36(2), 175-205.

Since there is a high level of corporatism identified in Germany it is worthwhile looking at statements of German trade unions regarding the proposed Blue Card Directive. The so called *Deutscher Gewerkschaftsbund* (DGB) directorate is not in line with the assumption of the Commission that there is an existing labour shortage in the countries. However, the DGB admits that the migration flows have to be controlled. Though, it still sees the admission criteria's as too vague. Further, the DGB is also in favour to let the member states decide on the volume of admissions. Regarding the discretion granted it is, according to the DGB, questionable if it is not getting too much which leads to too much confusing and ambiguity (Deutscher Gewerkschaftsbund, 2008).

7. How much administrative capacity does Germany as a member state have?

In the following the data on Germany's governmental effectiveness over the period from 1996 - 2012 is presented:

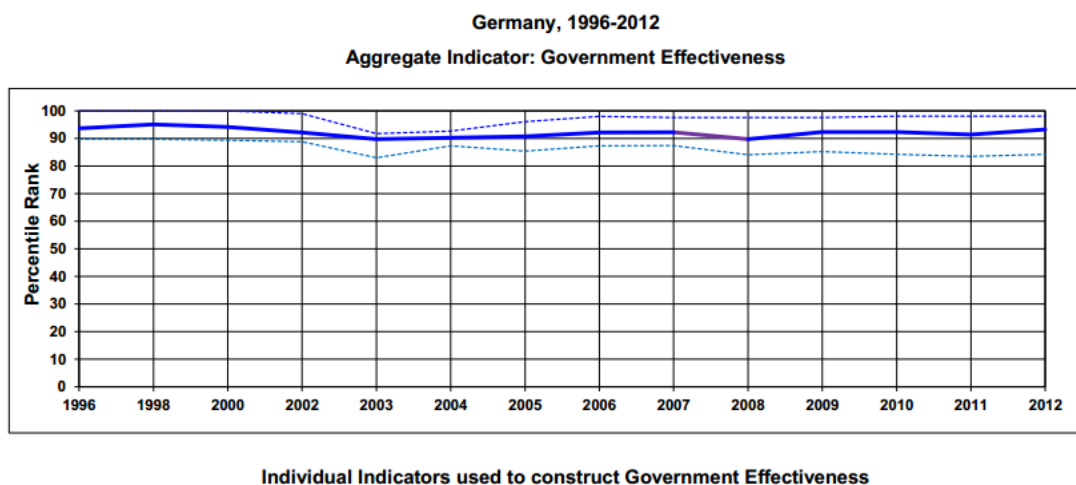


Table 4: Government effectiveness of Germany, time period: 1996 – 2012
Source: <http://www.govindicators.org>, Country Data Report for Germany, Aggregate Indicator: Government Effectiveness

As it can be clearly seen, over time there have been relatively stable and high values on governmental effectiveness in Germany. On the basis of the coding scheme one can make up the assumption that Germany can be categorized as a state with a high governmental effectiveness which is able to transpose EU legislation on time.

8. *In which world of administrative culture can Germany be classified?*

Concerning the case of Germany, Falkner (2007) categorize it as being in the world of domestic politics when it comes to the compliance with EU legislation. This means that Falkner (2005) suggests that the transposition of EU legislation is typically on time and correct if there is no conflict with domestic concerns. This finding suggest that, in general, Germany has a tendency to transpose EU legislation with some delay.

5.2. Comparison of the findings with hypotheses

Having coded the data for the analysis and, on the basis of that, given answers to the eight sub questions, the following table will summarize the findings for clarity. In addition, and for the purpose of analysis, the hypotheses derived from the theory are also presented at this point. In the third column a preliminary conclusion as to the question if this variable can explain Germany’s delay in transposition is presented.

	Hypotheses regarding the compliance ⁴	Findings regarding the directive and member state	Can this variable explain Germany’s delay in transposition?
Misfit	The more adjustments to be made, the lower level of compliance	Moderate misfit	NO
Incentive to deviate	The more objections by Germany, the lower level of compliance	High incentive to deviate	YES
Discretion	The more discretion given by the directive, the higher the level of compliance	High discretion	NO
Length of the directive	The more major provision in the legislative text, the lower the compliance	Long directive	YES
Centralization	The more centralized a state is, the higher the level of compliance	Decentralization and federalism	YES
Corporatism	The higher the level of corporatism, the higher the level of compliance	Corporatist	NO
Administrative capacity	The more administrative capacity, the higher the level of compliance	High administrative capacity	NO
Administrative culture	Ranking the three different worlds, the lower/higher level of compliance	World of domestic politics	YES

Table 5: Comparison of the findings with the hypotheses derived from theory

⁴ Again, it is referred to the transposition phase and whether or not Germany complied on time when talking about the level of compliance

Description of the findings

As it can be taken from the table presented above, the findings of the comparison are as follows: Concerning the first two variables which relate to the member state in connection with the EU Blue Card Directive the findings suggest that there is only a moderate misfit between the Blue Card Directive and the German national legislation. Thus, it can be concluded that this variable cannot really explain the delay in transposition since it is hypothesized that if there are far reaching adjustments to be made, the lower level of compliance. The second variable which has been tested is the incentive to deviate. Having tested this variable it becomes clear that Germany had a high incentive to deviate from the context of the Blue Card Directive. Consequently, this finding is in line with the stated hypothesis in the literature which claims that if there is a high incentive to deviate, there is a lower level of compliance. Regarding the two variables that relate to the directive itself it has been found out that the Blue Card Directive grants member states a relatively high level of discretion. Therefore, this variable can be regarded as not explaining the transposition delay since it is claimed that the more discretion is granted the more likely it is that a member state complies sooner.

Having measured the length of the directive it can be described as a long directive. This is then again in line with the stated hypothesis that the longer or more detailed a directive is, the more time it takes to comply. The last four variables then all relate to the settings of the member state. In this study, Germany as a member state has been under investigation. The results show that Germany is a federalist and decentralized state. This findings implies that it is corresponding to the hypothesis. Reframing the hypothesis it can be said that a more decentralized state is less likely to transpose on time. Findings on the question of Germany as a corporatist state or not reveals that Germany has a high level of corporatism. This finding then implies that it is not in accordance with the hypothesis since it is stated that the higher the level of corporatism, the higher the level of compliance. Next to the last variable, we have the administrative capacity of Germany. The findings suggest that Germany has a high administrative capacity. This again is another finding contradicting to the hypothesis in the EU compliance literature where it is stated that a high administrative capacity suggests a high level of compliance. The last variable test is the one of administrative culture. Since Germany can be classified as a member state in the world of domestic politics this findings is then yet again in line with the stated proposition of a medium level of compliance.

All in all, this gives us a mixed picture of the eight variables tested. However, these findings are further discussed and elaborated in the next section.

5.3. Discussion

Having described the comparison for the study attention is now drawn to the interpretation of these findings. In order to grasp a better picture of the findings, one should consider some interesting and influential relations amongst the variables in more detail. In addition, one should also look at the relatively importance of each variable and they debatable directions of effectiveness.

To start with, the relation between the variable misfit and the length of the directive should be further investigated. In the literature it has been debated whether or not the length of the directive is a good indicator for the transposition delay or not (Thomson, 2009). However, if we relate the length to the misfit it can be said that, even if we have a detailed legislation which require a lot of changes, this does not necessarily mean that there is a big misfit. Applying this relation to the study at hand it becomes clear that, even if we have a directive that is judged as long, the misfit in this case is relatively moderate. Germany in this case transposed the Blue Card Directive with one implementing law (Eisele, 2013). Thus, taking into account that misfit is seen as a more important variable than the length, one could assume that there might be a delay in transposition but this finding has to set into relation to other factors.

This brings us to another interesting relation, which is also connected to the first one, and which should be looked at is the one between the misfit and discretion granted. Given the fact that in this study about Germany's Blue Card transposition there has been a moderate misfit but a relatively high level of

discretion identified one can conclude that these findings corresponds in a way that this constellation is likely to lead to a timely transposition of the Blue Card Directive. This is due to the assumption that with much discretion granted, it is more likely that broader ranges of policies at the national level are consistent with their provisions (Thomson, 2009). This could balance the moderate misfit.

To go further, the interrelation between the length, misfit and discretion can also be related to the administrative capacity of Germany which has been judged as quite high in this study. Thus, one can conclude, that the relatively high level of administrative capacity builds a good basis for a timely transposition which can easily handle the relatively moderate misfit but also the incorporation of the detailed changes should not be a problem when equipped with such a capacity. Moreover, the high discretion granted suggests that more national policies are in line with the directive.

Further, it is claimed that the more decentralized a state is, the more likely it is that there is a delay in transposition since more coordination is needed (Thomson, 2009). Since Germany has been categorized as a federalist and decentralized state, delay in transposition is quite likely. However, despite this fact there has also been a high level of administrative capacity been identified. Looking at this relation, one can conclude that the fact that Germany is decentralized cannot really explain the delay in transposition since the findings on the other state characteristic reveals that they have the capacity to do so.

However, one should also shed light on the relation between the incentive to deviate and discretion. Both variables are regarded as important explanatory variables in the EU compliance literature (Thomson, 2009; Steunenberg & Toshkov, 2009). In this study Germany has a high incentive to deviate from the Blue Card Directive proposal. This stands in contrast to the relatively much discretion granted by the directive since generally, more discretion is appreciated by the member states, especially since member states do not want the EU to get too much involved in their migration schemes (Gümüs, 2010). Thus, it is be reasonable to assume that the directive should be more welcomed than it is now.

Nevertheless, some possible explanations may be found in the categorization of Germany in the world of domestic politics which sets out that within this world, there will only be a correct and timely transposition if there is no conflict with national concerns (Falkner, 2005). National concerns on behalf of Germany are, for example, that Germany want to keep sovereignty regarding the labour migration area (Cerna, 2013). Furthermore, the effectiveness of such a Card is also questioned (Gümüs, 2013). Thus, a delay in transposition of the Blue Card could be due to the fact that Germany's national concerns were given priority over the timely transposition. In connection to that, labour migration regulation is a quite sensitive policy field and Germany has long struggled with the notion of being a migration country (Green, 2013). This makes it even more likely that Germany has a transposition delay.

Another interesting relation which should be looked at in this respect is the one between the high incentive to deviate and the high level of corporatism. Despite the fact that it is argued that a high level of corporatism makes it more likely to transpose on time (Thomson, 2009) this seems different in the case of Germany's Blue Card Directive transposition. This is due to the fact that strong corporatist systems can also block policy change (Thomson, 2009) which could also hamper the timely transposition. Looking at the opinions of the German trade union one can see that they are e.g. not in line with the labour shortage identified by the Commission (Deutscher Gewerkschaftsbund, 2008). The overall negative position regarding the inflow of migrants may support a transposition delay. Thus, the world of domestic politics and the strong corporatism combined would rather suggest a transposition delay with regard to the Blue Card Directive.

Final judgement

To conclude this section, Germany can be regarded as a state which is in principle able to transpose EU legislation on time even if there are some limitations to that. These state characteristics are not easy to change immediately or change depending on the type of EU legislation to be adopted. Thus, one cannot find here the main reasons for the transposition delay. Consequently, more attention should be drawn to Germany and its preferences regarding the (content of) the directives to be transposed. The high

incentive to deviate could be related to the fact that Germany has long struggled with the notion of 'being a country of immigration' (Green, 2013). Furthermore, since the Blue Card Directive touches upon the labour migration policy area, this makes it even more likely that Germany has a lot of objections regarding the proposal of the directive.

Chapter 6: Conclusion

This last chapter then finally gives an answer to the main research question of this study. Here, attention is also drawn to the implication of the answer. Next to that, the focus will be on the limitation of this study. In the end, there will be some recommendations given as what has to be considered when a correct and timely transposition is desired. In addition, some recommendation for future research directions are given.

6.1. Answer to the research question

To recap the main research question the purpose of this study is to find an answer to the question:

Which factors explain Germany's transposition delay of the Blue Card Directive?

Looking at the results, and on the basis of the comparison, it can be stated that they are two preference related variables, namely the high incentive to deviate and the fact that it is a quite detailed directive, which can explain the delay in transposition. Furthermore, two state related variables, namely the relatively low level of centralization and the administrative culture Germany has been categorized to, may explain the delay in transposition. In contrast to that, the relatively moderate misfit between the EU and national legislation and the high discretion given by the directive would rather propose a timely transposition. Moreover, the high level of corporatism and the high level of administrative capacity also suggest a rather timely transposition.

These findings offer a mixed picture. Having tested eight potentially explanatory variables there are only four of them that could explain the delay in transposition. Nevertheless, these findings should also be treated with caution since one always have to see them in relation to and how they influence each other. Furthermore, some variables are more important or better in the explanation of the transposition delay than others. These considerations have been outlined in the previous discussion section.

On the basis of this discussion it can be concluded that, first of all the relatively detailed legislation and the moderate misfit in combination might lead to a transposition delay. However, the moderate misfit in relation to the high discretion given supports the idea that EU legislation can be adopted on time. However, combining the three variables and setting them into relation to the high administrative capacity of Germany makes it more advantageous for a timely transposition.

Furthermore, this high administrative capacity can ease the fact that Germany is a decentralized state. Even if decentralization makes a transposition delay more likely, the capacity is there to transpose on time. However, one has also to consider that, even if there is a high discretion granted, there is still a high incentive by Germany to deviate. The incentive to deviate then might be explained by the worlds of compliance typology which emphasis the fact that member states tend to deviate if there are more important national concerns than the transposition of EU legislation (Falkner, 2005). Another explanation could be the fact that Germany is a strong corporatist state which has the power to block policy change if they are not in line with the proposed directive (Thomson, 2009).

With the findings of this study one can add another contribution to the discussion of whether the delay of transposition of EU legislation can be more explained by preference based or state based explanations. In this case, the focus should be more on the state's preferences since Germany had many objections which has a high influence on the transposition.

6.2. Limitations of the research

Nevertheless, one also has to take into account that this study takes the form of a case study. This implies that, even if the state based explanatory variables can be used to determine Germany's settings, especially the incentive to deviate from the content of the directive and the misfit with national legislation have to be considered as relatively individual since it is quite likely to differ regarding the policy area and the efforts which have to be made for the incorporation of the different types of EU legislation into national legislation. Further, it is also puzzling then to generalize these findings to other policy areas where Germany is supposed to transpose EU legislation. Moreover, it will also be challenging to generalize them to other member states regarding their EU Blue Card Directive transposition. This is one of the major limitation of this kind of research design. In addition, it also has to be repeated that this study mainly looked at the transposition phase of the EU legislation implementation within the compliance context. However, this decision is based on the work by Treib (2006) that this phase reveals the possible tensions between EU and national interests better than the enforcement and application phase. Furthermore, having tested eight variables in this study, there could also be other variables included, for example, more focus could be on the supranational level or on difficult procedures in further study which might influence the timely transposition. These findings then also have to be read with the knowledge in mind that Germany long struggled with the notion of being a country of migration. This is an influential factor regarding a directive which is quite demand-driven and touches upon the labour migration policy field.

To conclude, this case study of Germany with its Blue Card Directive transposition should be seen as a starting point and an incentive for further investigation. This study then has its focus solely on Germany and not to give conclusions about other member states' reasons for timely transposition.

6.3. Recommendation / future research

Since this analysis yields at the EU Blue Card Directive transposition in Germany and the factors that might explain Germany's transposition delay of the Blue Card there can be some recommendations given to improve the situation of the member states with regard to their right to keep some control of labour migration legislation but also for the EU and its attempts to create some common and harmonizing policies. In addition to that, this section also outlines some several other directions where more research could be done in order to raise more awareness but also understanding of the complex transposition of EU legislation.

To start with, the EU always has to take into consideration that, even it is a Union, it consists of nowadays 28 different member states which all have different conditions and preferences. Thus, creating harmonizing policies which should be implemented equally over all the member states and with the same effectiveness is relatively hard to achieve. This can also be recognized by the four explanatory variables tested regarding the state settings where in the case of Germany it has been revealed that there is a potential capacity to transpose an EU legislation on time. However, not all of the 28 member states have the same capacities to do so and thus, there will be problems occurring which could hamper the timely transposition of harmonized policies.

Furthermore, given the fact that the policy decisions nowadays are more and more made on the supranational level, makes it hard for the member states to keep some control of their policies. On the one hand, it is valuable that the EU tries to equalize policies and set some common standards. On the other hand, there will always be concern on behalf of the member states since EU legislation is likely to mismatch with national legislation. When thinking about these disputes one also has to have the actual objective of the Blue Card Directive in mind. It is questionable if the attractiveness of the EU for high skilled immigrants will increase if there are 28 different admission systems (Wiesbrock et al, 2012). Looking at the purpose of the Blue Card Directive, namely attracting high skilled migrants and thus strengthen the EU's position in the global competition, there should be an emphasis for the EU and the member states to work together since all would benefit from this. However, this still seems to be a

difficult task since the member states also have their own policies and programs with regard to labour migration. Furthermore, the success and the added value of the Blue Card is questioned (Gümüs, 2010). This question of the added value can also be connected to the Green Card initiative in Germany which already had the scope to attract high skilled workers for the IT sector. However, there are several reasons for its failures (Bauer et al, 2004) and the future will show whether or not the Blue Card will attract more high skilled immigrants than other efforts, like the Green Card, before. However, questioning this added value would again hamper the collaboration between the EU and the national level since there has already been a scheme to attract high skilled migrants.

The effective implementation of EU Blue Card then could also increase the awareness by the member states that they are more successful when working and cooperating with the EU level. This in turn would also be beneficial for the European integration process since the understanding of the factors which have an influence on the correctly and timely transposition of the EU legislation would help to improve and speed up the EU integration. This would then also strengthen Europe's position in the world.

In order to further understand and with that to improve the tension between EU and national level regarding EU legislation transposition more research could be first of all done in the field of the Blue Card Directive. This is due to the fact that this study just gives some tendencies that the labour migration policy field is a quite sensitive one. More research in that direction would generate more knowledge and thus more understanding regarding the Blue Card. This makes the case study of Germany also more valuable and moreover comparable with other member states transpositions. They could also disclose if some variables are more important or influential for other member states on the timely transposition. This can be done by, for example, investigating the Blue Card transposition in the other member states in more detail to see to what extent they appreciate this directive and to further understand if and what concerns they have regarding this directive. The example of the Green Card initiative in Germany already represents efforts to attract high skilled immigrants. Comparing the scope and success of the Blue Card and the Green Card in Germany could reveal if the Blue Card has an added value. Thus, studies could show if national programmes are more successful than EU initiatives. With that, one could also find reasons as to why EU programmes are not that welcome if there are successful national schemes.

Coming back to the EU legislation transposition itself it would also be interesting to further investigate the possible transposition delays of Germany in other policy areas. Here, one could make up some other conclusions to the extent of Germany's compliance with EU legislation in other policy areas since the state settings are likely to stay the same but other directives from the same policy area or others are likely to reveal another degree of EU legislation compliance by Germany.

To come to a conclusion it can be said that the EU legislation transposition research field is a quite interesting one to do research on since it often discloses many new findings as to why member states have difficulties to transpose these legislations on time. Moreover, concerns about the legislations proposed by the EU are also revealed. This shows that one of the biggest tasks of the EU is to reconcile all the needs and wishes of their 28 different member states when developing new policies. At the end, this should lead to some common policies with which each of them should live with. This is also essential to achieve when considering the overall and common goal of being an attractive destination for high skilled workers, and with that becoming the most competitive and dynamic knowledge-based economy in the world.

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Appendix

Appendix 1: Operationalization table of the eight explanatory variables

Characteristics of m/s vs directive (1,2), Directive (3,4), m/s (5,6,7,8)	Operationalization How to analyse the data?	Operationalization: Measurement level	Main source of information
1) (Legal) misfit	Determine the novelty and scope of legal change	Ordinal: small, limited, moderate and high	Type of EU legislation, changes in the national legislation as outlined by the implementation law of the German <i>Bundestag</i>
2) Incentive to deviate	Analysing if there are many objections on behalf of the German political actors involved (latent content)	Ordinal: low, medium, high incentive to deviate	Resolution by the German <i>Bundesrat</i> regarding proposal for the Directive and additionally press releases from German newspapers concerning the Directive
3) Discretion	Counting the number of relevant provisions that either grant member states discretionary powers or impose restrictions, then contrast them	Ordinal: low, medium, high according to discretion ratio	Relevant provisions of the Blue Card Directive 2009/50/EC
4) Length of the Directive	Figure out if the directive has a large number of recitals which may require more detailed change in national law	Ordinal: Low, medium, high according to number of recitals	(Number of recitals in the) Blue Card Directive
5) Centralization	Applying Lijphart's measurement of federalism	Dichotomous: unitary or federalist state	Lijphart, A. (2012). Patterns of democracy: Government forms and performance in thirty-six countries. Yale University Press, chapter 10 on federalism and decentralization
6) Corporatism	Applying Siaroff's quantitative index of states' degrees of corporatism	Dichotomous: corporatism or pluralism	Siaroff, A. (1999). Corporatism in 24 industrial democracies: Meaning and measurement. <i>European Journal of Political Research</i> , 36(2), 175-205.
7) Administrative capacity	Using the relative 'government effectiveness' of typology developed by the World Bank	Ordinal: low, medium, high level of governmental effectiveness	Existing typology of World Bank, www.govindicators.org , Country Data Report for Germany
8) Administrative culture	Applying Falkner's three worlds of compliance	Ordinal: Low (world of neglect), medium (world of domestic politics) and high (world of law observance)	Falkner, G. (Ed.). (2005). <i>Complying with Europe: EU harmonisation and soft law in the member states</i> . Cambridge University Press.