

Compliance with EU Labour Migration Policy

A case study on the EU Blue Card Directive

Master thesis

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Abstract

Migration is generally a highly politicised issue for which states claim exclusive authority. It is perceived as a core task for every state to maintain control over the admission of migrants to its country. High-skilled labour immigration policy is yet a noncontroversial issue. Due to negative demographic developments in industrialised countries, the increasing demand of high-skilled workers has led to an international race for the best and brightest. Also European countries increasingly face shortage of skilled labour. At the EU level, the demand for high-skilled workforce has led to the adoption of the Blue Card Directive in 2009 which regulates the admission of high-skilled third country labour. Aiming at attracting high-skilled labour from around the world, many Member States had however difficulties to comply with the Blue Card Directive. While there is no dominant explanation for Member States' compliance or noncompliance, the academic debate highlights several factors that can account for it. This case study aims at assessing the explanatory power of three of them: the policy misfit, the veto player argument and the influence of interest groups. Using a congruence analysis approach and process-tracing, the three concepts are tested on their explanatory power regarding the compliance outcome in four European Member States, namely Austria, Belgium, Germany and the Netherlands. The findings show that none of the selected compliance theories has a strong explanatory power. Rather, the reasons for noncompliance highly differ among the tested Member States. In two cases, the reasons for noncompliance even lie outside of the tested theoretical expectations. Moreover, the findings highlight that employers' associations and trade unions had considerable influence in the policy-making process in two countries. In addition to that, the findings suggest that Member States still have very different approaches towards the openness or restrictiveness of highly skilled migration policy.

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List of abbreviations

AufenthG	Aufenthaltsgesetz (Residence Act)	FDP	Free Democratic Party
AuslBG	Ausländerbeschäftigungsgesetz (Aliens Employment Act)	FPÖ	Austrian Freedom Part
BAK	Federal Chamber of Labour	FrÄG	Fremdenrechtsänderungsgesetz (Rights of Foreigners Amending Act)
BDA	Confederation of the German Employers' Associations	HSI	Highly-skilled immigration
BDI	Federation of German Industries	ICT	Intra-Corporate Transferee
BeschV	Beschäftigungsverordnung (Employment Regulation)	IND	Immigration and Naturalisation Service
BM.I	Federal Ministry of the Interior	IOM	International Organisation for Migration
BMJV	Federal Ministry of Justice and Consumer Protection	IV	Federation of Austrian Industry
BZÖ	Alliance for Austria's Future	NAG	Settlement and Residence Act
CU	Christian Union	NGO	Non-governmental organisation
CDA	Christian Democratic Appeal	OECD	Organisation for Economic Cooperation and Development
CDU	Christian Democratic Union	ÖGB	Austrian Trade Union Federation
CSU	Christian Social Union	ÖVP	Austrian People's Party
Destatis	German Federal Statistical Office	PvdA	Dutch Labour Party
DGB	Federation of German Trade Unions	QMV	Qualitative majority voting
DIHK	German Chamber of Commerce and Industry	SPD	Social Democratic Party of Germany
ECJ	European Court of Justice	SPÖ	Social Democratic Party of Austria
EMN	European Migration Network	TCN	Third-country national
EP	European Parliament	WKÖ	Austrian Federal Economic Chamber
EU	European Union		

1 Introduction

Demographic change is a challenge that all European countries currently face. Although demographic trends vary per country, the working-age population in each European Member State is either peaking or already declining. The general increase of the old-age dependency ratio, declining fertility rates as well as the shrinking workforce are not only decreasing the stability of national healthcare or pension systems (Delivorias and Sabbati, 2015). According to forecasts, the declining population growth and the thereby arising efforts to increase productivity will eventually lead to an excess demand for high-skilled labour. Compared to the expected supply, lower- and especially medium-skilled labour will however be less in demand (Dobbs et al., 2012; Delivorias and Sabbati, 2015). This skill imbalance and the subsequent ‘unmet skill demand’ of highly skilled workers is estimated to heavily affect Europe’s economic output and global competitiveness. According to the Organisation for Economic Cooperation and Development (OECD), the growing shortage of high-skilled workers in the European Union (EU) is expected to lead to more than 100 million open vacancies between 2013 and 2025 (OECD and EU, 2016, p. 33-35).

Indeed, the implications of demographic change have also been long known and discussed at the European level. Already at the Tampere meeting in October 1999, the call was made for a common immigration policy to address negative impacts on the European economy. Setting the political route for migration policy, the Council meetings in Tampere as well as in The Hague introduced multi-annual programmes pursuing the harmonisation of immigration policy at the European level (Hansen, 2016). The first and also one of the publicly most-known directives regarding European labour migration policy is the EU Blue Card Directive. Adopted in May 2009, it aims at attracting high-skilled third-country nationals (TCNs) to the EU by offering favourable conditions in terms of entry, residence and mobility (OECD and EU, 2016).

Since the adoption, Member States were supposed to transpose the Directive into national law until 19 June 2011. However, the European Commission sent letters of formal notice to 18 Member States and issued reasoned opinions to eleven of them (see table 2). Both actions are part of the official infringement procedure the Commission can initiate against Member States that are detected being non-compliant with EU legislation. Nevertheless, it was only in August 2013 that the last Member State transposed the Directive into national legislation, more than two years after the official deadline expired. Next to the enormous delay in transposing the Directive, the EU Implementation Report of 2014 also pointed out that several countries were still not fully compliant with all set requirements (European Commission, 2014).

In fact, the process towards a common EU migration policy has been slow and highly contested. While there is a “distinct rationale” regarding the delegation to the EU level for every specific group of migrants (Cerna, 2013, p.2), high-skilled migration is however perceived as the least controversial issue among the different migrant categories. Additionally, Member States are increasingly interested to compete in the global race for “the best and brightest” (Ibid.) to increase their human capital and to manage skill shortages. Regarding the above described implementation problems of many Member States concerning the Blue Card Directive, it would therefore be interesting to analyse why so many Member States had difficulties to implement this directive and which factors led to a high or a low level of compliance.

In the next section, the societal and scientific relevance of this research is explained in more detail. Thereafter, the concrete research question will be defined.

1.1 Relevance of research

Scientific relevance

Since the Blue Card was adopted in 2009, it has already been part of many studies. Still, most of the research merely focuses on two areas: (1) the evaluation of the attractiveness and the functioning of the Directive (see e.g. Gümüs, 2010; Cerna and Chou, 2014; Eisele, 2013; Mosneaga, 2012; Wogert & Schüller, 2011) and (2) comparisons of the Directive with already successfully implemented highly skilled immigration (HSI) policies of the United States, Canada and Denmark (see e.g. Isaakyan & Traindifyllidou, 2013; Carrera, Guild & Eisele, 2015; Wind & Adamo, 2015).

In contrast, this study will focus on Member States’ compliance regarding the Blue Card Directive which has not been studied in-depth yet. Why do some states comply with the Directive while others fail to implement it correctly? Based on existing theoretical approaches, the thesis seeks to understand which factors influence compliance and noncompliance of Member States regarding labour migration policy and which theories offer the best explanatory power.

The academic discussion offers a variability of theories explaining compliance and noncompliance but research is mostly focused on EU policy in the field of social and environmental policy (Treib, 2014, Schmälter, 2017). Thus, it is important to evaluate if the

existing concepts are also applicable to the field of labour migration policy, if theories need to be adjusted or if a completely new approach is necessary.

Societal relevance

Bouter (2010) argues that scientific research has to “make a noticeable contribution to public opinion or political decision-making” (p.10). Moreover, research has to foster the understanding of “societal sectors and practises [...] and the goals they aim to achieve and to resolving problems and issues” (Van der Meulen, 2010, p. 10).

The chosen research topic is societally relevant with regard to current developments. In June 2016, the Commission proposed a revision of the EU Blue Card scheme (European Commission, 2016). Interestingly, the revision has to be adopted with a different voting system. Since the Lisbon Treaty in 2009, the area of asylum and immigration policy implies a qualitative majority voting (QMV) and the ordinary legislative procedure, which gives co-decision power to the European Parliament (EP). On the one hand, this could increase the chance of adopting the Commission’s proposal of a revised Blue Card scheme, because coalition formation in the Council is more likely, the number of veto players is reduced, and the power is taken away from governments with rather extreme positions (Hix and Høyland, 2011). On the other hand, this could also influence the compliance of Member States (Falkner et al., 2005). Mosneaga (2012) points out that case studies have shown a huge difference in Member States’ levels regarding readiness and openness towards HSI policy. Therefore, it is crucial to analyse which individual factors influenced compliance and noncompliance of certain Member States and to take this knowledge into account when discussing a revision of the scheme. This could help to increase the level of compliance and thus strengthen the attractiveness of the Blue Card compared to already successful migration schemes of the US and Australia, ensuring to establish a system that can successfully cope with the expected and already existing labour market shortages within the EU.

1.2 Research question

With regard to the shortcomings of scientific research and the relevance for society as stated above, this thesis aims to analyse which theory of compliance has the best explanatory power regarding labour migration policy. Therefore, the research question that will be examined is:

RQ: How can the different outcomes in Member States' compliance on the EU Blue Card Directive be explained?

1.3 Structure of thesis

Subsequent to chapter 1, which introduced the research topic of the thesis and stated the research question, chapter 2 will give a deeper understanding of HSI and the Blue Card Directive, including the development, the main aims and the legal requirements of the Directive. Thereafter, chapter 3 will review the broad literature on compliance. Following this groundwork, the theoretic framework and the theoretical predictions are established in chapter 4. Based on that, chapter 5 will discuss and select the most suitable research design, operationalise the chosen concepts and will describe the case and data selection. The subsequent part will then consist of the analysis, the core of the study. After the observations are outlined in chapter 6, the findings will comprehensively be discussed in chapter 7. Lastly, chapter 8 will answer the stated research questions as well as highlight limitations of the study and possibilities for further research.

2 High-skilled labour immigration and the European Blue Card Directive

After a general introduction into the topic and the research question, the next section will give an overview and deeper understanding of HSI and the policy in question, the EU Blue Card Directive (Directive 2009/50/EC). To this end, the chapter will provide insights into the development of the EU Blue Card Directive by examining the development of the EU migration policy, the process of decision-making of the Blue Card Directive as well as pointing out the main aims, key discussion points of the policy and the legal requirements.

2.1 Highly skilled immigrants and HSI policy

According to Cerna (2016), there is no universal definition of highly skilled immigrants existing. Still, there are three factors that appear to be relevant in every definition: tertiary education, as well as above-average occupation and salary. Importantly, these categories can overlap.

HSI policy of states can be defined by its openness or restrictiveness regarding the admission mechanisms, the selection policies as well as the rights that are finally granted to admitted migrants. There are two common admission systems: the demand-based (employer-based) system, implying that an employer is seeking to fill an open position; and the points-based (criteria-led) system, in which a migrant is not admitted based on an existing work contract but solely by his qualifications. Restrictiveness of HSI policy is illustrated by low numbers of admission, strict labour market protection or special protective measures for the domestic workforce. Moreover, states can introduce admission volumes, labour market tests and labour protection to restrict the admission. Regarding work permit rights granted to immigrants, the openness or restrictiveness of a HSI policy is defined by employer portability, the possibility to gain a permanent resident right and the spouse's right to enter the labour market, too (Ibid.).

2.2 Development of EU Labour Migration Policy

Labour migration has been an issue since the beginning of the European project. Regarding the harmonisation of labour migration concerning TCNs, the first step was done in 1992 with the Maastricht Treaty. In the Treaty, the Member States identified a common interest in setting conditions for TCNs' entry, movement and residence (Olsson, 2016). In preparations for the

Treaty, national ministers of immigration had already stated their aim to harmonise domestic legislation regarding admission of TCNs in a work programme in 1991.

However, it took until the Amsterdam Treaty in 1997 for further progress in harmonisation. In 1994, the Council of Ministers already adopted a non-binding resolution on rules of admission for TCNs and in 1997, the European Commission presented a proposal for a Convention that was however dropped later. According to Olsson (2016), these early initiatives reflect that Member States saw “little need” for the migration of TCNs. However, until 1999 and the Amsterdam Treaty, the situation for labour migration fundamentally changed. While the beginning of the 1990s was still marked by high unemployment and asylum seeker numbers, at the end of the 1990s the amount of asylum seekers and the level of unemployment in Europe fell while the number of labour migrants continuously rose. Therefore, the Treaty, aiming at establishing an area of freedom, security and justice also announced the development of a common EU migration and asylum policy. However, the prospect of developing a common migration policy was a highly controversial issue among the Member States and eventually led to special provisions of opposing Member States, namely the general opt-out of Denmark and optional opt-outs of Ireland and the UK in the field of migration (Ibid.).

The meeting of the European Council in Tampere in 1999 marked a historical step. Being the first meeting on Asylum and Migration policy, central points of discussion were the enhancement of judicial cooperation and criminal prosecution as well as the creation of a common asylum and migration policy. Regarding the common treatment of TCNs, the European Council stated that it “[...] acknowledges the need for approximation of national legislations on the conditions for admission and residence of third country nationals” (European Council, 1999). However, the stated goal to develop a legislative framework proved difficult due to the highly diverging views of the Member States.

The first legislative attempt of the Commission to harmonise the treatment of TCNs was presented in 2001. The proposal intended to set out “conditions of entry and residence for third-country nationals for the purpose of paid employment and self-employed economic activities” (European Commission, 2001). The proposal led to huge criticism because it applied the same conditions to all third-country nationals and did not differentiate between qualifications. The continuing critique subsequently led to a withdrawal of the proposal in 2006 (Procedure 2001/0154/CNS). Nevertheless, at the same time, the Commission also discussed the conditions for long-term residents which appeared to be easier to agree on. In 2003, both the Long-Term Residence Directive (2003/109/EC) as well as the Directive on the right to family reunification (2003/86/EC) were adopted. For study and research purposes, the Council furthermore adopted

Directive 2005/71/EC on a specific procedure for admitting TCNs for the purposes of scientific research as well as Directive 2004/114/EC which set out the conditions of admission of TCNs for study purposes (Olsson, 2016). In contrast to the first proposal of the Commission in 2001, the following directives just granted rights to selected types of TCNs and might be the reason why Member States were able to agree.

Five years after Tampere, the European Council adopted The Hague Programme, which recognised the need for a common European labour migration in strengthening the knowledge-based economy of the EU and asked the Commission to present a policy plan on legal migration (Olsson, 2016). This plan was subsequently presented in 2005 and introduced a ‘roadmap’ for the next four years (European Commission, 2005). It included five new legislative initiatives which are listed in table 1. The Blue Card Directive and the General Framework directive were the first directives to be adopted in 2009 and 2011. In 2014, the Council furthermore adopted the Directive on Seasonal Workers and Intra-Corporate Transferees (ICTs), while the proposal for remunerated trainees was added in the 2013 recast of the Directive on the conditions for entry and residence of third-country nationals for the purposes of research and studies, which was finally adopted in May 2016 (Olsson, 2016; Directive (EU) 2016/801).

Table 1 Legislative measures stated in the 2005 Policy Plan on Legal Migration

General Framework Directive	Specific sectoral directives on
	High-skilled workers <i>(Directive 2009/50/EC)</i>
	Seasonal workers <i>(Directive 2014/36/EU)</i>
Single permit for work and residence and rights for workers <i>(Directive 2011/98/EU)</i>	ICTs <i>(Directive 2014/66/EU)</i>
	Remunerated trainees <i>(Directive 2016/801/EU)</i>

Source: Own representation, based on Olsson (2016); Directive (EU) 2016/801.

In general, the European Commission pursued a rather selective and careful approach regarding the development of a common labour migration policy after the setback of the 2001 proposal. Interestingly, the successfully adopted directives were all on rather low salient issues or on high salient issues for which Member States already had a more generous policy in place, such as the Long-Term Residence Directive (Luedtke, 2011; Cerna, 2013b). The EU Blue Card depicts the first directive on the admission of third-country nationals and some scholars even

argue that it can be seen as “one step towards EU regulation of labour migration policy.” (Ibid., p.186).

2.3 Directive 2009/50/EC

The Blue Card Directive establishes common conditions for highly qualified TCNs and their families who want to work in a highly qualified job in the EU. The Commission first adopted the proposal in October 2007. The following sections will briefly depict the main aims of the policy, the decision-making process and the requirements Member States have to transpose into national legislation.

2.3.1 Aims and targets

According to the legislative document, the Blue Card is intended to address “labour shortages by fostering the admission and mobility – for the purpose of highly qualified employment – of third-country nationals [...] in order to make the Community more attractive to such workers from around the world and sustain its competitiveness and economic growth” (Council Directive 2009/50/EC). The rationale behind it consists of the idea that the EU as a community is more successful in attracting high-skilled workers than a single Member State. Indeed, the Directive intends to remove disparities in HSI policy, increase the mobility of TCNs within the EU as well address the increasing demands for high-skilled workers (Gümüs, 2010).

In sum, the Blue Card Directive aims at being flexible demand-driven and simple fast-track admission system that can be competitive to admission systems of other countries, but also pays regard to Member States’ preferences in terms of labour market needs and receptiveness. The main points of the Directive and the discretion allowed to the Member States will be discussed in the next sections.

2.3.2 Decision-making process

Due to the fact that the directive was negotiated before the Treaty of Lisbon became effective, the directive was adopted under the consultation procedure. In the Justice and Home Affairs pillar, the Council had to adopt the policy by unanimity while the EP only issued an opinion. Moreover, the Committee of Regions and the European Economic and Social Committee had to be consulted. With the enforcement of the Lisbon Treaty, this policy area now moved to

ordinary legislative procedure (Bellini, 2016; General Secretariat of the Council of the EU, 2009).

The European Commission presented the proposal in 2007, depicting it as an exclusive and sole channel for high-skilled immigrants (European Commission, 2007). However, the proposal led to strong opposition from several Member States. While Germany argued that its level of unemployment would still allow to source high-skilled workers domestically and economic migration should remain a national matter, Austria feared the Blue Card could lead to new flows of migration (Gümüs, 2010). Both Germany and Austria referred to the directive as a “centralization too far” (BBC, 2007). Moreover, countries raised concerns about further pressure on their national pension plans. The fact that the UK in January 2008 decided to opt and not participate in the system was due to the conflicts with its own point-based system. Ireland also opted out because of conflicts with its Irish Green Card. The only Member States expressing initial support for the scheme were Italy, Spain and France.

To gain approval from the Council, the directive was subsequently “watered down” and granted a high level of discretion power to the Member States regarding implementation (Cerna, 2013a, p.4). A main concession was thereby that the Directive did not present the Blue Card as the only system for the entry and residence of TCNs anymore, but allowed the concurrent existence of additional national approaches for highly skilled TCNs (see 2.3.3 for more details). The directive, presenting the “lowest common denominator” (Ibid.) was eventually approved by the Council on 25 May 2009 and Member States had to transpose the directive into domestic legislation until 19 June 2011.

Table 2 Overview of infringement procedures

Step	Adoption of Directive	Transposition deadline	Letter of formal notice	Reasoned opinion
Date	25 May 2009	19 June 2011	18 July 2011	27 October 2011
Concerned Member State			Austria, Belgium, Bulgaria, Cyprus, France, Germany, Greece, Hungary, Italy, Latvia, Lithuania, Luxemburg, Malta, Poland, Portugal, Romania, Slovakia, Sweden	Cyprus, Germany, Italy, Malta, Poland, Portugal, Sweden <hr/> 27 February 2012 Austria, Cyprus Greece <hr/> 31 May 2012 Slovenia <hr/> 25 April 2013 Sweden (Additional reasoned opinion)

Source: Own representation, based on European Commission (n.d.2).

Table 2 shows that the Commission opened infringement procedures against 18 Member States for the delay of transposing the Blue Card Directive into domestic legislation. In a later stage, the Commission sent reasoned opinions to 11 of the 20 Member States. Interestingly, Sweden was the last country to implement the Blue Card Directive in August 2013.

2.3.3 Legal requirements

In contrast to EU regulations, which are directly effective in the Community, an EU directive has to be transposed into national law by the individual Member State. More precisely, directives are depicted as targets that Member States have to achieve by creating their own domestic legislation or modifying it (Hix and Høyland, 2011). Table 3 highlights the main requirements and provisions of the Blue Card Directive and depicts that Member States have discretionary power in several aspects of the Directive.

Table 3 Overview Blue Card Directive

Directive <i>2009/50/EC</i>	Description
	Valid work contract or binding job offer of at least a year
Application requirements <i>(Article 5)</i>	Salary above the salary threshold of 1.5 (or 1.2) than the annual average gross salary of the specific EU country
	Higher educational qualification or 5 years of professional experience
Admission volume <i>(Article 6)</i>	Determined by the concerned Member State
Length of admission procedure <i>(Article 11)</i>	No more than 90 days
Restrictions to intra-EU mobility and type of employment <i>(Article 12, 18)</i>	Blue Card holder is restricted to highly qualified employment that is in line with the admission criteria for the first two years
	Moving to a different EU country is not allowed in the first 18 months
Duration of validity <i>(Article 7)</i>	Between 1 and 4 years
Permanent residence <i>(Article 16)</i>	After 5 years of legal and continuous residence in the EU as a Blue Card Holder

Source: Own representation, based on Council Directive 2009/50/EC.

Regarding application requirements, the salary threshold has been the most significant element of harmonisation regarding admission. According to paragraph 10, “the definition of a common minimum denominator for the salary threshold is necessary to ensure a minimum level of harmonisation in the admission conditions throughout the Community” (Council Directive 2009/50/EC). This minimum level has been set to “at least 1.5 the average gross annual salary in the Member State concerned” (Ibid., Article 5). However, Member States have also been allowed to issue a higher salary threshold according to their labour market situation and their immigration policies. If Member States faced a lack of a specific category of workforce, they have moreover been allowed to define a lower salary threshold of at least 1.2.

As already mentioned in 2.3.2, the legislative document furthermore states that Member States have the discretion to “maintain and introduce new residence permits for any purpose of

employment” and that TCNs should be able to apply for a national residence permit or a Blue Card, while enjoying “additional rights and benefits which may be provided by national law” (Council Directive 2009/50/EC). This implies that in countries wherein the national HSI policy is kept in place next to the Blue Card, employers can actually choose for the more favourable admission system. However, Member States were also free to decide about the introduction of an admission volume. In fact, this means that Member States can actually reduce the number of issued Blue Cards to 0 or take out specific work sectors or country regions for which no Blue Card will be issued.

Although the intra-EU mobility was defined as one of the ‘key elements’ of attracting highly skilled TCNs (Eisele, 2013, p.16), the Commission’s proposal first intended to restrict the occupational and geographical mobility of Blue Card holders within the first two years. After severe criticism of various Member States and several calls for a shortened period the geographical mobility was ultimately restricted to only 18 months (Ibid., Council Directive 2009/50/EC). Regarding the EC long-term residence status (permanent residence), the EU Blue Card Directive adopted the requirements of the Long-Term Residence Directive (2003/109/EC).

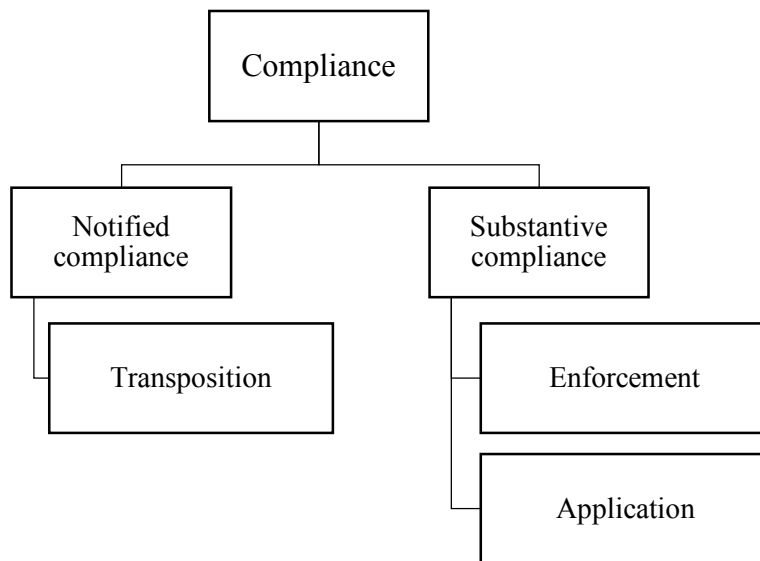
3 Literature Review

After having described the main characteristics about the Blue Card Directive, this chapter will first discuss the general definition of the term ‘compliance’. It will discuss how compliance is defined and which problems occur in conceptualisation. Second, it will provide a general outline of the existing body of compliance literature. By identifying the most important studies in the field, the main streams within the scholarly debate will be identified and their development described. Lastly, this chapter will also discuss the main problems and obstacles of EU compliance research that have to be addressed in future research. This serves as the theoretical basis for the upcoming chapters and the case study analysis.

3.1 Decoupling compliance: The problem of conceptualisation

In European studies, the term ‘compliance’ has obtained various definition (Schmälder, 2017). However, the most commonly used definition has been derived from the field of International Relations theory, which defines compliance as a “state of conformity or identify between an actor’s behaviour and a specified rule” (Raustiala and Slaughter, 2002, p. 539). Although the definition clearly outlines the term of compliance, problems with the correct interpretation exist. Zhelyazkova, Kaya and Schrama point out, that various studies overlook the complexity of compliance and solely focus on ‘notified’ (formal) compliance, which includes only the transposition of the directive into domestic legislation. However, the authors highlight the necessity to also take into account ‘substantive’ (practical) compliance (2017, p. 219). This part refers to the domestic enforcement and the application (see figure 1). Due to the incorrect conceptualisation, compliance is often falsely interpreted and subsequently gives a wrong impression of Member States’ levels of compliance (Dimitrova and Steunenbergh, 2016; Zhelyazkova, Kaya and Schrama, 2017).

Figure 1 Levels of compliance



Source: Own representation, based on Falkner et al. (2005); Zhelyazkova, Kaya and Schrama (2017).

3.2 The field of compliance research – An overview

Generally, the field of compliance research is a highly approached research field. Due to the “alleged implementation deficit” (Mastenbroek, 2007, p. 1), many scholars have analysed potential factors that could lead to noncompliance of European Member States. Therefore, a large collection of possible factors already exists. Still, a common consensus has not yet been found (Falkner et al., 2005; Schmälter, 2017).

To simplify the overview and understanding of the amount of compliance studies published, the scholarly debate can be categorised in different research periods. The periods will be described below.

3.2.1 State-based explanations: the lack of administrative and legal capacity

The first period, which started with the implementation of the EU Single Market Programme, discussed factors regarding institutional efficiency, effectiveness of legal provisions as well as the need to involve relevant social actors into the process of implementation (Treib, 2014). Mastenbroek (2005) argues that scholars of the first period lacked a real theoretical framework and depicted compliance as a rather “a-political process” (p. 1104) which simply occurs because of limited administrative and legal capacity of Member States. Krislov, Ehlermann and

Weiler ((1986 cited in Mastenbroek, 2007, p.6) were one of the first scholars who noted an “acute” compliance deficit in the EU while comparing the US and the EU in terms of decision-making processes. Siedentopf and Ziller (1988) published the first empirical study on the implementation of EU Directives, analysing the transposition process of Directives in 12 Member States. They conclude that delays in transposition generally stem from differences in administrative culture and style as well as inter-ministerial disputes and interventions of affected domestic actors.

3.2.2 Misfit approaches

The second phase, starting at the end of the 1990s, focused on a more theoretical-based framework and developed ideas in the light of Europeanisation, analysing the “degree of compatibility between EU policies and domestic structures” (Treib, 2014, p.8). The basic idea of this phase was that Member States try to “upload” their political preferences to the EU-level and therefore minimise adaption costs (Mastenbroek, 2005, p. 1109).

Knill and Lenschow (1998) highlighted the influence of national administrative traditions. In their study on environmental policy implementation in Germany and Britain, the authors concluded that existing national structures hamper correct policy-implementation more than a sole cost-benefit analysis. Differently, Börzel (2000) argued that the compliance logic is policy-based. In her study about implementation of environmental directives in Germany and Spain, she highlighted the fact that compliance can differ within policy fields of one Member State and rather relies on the ‘goodness of fit’ with existing national policy. Duina (1997) combined both ‘policy’ and ‘institutional’ misfit approach to analyse the Equal Pay Directive in three European countries, aiming at giving a more comprehensive understanding of domestic influences on compliance. She concluded that noncompliance is generally higher when a Directive requires high costs of institutional transformation.

Although the ‘goodness of fit’ approach led to clear theoretical hypotheses and precise expectations, studies could rarely prove the hypotheses true. Knill and Lenschow (1998) pointed out, that only three of their eight analysed cases fit with explaining the institutional misfit. Falkner, Hartlapp and Treib (2007) similarly highlighted that the ‘goodness of fit’ theory cannot be generalised and is a “sometimes-true theory” (p. 407). In a prior study by Falkner et al. (2005) about social policy in the EU, the authors analysed the implementation of six social policy directives in all 15 member states. Surprisingly, none of the tested domestic factors proved to be the overriding variable to explain the compliance level of Member States. Instead,

it was argued that one need to look at “relevant combinations of factors and the logic of their interplay” (p. 277). The authors argued that the misfit approach has not proven applicable to the field of social policy. Generalizing that the misfit approach therefore does not apply to the field of EU legislation at all, they argued that rather the political constellation of the national government as well as the strength of social partners can influence the implementation process (Falkner et al., 2005).

Interestingly, the scholars arguing with the ‘goodness of fit’ approach did neither take individual preferences of national actors nor the different stages of the implementation process into account (Treib, 2014). Importantly, scholars did not distinguish between factors influencing formal and substantive compliance. Although they acknowledged the difference between these types of compliance, they did not test if there are different factors responsible for formal and practical implementation. Therefore, it does not become clear if different factors are equally important on different stages of the transposition process (Treib, 2014).

3.2.3 Domestic preferences, veto points and compliance cultures

Due to the fact that the ‘goodness of fit’ approach rarely applied to the tested cases, scholars rather focused on domestic preferences, public-private interactions and co-ordination problems through veto players in the third period of compliance research. Furthermore, the importance of a compliance typology was addressed (Falkner et al., 2005). In addition to that, the rise of quantitative studies moreover diversified the theoretical and methodological variety of compliance research (Mastenbroek, 2007; Treib, 2014).

While comparing the transposition of packaging waste directives in the United Kingdom and Germany, Haverland (2000) developed the approach of institutional veto points to show that the UK is able to transpose the environmental directives into national law without delay, although the directives represented a fundamental change with regard to existing national policy. He therefore argued, that compliance can be explained looking at the number of institutional veto points influencing the transposition pace of national governments, rather than to assume that the degree of adaption pressure influences the transposition process negatively. Treib (2003; 2010) also analysed structural veto points and examined the influence of party political preferences on national governments. In his study (2010), which looked closely at how social policy has been discussed within the Convention on the Future of Europe, he found that Member States’ positions are mostly a mixture of party political preferences as well as national interests.

Börzel et al. (2010) presented an integrated power capacity model to explain compliance. Drawing on compliance approaches from International Relations theory, the authors discussed if an integrated approach of enforcement, management and legitimacy theories of compliance has explanatory strength to explain why Member States differ in compliance levels. The test was conducted on data of more than 6,300 noncompliance cases and showed that an integrated power capacity approach best explained why some Member States complied less often than others.

Falkner et al. (2005), Falkner, Hartlapp and Treib (2007) and Falkner and Treib (2008) explained the existence of different levels of compliance by grouping Member States according to their compliance level, indicating factors which create certain ‘worlds of compliance’. By testing the dominant hypotheses stated in the misfit and veto points camp, the authors developed four different ‘worlds of compliance’ which illustrate the compliance logic of Member States. Importantly, the authors acknowledged right from the beginning that there cannot be one single variable which explains compliance for all EU countries. Rather, they created various groups according to different compliance factors, namely (1) world of law observance, (2) world of domestic politics, (3) world of transposition neglect, and (4) world of dead letters. By analysing the transposition, enforcement and application process of six different EU labour directives, the authors offered a typology of “ideal-typical implementation styles” and highlighted that country-unspecific approaches like the misfit approach are unsuitable to explain country characteristics (Falkner and Treib, 2008, p. 298).

3.2.4 Current developments

Current studies (Dimitrova and Steunenberg, 2016; Zhelyazkova, Kaya and Schrama, 2017; Schmälter, 2017) focus on an integrated actor- and capacity-driven theoretical approach, while incorporating various stages of the implementation process as well as actor preferences and actor constellation. The emphasis clearly lies on studies about the practical implementation of directives as well as about EU policy fields that have not been analysed in the field of compliance yet.

In the study of Zhelyazkova, Kaya and Schrama (2017), the authors assessed compliance across policy fields. Analysing compliance data in the fields of environmental policy, internal market policy, social policy and Justice and Home Affairs policy, they conclude that characteristics of the policy area are more important in determining compliance than country-specific characteristic.

Another study conducted by Schmälder (2017) analyses the compliance of Member States with civil liberties. Focusing on capability and willingness as the two factors determining compliance, she uses a two-level theory to examine the compliance levels. She argues that the two theory levels support the analysis of the practical compliance process, because policy specific conditions can be applied.

Dimatrova and Steunenberg (2016) rather developed a three-level game model of compliance which integrates different actors and different stages of decision-making. This actor-driven approach aims at analysing the importance of different actors involved in the implementation process. Thereby, Dimatrova and Steunenberg analyse the interplay between EU actors, national bureaucrats and national political actors in the field of cultural heritage policy. They identify four types of “domestic responses” towards EU policy, varying “between full alignment [...] to decoupling” (p. 8). The authors describe the occurrence of compliance and noncompliance as the outcome of different preferences of a broad group of actors and their actions. As a result of the study, the authors see insufficient policy co-ordination as the main reason for noncompliance and the differences in the implementation outcomes Member States’ policies.

3.3 Conclusion: Obstacles and challenges for future compliance research

As shown above, the list of possible factors determining compliance is very extensive. Therefore, this chapter merely provided a brief overview of the main camps and ideas in the field of compliance research.

Still, the overview showed that compliance theories can generally be divided between state-based (capability-based) and preference-based (actor-based) approaches. Both camps have been developed in the first three periods of compliance research. In the latest studies of Member States’ compliance, one can identify the emergence of integrated approaches analysing both preference- and state-based compliance factors.

Moreover, the overview also helped to identify some obstacles and challenges for future compliance research. First, it is noticeable that the research is conducted on only a piece of EU legislation. Despite the fact that all studies focus on the implementation of directives, environmental and social policy clearly stand on the forefront of attention. Although current developments show the incorporation of other fields such as human rights or cultural and educational policy, there is still a need to analyse data from other policy fields as well. As Treib

(2014) and Schmälter (2017) point out, this would help to identify sectoral differences. Moreover, the review has shown that most studies focus on one policy field and that cross-sectoral studies are rather limited. These studies could increase the identification of policy-specific compliance factors (see e.g. Zhelyazkova, Kaya and Schrama, 2017).

Furthermore, there is an overrepresentation of certain member states in qualitative studies. While most scholars focus on the old Member States when studying compliance, the ‘new’ Central and Eastern European countries are rather neglected (Zhelyazkova, Kaya and Schrama, 2017). Treib (2014) adds that compliance research has mostly focused on cases concerning Germany, the United Kingdom and the Netherlands while rarely analysed compliance in Austria, the Scandinavian countries, Luxembourg, Greece or Portugal.

Lastly, several studies have not clearly distinguished between formal and practical implementation when researching compliance (Dimitrova and Steunenberg, 2016; Schmälter, 2017; Treib 2014; Zhelyazkova, Kaya and Schrama, 2017). This leads to false compliance outcomes as well as gives a wrong impression about the actual compliance levels of EU countries. Future compliance study has to carefully differentiate between both types of compliance and needs to contribute to a bigger knowledge of substantive compliance.

4 Theoretical framework

Based on the previous chapter, which has illustrated the major approaches of compliance research, this chapter will discuss the theoretical framework of the thesis. After the selection of theoretical approaches with regard to the literature on labour immigration policy, the theory-specific arguments will be presented. Lastly, this chapter deals with the specific propositions which will be deduced from the abstract theories. These propositions will be used in the later stage of the analysis to make inferential leaps between predictions and empirical observations identified in the analysis.

4.1 Selection of theories

As outlined in chapter 3, the compliance research developed around two major paradigms: state-based and preference-based explanations. Due to the variety of compliance approaches and the lack of a dominant factor accounting for compliance or noncompliance, it is necessary to first look at which problems are generally highlighted in the field of labour migration policy-making. This helps to not simply base the selection on the most divergent theoretical approaches, but rather to fit the selection with assumptions already stated in the field of labour migration policy. Importantly, both labour- and migration-related issues need to be taken into account when looking at characteristics of the policy.

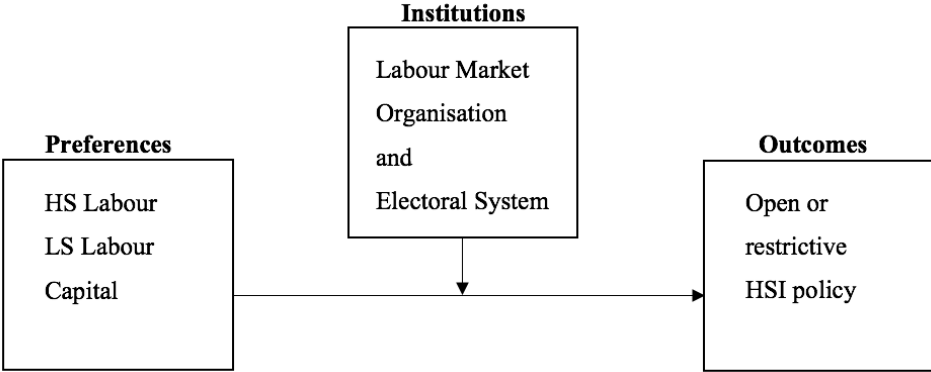
A first dominant topic in the field of EU labour migration policy is the question of state sovereignty. Perceived as a highly politicised topic, Roos (2013) points out that “[r]egulating immigration is a core function for which states claim exclusive authority since it determines admission and exclusion of a state’s non-members” (p. 67). Therefore, Member States want to maintain the control over their own borders and decide individually how many and who can enter the country. Additionally, states also face country-specific labour needs as well as different levels of skill shortages. As a consequence, each European Member State has adopted a labour migration policy that fits its specific needs (Olsson, 2016). One can therefore monitor differences between openness and closure (restrictiveness) of labour migration policy in the EU, caused by different levels of readiness and awareness towards migration (Cerna, 2013b; Monsneaga, 2012). This difference is also reflected in highly divergent migration regimes in place (Olsson, 2016). Derived from this point of view, it can be argued that rooted “national policy traditions” (Treib, 2014) and their degree of openness or closure are determining the willingness of states to adapt to the Blue Card Directive. Therefore, the first selected concept

is the misfit approach, which implies that compliance depends on the fit between national regulatory traditions and Directive as well as on the thereby implied adaption costs.

When specifically looking at migration policy regarding highly skilled immigrants, a different point can be stressed. Due to the fact that high-skilled migrants provide a great value for Member States in economic aspects, labour migration scholars generally assume that Member States are in favour of attracting high-skilled immigrants (Gümüs, 2010; Olsson, 2016). Besides the economic value implied, states also support attractive HSI policy because in contrast to low-skilled, high-skilled immigrants are not perceived as a threat for social cohesion of the domestic society (Olsson, 2016). Consequently, one can also argue that compliance does not depend on the fit with national policies because states generally favour high-skilled migration. Rather, domestic obstacles to policy-making could account for noncompliance. As a second concept, this study will therefore take the veto player approach into account, which argues that compliance depends on the number of veto players being able to block or influence the policy-making process according to their preferences.

However, the literature on labour migration policy also highlights the importance of domestic actors who are affected by high-skilled labour migration and have a possible interest in influencing HSI policy-making. Both Olsson (2016) and Cerna (2007; 2016) stress the influence of interest groups. According to Cerna (2016), employers’ associations as well as labour unions can advocate for a more restrictive or more open HSI policy. In her model of HSI policy-making in industrialised countries, she depicts the importance of four groups in the policy-making process: (1) native high-skilled and (2) low-skilled workers (labour) as well as (3) high-skilled and (4) low-skilled industries (capital).

Figure 2 HSI causal schema



Source: Cerna (2016).

Due to ability to participate in the process of policy-making, the group-specific preferences can create different policy outcomes with regard to highly skilled immigration (see figure 2). In the model, native high-skilled labour is expected to oppose an open HSI policy due to greater competition on the domestic labour market and possible impacts on salary and working conditions. Native low-skilled labour is rather likely to be in favour of an open HSI policy because it can profit from complementary effects such as greater productivity. According to Cerna, the capital will strongly advocate for a liberalised HSI policy, because it can result in lower wages and secured growth (high-skilled industry) or higher profit and output (low-skilled industry). In short, Cerna expects the groups to form coalitions to strengthen their political influence and push through their preferences. The author outlines three different coalitions, which can either push for or against an open HSI policy. To test the assumed influence of labour and industry, this thesis will incorporate interest groups and analyse the possible influence of domestic actors in pressuring for their policy preference (Ibid.).

To sum up, the three selected approaches are policy misfit, veto player and interest groups, which will be explained in more detail in the next subsections. After a description of the basic assumptions as well as the development of the theories and their main concepts, the hypotheses derived from the theories will be stated.

4.2 The misfit argument

As already illustrated in 2.2.2, the misfit theory has been developed to analyse the “degree of compatibility between EU policies and domestic structures” (Treib, 2014, p.8). The underlying argument has been that genetic causes (state-based explanations) or system causes (EU-based explanations) fail to account for diverging compliance levels within one country (Börzel, 2000). Arguing that “states are expected to wilfully defect from [...] agreements if the perceived benefits exceed the cost of non-compliance” (Zhelyazkova, Kaya and Schrama, 2016, p. 829), the “goodness of fit” approach is used to explain that a misfit between EU policies and existing national traditions (institutional misfit) or policies (policy misfit) will lead to a highly contested implementation and consequently to delays or failure in implementation. Therefore, states generally try to effectively reduce their adaption costs by uploading their national policies to the EU (Hartlapp, 2009; Mastenbroek, 2005).

As already mentioned earlier, the misfit approach led to huge criticism because it rarely applied to tested cases (see Knill and Lenschow, 1998; Haverland, 2000; Falkner et al., 2005).

Therefore, it has been declared to be too static and having a too limited explanatory power (Mastenbroek, 2005). Nevertheless, recent literature still makes use of the clear empirical expectations of the misfit argument (Prosser, 2015; Frederiksen et al., 2017). Considering it “as a necessary condition for domestic change” (Hartlapp, 2009, p. 471), the misfit argument is still ascribed an essential explanatory power.

As outlined in 4.1, this study will focus on the policy misfit.

4.2.1 Policy misfit

Policy misfit occurs when the content of the EU directive is divergent from domestic legislation (Falkner et al., 2005; Mastenbroek, 2005). The EU directive thereby challenges or contradicts the existing national policy and creates pressure to adapt the legal structures (Börzel, 2000). More narrowly defined, policy misfit can be distinguished between quantitative and qualitative policy misfit. While a *quantitative policy misfit* is defined as a “gradual difference”, implying an increase or decrease of strength of the domestic policy in question, a *qualitative policy misfit* is described as a “matter of principle”, leading to a major policy shift or even to the creation of a completely new policy (Falkner et al., 2005, p. 27-28). Therefore, qualitative misfits are generally perceived with a higher adaption pressure. Table 4 gives an overview of the differences in adaption pressure and the expected consequences for the level of compliance.

Table 4 Policy misfit: Levels of adaption pressure and compliance

Level of adaption pressure	Changes required	Level of compliance
Low	EU Directive is in line with existing domestic policy, no or minor changes are required.	High
Moderate	EU Directive merely requires moderate changes on the level of quantitative aspects of the domestic policy.	Moderate
High	EU Directive requires completely new legal rules and far-reaching gradual changes in qualitative aspects of the domestic policy.	Low

Source: Own representation, based on Falkner et al. (2005).

While measuring the total degree of policy misfit, scholars also take practical significance and economic costs into account. The incorporation of practical significance is important, if there is a policy misfit related to the domestic legislation, but the application of the policy is handled according to EU requirements. Economic costs should not be equated with the degree of policy misfit as outlined in table 4. According to Falkner et al. (2005), economic costs can be very high even though required policy changes have merely been minor. Contrary, major policy changes sometimes do not imply economic costs. However, economic costs can solely be estimated (Ibid.).

4.2.2 Prediction

Taking into account the assumptions of the policy misfit approach, the following hypothesis is derived:

H1: Compliance is less likely, if the implementation of the policy implies a high level of adaption pressure.

4.3 The veto player argument

The veto player approach has been developed in response to the “goodness of fit” approach, focusing more on domestic preferences of relevant actors and their power to influence the domestic decision-making process (Hartlapp, 2009; Steunenberg, 2006). Arguing that a misfit between European and domestic policy does not explain noncompliance, scholars highlight the strength of affected domestic actors in blocking policy change.

4.3.1 Starting point

Starting in the field of comparative politics, the veto player argument developed around the idea that different political systems (e.g. presidential or federal) have to bring in different numbers of veto players before being able to push through new reforms (Hartlapp, 2009). Thereby, scholars tried to explain why some countries are politically more stable than others. Tsebelis (1995, 2002) has been the one of the first to introduce the term of “veto players”. He defines it as “individual or collective actors whose agreement [...] is required for policy decisions” (1995, p. 289). Acknowledging that veto players can vary across and within countries, he differentiates between ‘institutional’ veto players (e.g. chambers and president)

and ‘partisan’ veto players. Furthermore, he states that most veto players are collective players. This implies that the outcome depends on the specific internal decision-making rule.

Concluding that countries with a higher number of veto players will generally face policy change less often, Tsebelis furthermore highlights dissimilar policy positions between veto players as well as the internal cohesion of collective veto players as factors hampering policy change.

4.3.2 Veto players in compliance research

The veto player argument has also been adapted to the field of compliance research. Haverland (2000) argues that a higher number of veto players (he makes use of the term ‘institutional veto points’) will negatively influence quality and tempo in the implementation process of EU directives. Delays therefore depict “domestic opposition to the implementation of the directive” (Steunenberg, 2006, p. 294). In the last decade, the focus has furthermore shifted away from the mere amount of veto players in a political system towards an emphasis on the distance between actors’ preferences, the proposed policy in question as well as on the policy coordination mechanism (Héritier, 2001; Steunenberg, 2006; Hartlapp, 2009).

One of the first concept with a preference-based veto player approach has been developed by Héritier (2001). She argues that policy change highly depends on actors’ preferences, which are determined by the “distributional consequences” of the policy in question (p. 44). Therefore, veto players who benefit from a policy change related to a mismatch between EU and national policy will be supportive, while expected ‘losers’ are likely to oppose a policy change (Ibid., p. 53). For the author, the compliance outcome is “the result of conflict, bargaining and compromise among individuals or groups representing diverse interests.” (p. 53). In contrast to Tsebelis (1995; 2002), Héritier (2001) does not only include institutional and partisan veto players in her case study on European Transport Policy, but measures, next to these “formal” veto players, also the impact of “factual” veto players. Factual veto players are sector-specific, such as social partners in the field of labour or social policy-making (Hartlapp, 2009; Jahn, 2010). Importantly, their power to influence and block the decision-making process heavily depends on the transposition process of the policy field (Jahn, 2010).

Another concept on domestic actors’ influence on compliance has been developed by Steunenberg (2006; 2007). Building on Héritier (2001) that power is not solely restricted to formal veto players, Steunenberg (2006) uses the term ‘policy-specific’ veto player to describe actors that can formally or informally influence the transposition process and are able to shift

the transposition of the policy in their preferred direction. In contrast to Héritier's approach, Steunenberg focuses on the idea of a coordination-problem between different actors' preferences. He argues that the transposition of EU directives is a two-level game between lower-level and higher-level actors. Based on different coordination methods (single-player or multi-player), the discretion allowed to the lower-level actors in drafting the legislation and the interactions between both lower-level and higher-level actors affect the outcome of decisions made. Steunenberg (2006) acknowledges that the transposition process on the national levels are not uniform and domestic actors influence the transposition differently according to the method of transposition (e.g. consultation, coordination).

4.3.3 Prediction

Arguing that there is a need for domestic adaption to European legislation, one can derive to the following hypotheses:

H2: Compliance is less likely the higher the number of veto players a Member State is confronted with.

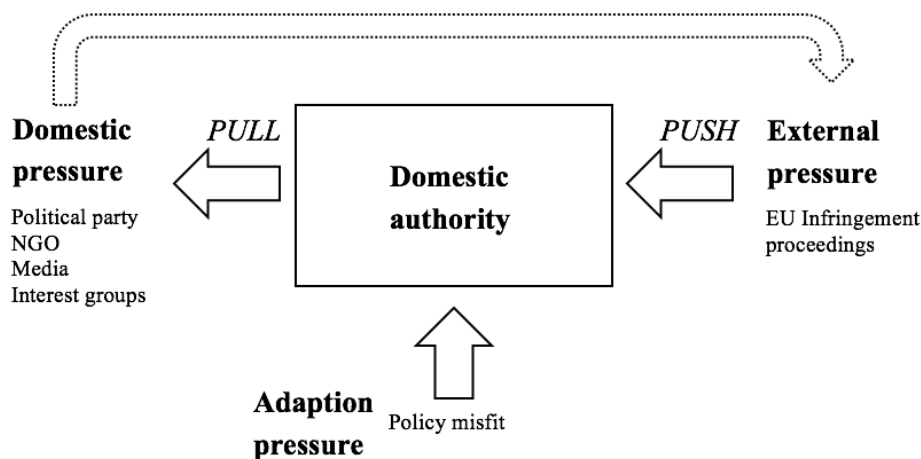
4.4 Influence of interest groups

Although interest groups are not considered as formal veto players in the policy-making process, they can still have considerable power to influence the policy outcome (Falkner et al., 2005). The rationale behind it can be found in public choice theory, which assumes that "regulation is a commodity sold by regulators to the politically most influential societal group" (Tosun and Schulze, 2015, p. 954). Thereby, one possibility for interest groups to attain their preferred policy outcome is by lobbying actors involved in policy-making. According to Baumgartner et al. (2009, cited in Tosun and Schulze, 2015, p. 954), lobbying can be performed by three means: (1) inside advocacy, implying that the interest group directly provides information to policy-makers; (2) outside advocacy, by which the interest group notifies actors about its preferences using e.g. press reports or public statements, and (3) grassroots advocacy, meaning the mobilisation of the general public. Next to lobbying, other forms of influence can be exerted through naming and shaming, litigation or by filing a complaint with the European Commission (Treib, 2014).

Also in the field of compliance, studies have confirmed the impact of interest groups and identified them as a “key factor” (Treib, 2014, p. 24). However, there have not been many studies which specifically examined the impact of interest groups specifically for the EU or the domestic level (Ibid.; Dür and De Bièvre, 2007; Falkner et al., 2005).

One of the first studies on interest group influence has been conducted by Lampinen and Uusikylä (1998) which measured the degree of corporatism as one of the factors influencing compliance. Börzel (2000) in her study about implementation of environmental directives in Germany and Spain, added a push-and-pull mechanism to her misfit argument, implying that domestic ‘pull’-factors can pressure for correct adaption and can overcome a previous misfit by several means (see also figure 3). She proves that the level of compliance can significantly improve if domestic actors, such as interest groups, NGO’s or the media, pressures for a proper application of EU law.

Figure 3 Pull-and-push model



Source: Own representation, based on Börzel (2000).

In contrast, Héritier (2001) and Falkner et al. (2005) argue that interest groups can also hamper or delay the implementation process, with interest groups even “openly call for disobedience with European duties” (Falkner, Hartlapp and Treib, 2007, p. 405) because these contradict their preferences. Interestingly, Falkner et al. (2005) states that “[r]ather than running the risk of negative publicity and possible electoral losses due to interest group mobilisation, governments frequently prefer the threat of European infringement procedure as a corollary of delayed or even incorrect transposition” (p. 308).

4.4.1 Predictions

In compliance literature, there is a noticeable disagreement regarding the impact of interest group advocacy on the Member States' level of compliance. Therefore, both blocking and pulling power will be included in the predictions.

H3: Compliance is more likely if supportive interest groups mobilise for effective implementation in the policy-making process.

H4: Compliance is less likely if interest groups oppose the policy and mobilise against an effective implementation.

5 Research design

In chapter 4, the choice of theories was presented in a theoretical framework and predictions were derived from the depicted concepts. This chapter will now discuss possible research designs and subsequently select the most appropriate and suitable design. Moreover, the concepts used in the empirical analysis will be operationalised. Furthermore, the method of collecting and analysing the empirical observations, which will be used to make inferential leaps to the abstract predictions of the theories, will be clarified.

Importantly, this chapter will only focus on non-experimental designs due to the fact that the variables of the research question cannot be manipulated but merely observed (Bryman, 2012).

5.1 Selection of design: Congruence analysis

Blatter and Haverland argue that “causal inferences should not be drawn using empirical observations and formal logic alone” (2014, p. 13). Rather, interpretations should be based on theories. With regard to the comprehensive predictions derived in chapter 4, it is necessary to gather detailed empirical information in order to be able to falsify or confirm those.

A case study with a small-N research design presents a particular suitable instrument for this study, because it allows to conduct an in-depth analysis of a particular event. More narrowly, a case study, taking into account only a few cases, enables the researcher to collect extensive and diverse observations per case. Thereby, the researcher can ensure a high internal validity, which relates to the causality between dependent and independent variable. In other words, the internal validity is concerned with the question if the independent variable really matters for the outcome of the dependent variable or if other factors could have influenced variations in the dependent variable (Bryman, 2012). In contrast, a quantitative approach, although allowing for a high external validity and reliability of results, could diminish the internal validity of results by neglecting important country-specific features (Blatter and Haverland, 2014; Creswell, 2014). Although there is no dominance of qualitative or quantitative studies in compliance research (Mastenbroek, 2005; Treib, 2014), quantitative studies have been criticised because they often generate mixed and contradictory results related to the variety and inconsistency of data sources (Hartlapp and Falkner, 2009; Treib, 2014). This issue furthermore supports the choice for a qualitative case study design.

There are three different case study designs available: The co-variational approach, which looks at the impact of a specific causal factor; the causal-process tracing, which examines the

process between different causal factors and the ultimate outcome; and lastly, the congruence analysis, which can be used to verify the explanatory strength of a certain theory or paradigm.

Taking into consideration the research aim of this thesis as stated in 1.2, a congruence analysis is assessed to be the most appropriate research method. As defined by Blatter and Haverland (2014), the congruence analysis approach examines the explanatory strength of a theoretical approach compared to other theories in the field. This is particularly suitable regarding the heterogeneous scholarly debate on compliance. Due to the fact that the thesis particularly aims at assessing the explanatory power of different theoretical approaches and therefore does not question the influence of a specific factor of compliance, a different case study design like a co-variational approach would be inapplicable. A generalisation to different cases is not applied. Rather, the findings can be used to reflect on different approaches and perhaps induce the development of new theories (Ibid., pp. 149-150).

The competing theoretical approaches constitute for the most important part of the congruence analysis approach. Instead of focusing on the case selection to formulate predictions, the primary focus lies on the examination of the academic debate. Thereby, the researcher can extract the most influential paradigms and theories from the abstract level and formulate them into more concrete expectations. These expectations will then be tested on the degree of fit using empirical evidence of the studied cases. After collecting the empirical information, the observations will be compared to the deduced theoretical expectations in a “three-corner-fight” (Blatter and Haverland, 2014, p. 166).

5.1.1 Increased validity by adding causal-process tracing

Although there are clearly dividing lines between the different case study approaches, a combination of types is possible and can lead to a more meaningful result of study. Regarding the selected design of a congruence analysis, a useful combination can be reached by adding causal process-tracing. Process tracing enables the researcher to study the whole causal chain and to identify the causal link and mechanisms between independent and dependent variable (Dür, 2008). By tracing the process of the cause, the researcher can uncover all steps and thus ensures that the causal factor which is studied really matters (Ibid.; Blatter and Haverland, 2014). This combination can help to reduce the indeterminacy as well as the risk of inferential errors. According to Blatter and Haverland (2014), the combination is moreover suitable to determine the congruence between predictions and empirical reality or – if the theories prove inapplicable in the first step – to derive to an inductive explanation. In the latter possibility, the

researcher - instead of using deductive reasoning – takes the opposite way in which he gets back to the empirical observations first. From this point he then connects the individual observations with abstract theories (pp. 219-223).

With respect to this study, the addition of causal process-tracing supports the validity of the congruence analysis in two ways. First, the use of process-tracing is a necessary addition regarding the measurement of interest group influence for which no universal measurement exists. According to Dür (2008), process-tracing is however one of the most widely used approaches to measure the influence of interest groups. By using process-tracing, the researcher is able to analyse the whole policy-making process and the different channels through which influence can be exercised (see also 5.2.3). This is particularly helpful, because the researcher is able to uncover all possible factors that might have influenced the policy outcome which subsequently leads to the determination if an influence attempt of a particular interest group had an independent effect on the policy outcome (Ibid.). Second, the use of process-tracing allows to uncover further factors that might have influenced the decision-making outcome but lie outside of the theoretical expectations of the study (Blatter and Haverland, 2014).

5.2 Conceptualisation and operationalisation

In this section, the concepts that are used in the empirical analysis will be further operationalised. This will be done by first presenting a clear definition of each concept. This crucial step allows to present the meaning of each specific concept and helps to further concretise and elucidate its use in the analysis. Moreover, the criterion for the measurement of each concept will be presented. This is important to explain how empirical information will be gathered in a later step (Berg and Lune, 2014).

5.2.1 Compliance

In the Cambridge dictionary, compliance is defined as “the act of obeying an order, rule, or request” (Cambridge University Press, 2017). Regarding compliance with EU directives, the term has to be defined more comprehensively, because past research has often lead to different outcomes due to vague conceptualisations of compliance (Hartlapp and Falkner, 2009). Compliance with EU directives is usually categorised in three stages: transposition, enforcement and application (Falkner et al., 2005). Non-transposition thereby refers to the circumstance that a directive has not been legally transposed into domestic law yet (delayed

transposition) or that it has been transposed incorrectly. In a later stage, non-enforcement implies that there is no enforcement system of national actors and institutions that ensures the rule is obeyed, whereas non-application defines the addressees' non-observance of the rule (Falkner et al., 2005).

This study will be assessing Member States' compliance by looking only at the first stage. Due to the limited scope of this study and the high discretion allowed to the Member States regarding the Blue Card Directive, it is not possible to assess enforcement and application, because it would require an in-depth micro-level survey with experts as well as with employers and migrants involved in the implementation procedure. Even then, the provision of reliable data is difficult to achieve (see also Falkner et al., 2005).

The study will determine the level of transposition by looking at the timeliness and correctness of transposing the Directive into national legislation. For this purpose, the infringement procedure database of DG Home Affairs, EUR-Lex and an additional analysis of the country-specific legislation will be conducted. The infringement procedures initiated by the European Commission follow different steps (see figure 4) and provide information on various forms of noncompliance.

Figure 4 Infringement procedures in cases of noncompliance



Source: Own representation, based on European Commission (n.d.1)

The broad range of sources is necessary because academic literature argues that the infringement proceedings of the European Commission might be biased and incomplete (Thomson, Torenvlied and Arregui, 2007; Hartlapp and Falkner, 2009). To overcome this bias, national sources will therefore be taken into account. Table 5 gives the used scheme for assessing compliance.

Table 5 Assessment of compliance

Level of transposition (= anticipated level of compliance)	Correctness of transposition	Timeliness of transposition
High	Essentially correct	< 6 months <i>(on time or almost timely)</i>
Moderate-high	Essentially correct	< 12 months <i>(significantly delayed)</i>
Moderate	Essentially correct	> 12 months <i>(seriously delayed)</i>
	Essentially incorrect	< 6 months <i>(on time or almost timely)</i>
Moderate-low	Essentially incorrect	< 12 months <i>(significantly delayed)</i>
Low	Essentially incorrect	> 12 months <i>(seriously delayed)</i>

Source: Own representation, based on Falkner et al. (2005).

5.2.2 Policy misfit

A policy misfit is defined as a mismatch between the national policy and the EU directive in question (Falkner et al., 2005). The theory expects that a high policy misfit will lead to high adaption pressure and subsequently to a lower level of compliance.

To measure policy misfit, this study will, based on Falkner et al. (2005), compare the most important provisions of the directive with the counterpart in domestic policy that had been in place before the adoption of the Blue Card Directive in 2009. Importantly, the level of policy misfit will determine the level of adaption pressure. It is expected that the higher the adaption pressure is on the national policy, the lower the level of compliance will be in tested Member State.

Another factor that is taken into account while determining the level of adaption pressure is the discretion allowed to the Member States. Usually, discretion is incorporated into a EU directive if Member States have different preferences on the policy in question. According to Thomson (2010), “discretion refers to the power given to implementers” (p. 7). In other words, the EU can grant a certain degree of discretion regarding the transposition of the directive. To

give an example regarding the Blue Card Directive, the EU allowed the Member States to determine the duration of validity between 1 and 4 years. Additionally, Member States were free to decide if they want to implement a lower salary threshold for shortage occupations. Taking the argument of Thomson (Ibid.) that a high level of discretion improves the overall transposition performance, this study assumes that discretion reduces the ultimate adaption pressure even though there is a high policy misfit. Table 6 shows how discretion is operationalised in this study.

Table 6 Operationalisation: Level of discretion

Level of discretion	Operationalisation
Low	No discretion is allowed
Moderate	The aspects allow for variation in implementation
High	Member States are allowed to choose if they want to implement this policy aspect

5.2.3 Veto players

Taking the definition of Tsebelis (2002), “veto players are individual or collective actors whose agreement is necessary for a change of the status quo” (p. 36). Thereby, every institutional or partisan actor who has the formal power to block the adoption of a policy (either defined through the Constitution or the political system of the Member State), is considered to be a veto player. It is assumed that countries with a higher number of veto players will have more difficulties to timely and correctly implement the directive and are therefore less likely to comply.

The formal power to block is a crucial characteristic in defining the correct amount of veto players in the chosen Member States. Indeed, upper chambers in a bicameral political system cannot be considered a veto player if they can solely delay the decision-making process but do not have the power to fully eliminate the policy proposal. Another crucial indicator to determine the amount of veto players is the ‘absorption rule’ (Tsebelis, 2002). Hereby, a possible veto player will not be counted as one if the veto player does not affect the decision-making outcome, e.g. because both chambers have the same party composition.

5.2.4 Interest group influence

Taking the definition of Eising (2008), interest groups are defined by three factors: organisation, political interest and informality. Measuring interest group influence on the policy process, in other words, to evaluate if an interest group was able to exert control over a political outcome, still remains difficult because no universal measurement unit exists (Dür, 2008). Moreover, influence is difficult to measure because it can be exercised through various channels: directly and indirectly (see table 7).

Based on Dür (2008), it will be looked at three factors using causal process-tracing: the interest groups' preference, the interest groups' access to the decision-making process and the ultimate preference attainment. To evaluate the interest groups' preference, it will be looked at press releases and public statements regarding the Blue Card Directive as well as regarding HSI and legal migration. Concerning the interest groups' access to the decision-making process, both direct and indirect access to the decision-making process are taken into account. Table 7 gives an overview on the possible access points for interest groups that will be looked at. Importantly, both direct and indirect access are weighted equally. Preference attainment will be examined by comparing the interest group's preference with the final policy outcome. Moreover, possible responses by decision-makers to the attempts to influence the policy outcome as well as group statements regarding the adopted policy will be taken into account.

Table 7 Operationalisation of measuring interest groups' access to decision-making

Factor	Influence	Indicator
Access to decision-making	Direct Access	Information exchange via official letters
		Information exchange in commission or governmental advisory committee
	Indirect Access	Media campaigns
		Public statements/press releases Litigation/filing complaints with European Commission

To ease the amount of data, it will be focused on the main (umbrella) interest groups with a concentrated interest in high-skilled immigration, such as employer's associations, industrial associations and trade unions.

5.3 Case selection

Chapter 5.1 selected the congruence analysis approach in combination with causal-process tracing as the most suitable research design for the stated research question. Using this approach, the selection of cases should follow the selection of theories. However, the possibilities regarding the choice of Member States are very limited. Due to the selected qualitative approach – and the resulting necessity to conduct in-depth analysis in a Member States’ political, legal, and public system – language barriers during the first conducted desk research in various Northern European countries have confirmed that the necessary primary sources are not available in English. In addition to that, the English speaking European countries have opted out of the Directive. Therefore, this study will only be able to take into account four Member States: Austria, Belgium, Germany and the Netherlands. From these four countries, the European Commission issued infringement procedures against Austria, Belgium and Germany. However, it is expected that the selected countries will show enough variation regarding the independent variable.

5.4 Data collection

For this study, the collection of empirical information will be done primarily through desk research. The search strategy, based on the derived predictions, thereby includes several steps which will be described below.

First, all essential prerequisites with regards to the predictions will be defined. This step incorporates the determination of relevant veto players and interest groups as well as the collection of information about the national HSI policy which has been in place prior to the adoption of the European Blue Card.

In a second step, it will be looked at how each selected Member State has transposed the Directive. This information will later be necessary to identify all relevant data. A pre-scan has already highlighted that the selected countries transposed the Blue Card Directive very differently, ranging from the mere adoption of the Blue Card requirements into existing legislation to the complete creation of a new HSI policy. The search is furthermore complicated because every country uses a different term to describe highly skilled TCNs.

The third step will contain the data collection. For the search, it is primarily focused on the search terms “Blue Card” and the specific name of the Directive (2009/50/EC). It will be first concentrated on the governmental databases of the selected case as well as on the available

records of the European institutions, in particular the European Commission and the Directorate-General Migration and Home Affairs. The retrieved documents can incorporate press releases, reports, minutes of parliamentary proceedings as well as draft bills and legislative texts. Regarding the analysis of interest group influence, press releases and position papers will be analysed. These will be retrieved through the individual interest groups' websites. In addition to that, national newspapers will also be monitored for public statements. Moreover, the search terms will also be incorporated into standard search engines. In a later search run, broader search terms such as "economic migration" and "legal migration" and "highly skilled migration" will also be used to generate additional data. This appears useful, because the pre-scan has shown only limited results.

6 Case analyses

While the previous chapters have set the foundation of the study by discussing the development of European HSI policy and the Blue Card Directive as well as the literature on compliance, the theoretical framework and the chosen research method, the following chapters will present the core of this study. This chapter will address the country analyses as the first part of the analysis. Hereby, each country will be examined separately and closely tested on the applicability of the deduced predictions. The concluding part of each country analysis gives an overview of the congruence analysis, whereby (+) implies that the observation is in accordance with the theoretical prediction; (-) that the observation is contradictory to what is stated by the predictions; (+/-) that the observations are neither consistent nor contradictory with the prediction but “lie outside the set of expectations” (Blatter and Haverland, p. 189) and (o) that there was not enough empirical evidence available to determine the congruence between prediction and observation.

6.1 Austria

6.1.1 Compliance

Austria transposed the Blue Card Directive in 2011 by amending two laws. The first one, the Amending Act on the Employment of Foreign Nationals (*Ausländerbeschäftigungsgesetz* AuslBG), got adopted on 14 April 2011. The second law, the Rights of Foreigners Amending Act (*Fremdenrechtsänderungsgesetz*, FrÄG) got adopted on 12 May 2011. Both laws entered into force on 1 July 2011 (Parlament, 2011a; 2011b). The Austrian government informed the European Commission about both amendments on 28 April 2011 and 23 May 2011.

However, the European Commission opened an infringement proceeding against Austria and compiled a letter of formal notice on 18 July 2011. On 27 February 2012, the European Commission also issued a reasoned opinion to Austria, claiming that Austria is “still making it too difficult for highly skilled people to come and work in the EU” and therefore asked the country to bring its national regulations and administrative provisions in line with the Blue Card Directive (European Commission, 2012; Generalsekretariat, 2012). On request to the Austrian Constitutional Service, which is part of the Austrian Federal Chancellery, its subordinate Department of Legal Affairs of European Integration stated that there were still actions necessary to fully comply with the Blue Card Directive after the amendments of the AuslBG and the FRÄG had been adopted. Hereby, it was specifically referred to legislative adjustments

at the federal stage regarding professional qualification legislation and individual professional regulations (Winkler, 2017). These adjustments were eventually realised until 11 May 2012. The European Commission officially closed the infringement case on 27 September 2012 (European Commission, n.d.2).

Besides the significant delay of 10 months, table 8 shows that Austria complied with all the tested requirements of the Directive at the end of the transposition process. Therefore, the compliance level of Austria regarding the implementation of the Blue Card Directive can be assessed moderate-high.

Table 8 Correctness of transposition (Austria)

Directive requirements	Austrian Blue Card	Compliance
Salary threshold of at least 1.5 the gross annual salary	1,5	Yes
Salary threshold of at least 1.2 the gross annual salary for shortage occupations	Not applied	Yes
Educational background	Higher educational qualification	Yes
Duration of validity	2 years	Yes
Length of admission procedure	56 days – 90 days	Yes
Permanent residence	After 5 years	Yes

6.1.2 Policy misfit

Compared to the other tested countries, Austria had the most restrictive HSI policy in place before the adoption of the Blue Card Directive in 2009. With the fundamental change of Austrian's aliens' law in 2005, the Austrian government first shed the light on high-skilled immigrants by introducing the Settlement and Residence Act (*Niederlassungs- und Aufenthaltsrecht*, NAG).

§41 NAG set the rules regarding the admission of high-skilled TCNs. The admission is controlled through a yearly determined number of quota places (Bundeskanzleramt, 2009a). For 2009, the number of quota places for employed persons was set to 2.450 (Biffl and Bock-Schappelwein, 2013). Next to the NAG, The Foreigners' Employment Act (*Ausländerbeschäftigungsgesetz*, AuslBG) specified the prerequisites for the employment of TCNs. Although the herein defined salary threshold as well as educational requirements were

defined quite low, a mandatory labour market test and the quota places implied high barriers for HSI to enter Austria (Bundeskanzleramt, 2009b).

Indeed, as explained in 2.2.3, both labour market test and admission volume were allowed to be introduced by Member States as part of the implementation of the Blue Card. Additionally, table 9 shows that Austria was already compliant in most aspects of the main requirements. The only evident misfit occurred with regards to the minimum salary threshold. Here, Austria had a considerably lower salary threshold in place. However, the overall level of adaption pressure was moderate-low which is in line with the theoretical prediction.

Table 9 Policy misfit (Austria)

Directive requirements	HSI policy of 2009	Required adoption	Policy misfit	Discretion	Level of adaption pressure
Salary threshold of at least 1,5 the gross annual salary	0,83 ¹	Adopt an increased salary threshold	High	Moderate	Moderate-high
Salary threshold of at least 1.2 the gross annual salary for shortage occupations	Not applied	Already compliant	Low	High	Low
Educational requirements	University degree or trained at a tertiary institute for applied science or other specially recognised training	Already compliant	Low	Moderate	Low
Duration of validity	18 months (§41(4)) NAG	Already compliant	Low	Moderate	Low
Length of admission procedure	Six weeks (§41(2)) NAG	Already compliant	Low	Moderate	Low
Permanent residence	After 5 years	Already compliant	Low	Low	Low

¹ Own calculation, based on OECD.Stat (2017). According to the Austrian legislative text, the minimum salary level for “key workers” amounts to “60vH der Höchstbeitragsgrundlage gemäß § 108 Abs. 3 des Allgemeinen Sozialversicherungsgesetzes” (Bundeskanzleramt, 2009b).

6.1.3 Veto players

The political system of Austria is a federal parliamentary democracy. Austria has two chambers, the Nationalrat and the Bundesrat. Both chambers are involved in the legislative process. The Nationalrat possesses the right to propose, amend and adopt bills. Although the Bundesrat also has legislative power, its competence is not very far-reaching. In fact, the Austrian Bundesrat only possesses over a suspensive veto for legislation which does not amend the Constitution. This means that its veto can easily be overturned by the Nationalrat using a vote of persistence. Therefore, the Bundesrat is only able to delay the legislative procedure and is thus not counted as an institutional veto player.

Before the policy-making process at the EU level started, the Austrian grand coalition government under chancellor Alfred Gusenbauer was rather reserved about the idea of a common European HSI policy. Although Gusenbauer stated that the government had an opposing view towards the recruitment of foreign qualified workers for satisfying the national need for skilled people, it was also said that the idea is a right step to control migration flows to Europe (Kraus, 2007). This view changed drastically after the Commission issued the first proposal, leading to the statement of Gusenbauer that the Directive is not needed in Austria (Moravec, 2008). The Austrian government feared that the Directive would decrease the Member States' sovereignty to control the migration inflow (BM.I, 2009). Also in Germany, Finland and the Netherlands there was severe criticism regarding this point (Groen and de Lange, 2011; Fischer, Meßmer and Volkery, 2007). The opposition against the first proposal and the likelihood that the proposal would fail in the Council eventually led to an adjustment of the Commission's proposal and to the incorporation of the countries' demands (see 2.3). In the final draft, the proposal allowed for national HSI policies to be co-existent as well as for a zero quota regarding admission volume (BM.I, 2009).

The process of transposing the Blue Card Directive started in the new legislative term (2008-2013). The Social Democratic Party of Austria (SPÖ) and the Austrian People's Party (ÖVP), which formed another grand coalition after the quick end of the Gusenbauer coalition in 2008, already stated in their coalition agreement to establish a criteria-lead migration system and to remove the old HSI quota (Bundeskanzleramt, 2008). This proposal was subsequently published at the beginning of December 2010 and also incorporated the Blue Card. However, the government decided to only incorporate the Blue Card as a subcategory of the new HSI policy. At the forefront of the new HSI policy stood the Red-White-Red (and Red-White-Red +) Card, a points-based migration scheme which marked a fundamental change to the very

restrictive Austrian HSI policy in place since 2005. As it will be explained in the next subchapter, the reform of the Austrian HSI policy was already discussed since 2007 and highly advocated by the Austrian employer's associations.

Indeed, these newly established categories led to the fact that the Blue Card itself was not a dominant point of discussion once the Red-White-Red Card proposal was discussed in the Nationalrat. The discussion rather set around the far-reaching rights the Red-White-Red Card granted high-skilled immigrants. However, SPÖ and ÖVP, which possessed 108 of the 183 seats, were successful in getting the two bills through the parliament without any amendments, although they were highly criticised by the more right-wing parties FPÖ and BZÖ. Both AusBL and FrÄG got easily adopted within two months after the proposal was officially submitted by to the Nationalrat. Also the Bundesrat did not use its suspensive veto and passed the bills by mid-May.

In sum, the partisan veto players' preference regarding HSI policy fundamentally changed between 2007 and 2011 and finally led to the adoption of a new criteria-led HSI policy which stood in contrast to the Blue Card scheme. However, the Austrian government incorporated the Directive into the new HSI policy and transposed all requirements of the Directive correctly. The decision-making process went smoothly both between the coalition as well as in the parliament and the Blue Card Directive got adopted before the transposition deadline. The low number of veto players and the smooth policy-making process are in line with the compliance level and confirm the theoretical prediction.

6.1.4 Interest groups

Large socioeconomic groups traditionally play an important role in Austria and political influence is based on a mixed interest system of associations and chambers. The Austrian Social Partnership between employees' and employers' interest groups is hereby supposed to contribute to consensual decision-making and a balance of interests (Karlhofer, 2012).

The Chambers of Labour and the Austrian Trade Union Federation ÖGB represent the employees side, while the Chambers of Commerce and the Federation of Industry (*Industriellenvereinigung*, IV) are the most important interest groups on the employer side. The chambers, which do not compete with ÖGB and IV, build a stable pillar and are highly interwoven with the free associations. Since the constitutional amendment in 2007, which enshrined the chambers in the constitution, their influence on policy-making got considerably strengthened. The two biggest chambers, the Federal Chamber of Labour (BAK) and the

Austrian Federal Economic Chamber (WKÖ) form the social partners together with the Austrian Agricultural Chamber and the ÖGB. The most important event regarding the Social Partnership is the Bad Ischl Dialogue, which was set up in 2006 to annually discuss common positions of the social partners that are communicated to the Austrian government (Ibid.).

The Blue Card was highly criticised on both employers' and employees' side (Kraus, 2007; Pöll, 2007; der Standard, 2007). However, the reasons for criticism varied. The ÖGB strictly opposed the European concept and said that the EU is setting false priorities regarding its internal labour market. According to the union's preference, the primary focus should be on education and training of the Austrian population. Furthermore, the ÖGB stated that the Blue Card would raise the possibility of wage dumping (der Standard, 2007). Contrary, the WKÖ expressed its disappointment with the first proposal for a European Blue Card. The Chamber stressed that the proposal was not ambitious enough to attract high-skilled TCNs. In fact, WKÖ pressured for a Europe-wide validity of the Blue Card (der Standard, 2007). After the adjustments of the Blue Card Proposal, the WKÖ however pointed to the need for a faster national reform of the HSI policy before the supply of high-skilled TCNs would decrease (Pöll, 2007).

The employers' associations started in 2007 to actively push for a national criteria-led system, the Red-White-Red Card (Die Sozialpartner Österreich, 2010). The initiative hereby can be traced back to the IV, which released a position paper in 2007 about the Austrian migration and integration policy, stressing that a cancellation of HSI quota places is important for the Austrian industry and economic development of the country (IV, 2007). One year later, the IV, in cooperation with the WKÖ and the International Organisation for Migration (IOM), presented their concept of a points-based migration system for Austria and pushed for a complete change in the Austrian migration approach for the next legislative period (IV, IOM and WKÖ, 2008; Brickner, 2008). During 2008, particular media attention to the topic of HSI was created by WKÖ and IV (Fassmann, 2013).

Importantly, the recommendation of a points-based system got then incorporated in the coalition agreement of the new government in 2008, stating that a commission with participation of the Social Partners and the IV should work out the criteria for such a migration system (Bundeskanzleramt, 2008). The result of the Social Partners got published in 2010 and built the basis for drafting the final bill (Die Sozialpartner Österreich, 2010). Interestingly, the Blue Card was not mentioned in the joint proposal which solely focused on the development of the Red-White-Red Card. Also on the draft bill, the social partners got consulted and sent

official statements with proposed improvements. However, WKO, IV as well as the ÖGB solely focused on proposing changes concerning the Red-White-Red Card (Parlament 2011c; 2011d).

In sum, the employers' associations were able to attain their preferences of a criteria-led points-based migration system which in fact now dominates the Austrian migration system compared to the Austrian Blue Card (European Commission, 2014). Although both employers' associations and trade union were clearly opposing the European Blue Card, the interest groups did however not mobilise for an ineffective implementation of the Directive. Consequently, the prediction that compliance is less likely if opposing interest groups mobilise against an effective implementation does not apply in the Austrian case.

6.1.5 Conclusion

Austria has the second highest level of compliance in this study. The Austrian government was able to transpose the demand-based Blue Card Directive next to a new criteria-led national HSI policy correctly. Only regarding the timely transposition, Austria had a significant delay of 10 months. Both the prediction for the veto player and the policy misfit concept were in line with the ultimate level of compliance, but could not give explanations for the transposition delay. The analysis has shown that the reasons for the transposition delay can be found on the federal state level. Regarding the influence of interest groups, the observations have not confirmed the predictions but rather lay outside of the expected behaviour. Although the interest groups opposed the Blue Card and pushed for a more open HSI policy, they did not pressure against an effective implementation.

Table 10 Summary analysis Austria

Level of compliance	Independent variable	Outcome	In line with prediction(s)
Moderate-high	Adaption pressure	Moderate-low	+
	Veto players	3	+
	Interest group influence	High preference attainment through direct and indirect access to decision-making, no mobilisation against effective implementation	+/-

6.2 Belgium

6.2.1 Compliance

Belgium transposed the Blue Card Directive with a significant delay. The bill finally received the royal assent on 15 May 2012, nearly 11 months after the official deadline and got into force on 10 September 2012 (Belgische Senaat, 2012). The European Commission opened an infringement case against Belgium on 18 July 2011 by sending a letter of formal notice, which was closed in October 2012 after the Belgian government informed the Commission about the successful transposition in August 2012.

Table 11 Correctness of transposition (Belgium)

Directive requirements	Belgian Blue Card	Compliance
Salary threshold of at least 1.5 the gross annual salary*	1,20 ²	No
Salary threshold of at least 1.2 the gross annual salary for shortage occupations*	Not applied	Yes
Educational background	Diploma of higher education	Yes
Duration of validity	13 months (After two years of holding a Blue Card, the period of validity is extended to 3 years)	Yes
Length of admission procedure	90 days	Yes
Permanent residence	After 5 years	Yes

*as stated in the legislative text

Regarding correctness of transposition, table 11 shows that Belgium complies with all aspects of the Blue Card Directive except the salary threshold of at least 1.5 the gross annual salary. In the Belgian legislative text, the salary threshold was set to €49.995 for 2013, which should be adjusted yearly according to the Collective Labour Agreement wage index (Tewerkstelling en Arbeid, 2015). Based on the database of OCED (2017) on Belgium gross annual salary in 2012, the calculation confirms a lower salary threshold of 1.2. Interestingly, state secretary Maggie de Blok from the Open Vld (*Open Vlaamse Liberalen en Democraten*), who was responsible for drafting the law, even emphasised that the salary threshold has been

² Own calculation, bases on OECD.Stat (2017). According to the Belgian legislation, the basic yearly minimum gross salary equals € 49.995 or higher. This basic gross salary is adjusted annually to the index of conventional wages for servants (Tewerkstelling en Arbeid, 2015).

set quite high compared to the national migration system (De Kamer, 2012). Indeed, this statement asserts the perception that the Belgian government wilfully decided to non-comply with this aspect of the Directive.

In their implementation report, the European Commission (2014) confirmed that the salary threshold does not correspond with the threshold defined in the Directive and announced to ensure that the Blue Card is implemented correctly. However, no adjustments have been undertaken by the Belgian government so far.

As a result of the significant transposition delay and the incorrect transposition of the Blue Card into national legislation, the level of compliance for Belgium is assessed moderate-low.

6.2.2 Policy misfit

Similar to Austria, Belgium had a very restrictive migration policy in place before the adoption of the Blue Card. The core of the concept was the restriction of immigration. This “migration stop” implied strict conditions for TCN to receive a work permit, including a mandatory labour market test as well as a necessary manpower agreement between Belgium and the country of origin (Antoons and Pirotte, 2013, p. 6).

Although there was no specific policy for HSI in place in 2009, the admission scheme “arbeidskaart B”, the most common admission card for TCNs, included some attractive conditions for high-skilled migrants. Next to certain categories of highly qualified workers, e.g. researchers, article 9(6) of the Royal Decree of April 1999 also exempted TCN with a higher educational qualification of at least 3 years who obtained a specific salary threshold from labour market test and manpower agreement (Tewerkstelling en Arbeid, 2015; Antoons and Pirotte, 2013).

Regardless of the strict HSI policy in place, the comparison in table 12 shows that the Belgian legislation was already compliant with all the main requirements except the salary threshold and permanent residence. Both policy misfit and adaption pressure were in total only moderate-low and do therefore not explain the low compliance score of Belgium.

Table 12 Policy misfit (Belgium)

Directive requirements	HSI policy of 2009	Required adoption	Policy misfit	Discretion	Level of adaption pressure
Salary threshold of at least 1,5 the gross annual salary	0,93 ³	Adopt an increased salary threshold	High	Moderate	Moderate-high
Salary threshold of at least 1.2 the gross annual salary for shortage occupations	Not applied	Already compliant	Low	High	Low
Educational requirements	Diploma of higher education acquired after 3 years	Already compliant	Low	Moderate	Low
Duration of validity	12 months	Already compliant	Low	Moderate	Low
Length of admission procedure	2-4 weeks	Already compliant	Low	Moderate	Low
Permanent residence	After 7-9 years (depending on concrete classification)	Adopt a shortened period to acquire a permanent residence permit	Moderate	Low	Moderate-low

6.2.3 Veto players

Belgium is a federal representative democracy and a constitutional monarchy. Head of state is the king, who's legislative power is considerably limited and who will therefore not be considered as an institutional veto player. The legislative power is executed by the two chambers, the House of Representatives (Kamer van Volksvertegenwoordigers) and the Senate (Senaat). The House of Representatives, which is elected every five years and represents the lower house in the Belgian federalism, has the right to propose and amend bills, as well as the

³ Own calculation, bases on OECD.Stat (2017).

right of interpellation and budget control. The Senate represents the interests of the states in the upper chamber. Depending on the type of legislation at question, the Senate's influence is however limited since the constitutional reform of 1995. For European Directives, the optional bicameral procedure is used. Within this procedure, the Senate can ask for evaluating the draft bill and if necessary, amend the draft bill. However, the Chamber has the final say about the amendments adopted by the Senate. Therefore, the Senate can merely delay the legislative process for European Directives through the "examination" right and is thus not considered as an institutional veto player.

In the House of Representatives, the fragmentation of parties is very high, although the Belgian electoral system has a threshold of five percent. Usually, between 8 and 10 parties sit in the parliament. Scholars even speak of "extreme multipartyism" (de Winter, 2006), with parties representing the interests of each linguistic group instead of the national interests. Therefore, one can distinguish between two distinct party systems, a francophone and a Flemish. Although there can be sister parties identified according to the political spectrum, they still widely differ regarding their general political objectives and their organisation (Ibid.). Therefore, the coalition parties will be counted as separate veto players.

The transposition of the Blue Card Directive started in December 2011 after the new government was formed following the elections in June 2010. This process, which went into history as the longest process of government formation, took 541 days. Eventually, six parties agreed to form a new coalition end of November 2011: The Social Democrats sp.a (*Socialistische Partij Anders*) and PS (*Parti Socialiste*); the Christian Democrats CD&V (*Christen-Democratisch en Vlaams*) and cdH (*Centre démocrate humaniste*); and the Liberalists Open Vld (*Open Vlaamse Liberalen en Democraten*) and MR (*Mouvement Réformateur*). Di Rupo was appointed as the new Prime Minister on 6 December 2011. In the coalition agreement, the government already stated to reform the law on naturalisation fundamentally (EMN, 2012).

On 20 January 2012, the coalition agreed on the draft bill which was sent further to the lower house on 21 February (Ministerraad, 2012). The lower house discussed the bill end of March, after the bill had been approved by the Commission of Home Affairs.⁴ Without any amendments, the bill got adopted in the House of Representatives on 29 March 2012. The

⁴ The committee supports a faster-decision-making procedure in the lower house and a quicker process of the legislative work generally, but cannot be considered as a veto player because they do not possess a veto. It is composed of 17 members, which are selected on the basis of the proportional representation of the parties in the lower House. In the committees, the bills and proposals submitted by the Chairman of the Chamber are discussed and if necessary, amended.

Senate made no use of its right for examination. With the ratification and promulgation on 15 May, the bill got finally adopted into national legislation (Belgische Senaat, 2012).

Although there were in total seven veto players who could have possibly vetoed the bill, the legislative process went very smoothly without any further delays since the entrance of the Di Rupo government, which even supported the reformation of the migration system. The veto players therefore did not account for the significant transposition delay. However, this is not the case when looking at the incorrectness of transposition. The draft bill adopted by the coalition already incorporated an incorrect salary threshold. As mentioned earlier, the state secretary (Open Vld) responsible for drafting the bill wilfully determined a lower salary threshold in order to align the Blue Card to the national policy.

6.2.4 Interest groups

The Belgian interest group system is incorporated into a neo-corporatist tradition, characterised by a tripartite framework, a limited number of big interest groups as well as a clear dominance of umbrella organisations. Regarding the political decision-making process, the interest groups are strongly influential in the fields of social and health policy.

The social partners consist of VBO/FEB, the Association of Belgian Companies; and the two big umbrella trade unions, the ABVV/FGTB (socialist) and the ACV/CSC (Christian). Moreover, there is also a liberalist trade union (ACLVB/CGSLB) formally part of the social partners. However, the social partnership is dominated by the first three organisations (Hooghe, 2013). Regarding migration, the social partners are part of the advisory committee for the employment of foreign workers. If asked for, the committee can advise legislative authorities over particular questions regarding the conditions and requirements for the admission of work permits.

No public statement or press release by the interest groups was generated by the desk research regarding the transposition of the Blue Card into Belgian legislation. Also concerning a broader search term on migration, the results were quite limited. However, it was possible to at least construct the different interest groups' positions regarding legal economic migration by analysing the 2008 migration conference of the Koning Boudewijnstichting, in which the main trade unions and employers' associations discussed future policy developments regarding economic migration (Koning Boudewijnstichting, 2009).

ABVV/FGTB and ACV/CSC were against a further facilitation of legal migration in 2008. Economic migration of TCNs was not regarded a necessary condition to tackle the anticipated

lack of skilled workers. Rather, the trade unions put emphasis on an improvement of the Belgian training system and also pushed for first looking at the unused domestic potential: “[...] alle kansen moeten gegeven worden aan de hier aanwezige werklozen, autochtonen en allochtonen” (Ibid., p. 23). Furthermore, ABVV/FGTB signalled in a press statement on the new government programme 2012 regarding migration and asylum, that the focus regarding migration should shift towards the regularisation of illegal migrants and the question of naturalisation (ABVV, 2012). This supports the assumption, that, although the trade unions generally opposed economic migration of TCNs, HSI was not a prominent topic in the discussions on migration policy for the trade unions (Vanheule et al., 2011).

Contrary, VBO/FEB advocated for a more flexible economic migration. HSI was presented as a necessary condition for a positive economic development in the next years. Moreover, the employer’s association pressured for a simpler and easier recruitment and admission procedure of high-skilled TCNs (Koning Boudewijnstichting, 2009).

However, there is no evidence regarding a direct or indirect access of these interest groups to the decision-making process of the Belgian Blue Card. In sum, it can be argued that the found material is not sufficient to outline the particular interest groups’ preference regarding the EU Blue Card and thus to establish a causal link to the decision-making outcome.

6.2.5 Conclusion

Belgium had a moderate-low level of compliance and ultimately implemented the Blue Card essentially incorrect and with a significant delay. However, the analysis has shown that the adaption pressure was rather low and is therefore not in line with the policy misfit prediction. Regarding the veto player argument, the applicability of the prediction showed a mixed result: while the transposition incorrectness can be traced back to the partisan interests, none of the high number of veto players accounted for the significant delay. Rather, the analysis has shown that the delay was caused by the governmental crisis which lies outside of the veto player prediction. Regarding the influence of interest groups, no sufficient empirical evidence could be found to establish a causal link.

Table 13 Summary analysis Belgium

Level of compliance	Independent variable	Outcome	In line with prediction(s)
Moderate-low	Adaption pressure	Moderate-low	-
	Veto players	7	+ // +/-
	Interest group influence	No valid evidence of influence	o

6.3 Germany

6.3.1 Compliance

In Germany, the Blue Card Directive was adopted on 11 May 2017 and got into force on 1 August 2012, more than 13 months after the official deadline for transposing the Directive had been passed. Due to this significant delay, the European Commission (2011) opened an infringement proceeding by sending a letter of formal notice to Germany on 18 July 2011 as well as a reasoned opinion in October of the same year. Eventually, Germany notified the Commission on 27 June 2012 to have fully transposed the Directive (EUR-Lex, 2012).

Even though Germany was able to finally transpose the Directive into national legislation, table 14 shows that the country transposed the Directive incorrectly with regards to the minimum salary threshold and granted permanent residence. Indeed, the salary threshold as stated in the national legislative text differs significantly from what has been required by the Directive. However, the incorrect transposition did not seem to have been happened unintentionally – the violation with EU law was pointed out by the opposition party SPD (Social Democratic Party) in all readings of the legislative proposal in the Bundestag. The government parties stated that the low salary threshold would be necessary to ensure the attractiveness for TCNs but did not mentioned any breach with the EU law (Deutscher Bundestag, 2012c).

In addition to that, the old policy for highly qualified workers already offered a permanent settlement permit. However, neither of these three noncompliance issues led to further steps of the infringement procedure by the European Commission. After Germany informed about the transposition, the European Commission closed the proceeding on 27 September 2012. Similar to the Belgian case, the European Commission (2014) however acknowledged mismatches between German implementation and the terms of the directive.

Next to the delay of transposition, Germany also incorrectly transposed the Blue Card Directive into national legislation. The level of compliance is therefore assessed moderate-low.

Table 14 Correctness of transposition (Germany)

Directive requirements	German Blue Card	Compliance
Salary threshold of at least 1.5 the gross annual salary*	1.14 ⁵	No
Salary threshold of at least 1.2 the gross annual salary for shortage occupations*	0,89 ⁶	No
Educational background	University degree or 5 years of professional experience	Yes
Duration of validity	Max. 4 years but depends on duration of work contract	Yes
Length of admission procedure	14 days	Yes
Permanent residence	After 33 months of working in highly qualified employment (can be lowered to 21 months if applicant can prove a B1 level of language proficiency in German)	No

*as stated in the national legislative text.

6.3.2 Policy misfit

Germany had rather restrictive immigration rules in place prior to the adoption of the Blue Card Directive. With the adoption of the Immigration Act (*Zuwanderungsgesetz*) in 2005, Germany implemented the first approach of a selective demand-based immigration policy for non-European HSI (OECD, 2010). High-skilled, as defined in §19 of the Residence Act (*Aufenthaltsgesetz, AufenthG*) were hereby granted more favourable conditions. The main benefit was an immediate permanent residence permit. However, the group of high-skilled immigrants who could profit from this special provision was quite limited. According to §19 AufenthG, only scientists with a special professional knowledge, academic teaching personnel

⁵ Own calculation, based on Destatis (n.d.). According to the German legislative text, the minimum salary level amounts to “zwei Drittel der allgemeinen Beitragsbemessungsgrenze zur Rentenversicherung” (BeschV, 2012).

⁶ Own calculation, based on Destatis (n.d.). According to the German legislative text, the minimum salary level for shortage occupations amounts to “52% der allgemeinen Beitragsbemessungsgrenze zur Rentenversicherung” (BeschV, 2012).

and research staff in leading positions as well as managerial staff and specialists with special professional experience who obtain a particular salary threshold⁷ were not bound to the usual labour market test and received a permanent residence permit immediately (BMJV, 2005).

Table 15 Policy misfit (Germany)

Directive requirements	HSI policy of 2009	Required adoption	Policy misfit	Discretion	Level of adaption pressure
Salary threshold of at least 1,5 the gross annual salary	Salary threshold of 1,72 the gross annual salary ⁸	Already compliant	Low	Moderate	Low
Salary threshold of at least 1.2 the gross annual salary for shortage occupations	Not applied	Already compliant	Low	High	Low
Educational requirements	Not defined	Adopt educational requirements	High	Moderate	Moderate-high
Duration of validity	Permanent residence permit	Adopt a restricted residence permit	High	Moderate	Moderate-high
Length of admission procedure	14 days	Already compliant	Low	Moderate	Low
Permanent residence	Permanent residence permit	Change the issuance of a permanent residence from immediate to “after 5 years”	Moderate	Moderate	Moderate

Table 15 shows that the requirements stated in the EU Blue Card implied some necessary changes regarding the definition of high-skilled immigrants by means of educational requirements as well as an adjusted validity period and permanent residence. However, the Blue

⁷ According to the German legislative text, the minimum salary level amounts to the “Beitragsbemessungsgrenze der allgemeinen Rentenversicherung” (BMJV, 2008).

⁸ Own calculation, based on Destatis (n.d.).

Card system also represented a demand-based system. Moreover, moderate discretion was allowed in all three aspects that needed adaptation. Therefore, the ultimate adaptation pressure was solely moderate-low and does not explain the low compliance score of Germany.

6.3.3 Veto players

Germany is a federal parliamentary republic. It has two legislative chambers, Bundesrat and Bundestag (bicameralism), which both have the formal power to veto against and block legislation. Moreover, the federal president could be regarded as an additional veto player, because he has to sign and approve legislation. However, there have rarely been cases in which federal presidents refused to approve acts. Therefore, this study will not take the federal president as a veto player.

The German Bundestag, the parliament, is the first institutional veto player and directly elected by the German people. The German electoral system implies a 5 % threshold. Therefore, there are usually no more than five parties represented in the parliament. Still, it is difficult for a single party to reach a majority of seats and to be able to form a stable and viable government. The German governments thus usually consist of a coalition, embedded in a fluid five-party system.

For legislation which does not amend the German constitution (Basic Law), the government needs a simple majority in the Bundestag to get legislation approved. Typically – unless there is a minority government in place – the ruling parties possess a majority in the Bundestag and legislation is easily approved if the coalition is able to agree on it (Rudzio, 2015).

After the federal election in 2009, the Christian Democratic Union (CDU) and the Christian Social Union (CSU) formed a majority government together with the Free Democratic Party (FDP). In total, the coalition held 332 out of 622 seats (Bundeswahlleiter, n.d.), which made it easy to reach approval in the Bundestag once the parties could agree on the transposition of the EU Directive into domestic legislation.

However, the agreement between the coalition partners seemed rather difficult. In a press conference of the cabinet on 2 August 2012, it was mentioned that different ministries had opposing views on the transposition of the Blue Card Directive (Die Bundesregierung, 2010a). Still, it was said that the cabinet will be able to transpose the EU Directive into national legislation on time (Die Bundesregierung, 2010b). However, chancellor Merkel announced one year later that there are still discussion points between the coalition partners which have not been solved yet: “Wir werden die Blue-Card-Richtlinie der Europäischen Union umsetzen,

auch wenn uns das eine Reihe von Diskussionen in der Koalition kosten wird.” (Die Bundesregierung, 2011a). In November 2011, the CDU/CSU and FDP finally agreed on the legislation and published the draft bill in February 2012 (Deutscher Bundestag, 2012a). The discussion points in the coalition were clearly related to party political preferences: while the FDP already longer advocated for a more liberal labour migration policy and even spoke about the necessity to introduce a points-based migration system, CDU and CSU pushed for enhancing the educational system in Germany to combat the skill shortage and to rather hold onto the restrictive demand-based system (CDU and CSU, 2009; Die Bundesregierung 2011b; FDP, 2009).

The Bundesrat is the second institutional veto player and represents the federation’s states governments. The Bundesrat can veto federal legislation which has already been approved in the Bundestag. Because the Bundesrat consists of the governments of the federal states, the political majority in the Bundesrat can differ from the political majority of the Bundestag and the distribution of the seats varies according to the results of federal state elections. During the transposition process in 2012, the majority of seats was not in held by the governmental coalition. Indeed, the government needed the approval of the Social Democratic Party (SPD) to get the legislation approved in the Bundesrat (Schröder, n.d.). This seemed rather difficult, because the SPD already issued heavy critique on the draft bill due to the low salary threshold, which according to the party could lead to wage dumping on the German labour market and would furthermore be in contrast to European law.

Although the Bundesrat constituted for an important veto player, the legislative draft got easily adopted on 11 May 2012 (Bundesrat, 2012b). Reason for this smooth and quick process was the modification of the draft bill on important points according to the recommendations issued by the Bundesrat at the beginning of February 2012 (Bundesrat, 2012a). One of recommendations that was taken into the final proposal has been, that the Blue Card can also be issued to TCNs with a professional experience of at least 5 years. Hereby, the federal states wanted to ensure that the bill does also tackle shortages in the care sector (Kinkartz, 2012). By amending the legislation proposal according to the recommendations of the Bundesrat, the government thus successfully ensured the bill would not be vetoed.

All things considered, there were two institutional and two partisan veto players that could effectively block the legislative process. Both institutional players did not use its veto power. The reason for the transposition delay was that the coalition could not find an agreement on how to transpose the Directive into German legislation due to different party political preferences regarding immigration policy. This disagreement furthermore led to the incorrect

transposition of the Blue Card, because the FDP successfully pressured for a more open admission scheme. In sum, the partisan veto players therefore constituted for the delay and incorrectness of transposition. The prediction of the veto player theory is therefore confirmed.

6.3.4 Interest groups

Interest groups are organised very differently in Germany. While trade unions are all organised under the Federation of German Trade Unions (DGB), which dominates the union landscape, employers' associations are highly diversified and collaboratively organised. The three biggest organisations in the sector of employers' associations and business organisations are the Confederation of German Employers' Associations (BDA), the Federation of German Industries (BDI) and the Association of German Chambers of Industry and Commerce (DIHK) (Reutter, 2012).

Regarding the Blue Card Directive and legal economic migration of high-skilled TCNs, trade union and employers' associations expressed very dissimilar views. The DGB stressed the importance of training EU citizens during the Blue Card discussion on the European level as well as the need for a European concept regarding work-related migration (Crosbie, J., 2007; DGB, 2008). The draft bill of the German government was highly criticised, most importantly because the salary threshold got considerably lowered compared to the old HSI policy. The DGB hereby pointed at the violation of European law and marked it as wage dumping in favour of the employer's associations. Generally, the DGB advocated for a fundamental change of the policy for work-related migration by means of a points-based migration system (DGB, 2011).

The BDA contrarily advocated for a new national provision implementing a more attractive and facilitating HSI policy. The association hereby argued that national provisions to satisfy the demand for highly qualified specialists would still be more favourable over a common European approach because it can better adapt to the national labour demand. A success of the Blue Card Directive in Germany was thereby questioned upfront (BDA, 2010).

During the policy-making process, the DGB was part of an expert consultation of the Internal Affairs Committee of the German Bundestag. Herein, the DGB advocated for deleting the minimum salary threshold for highly qualified immigrants who applied for the national HSI regulation as defined in §19 (3) AufenthG. This paragraph defined a high-skilled migrant merely by a minimum salary threshold. While the initial draft bill foresaw the deletion of the whole section to solely focus on the Blue Card as the new HSI policy, the DGB contrarily argued that only a shift away from salary threshold to educational requirements would be

favourable, because a salary threshold would generally not be a suitable factor to determine the qualification of a person (Deutscher Bundestag, 2012b). However, they did not argue in favour of a complete deletion of §19 (3) AufenthG because this national HSI policy offered more favourable conditions to the migrant regarding permanent residence permit. This was highly supported by the DGB, who advocated against circular migration and for permanent settlement and integration (DBG, 2011). Although their argument was taken into the recommended resolution and report of the Internal Affairs Committee and got furthermore requested by the federal states Rhineland-Palatinate and Bremen in the Bundesrat, it is not found in the final legislation (Deutscher Bundestag, 2012b; Bundesrat, 2012c). Therefore, the influence of the DBG can be regarded as rather limited.

Although the enormous decrease of the salary threshold symbolises a facilitation as advocated by the BDA and the DIHK (DPA, 2007; BDA, 2009), a presumed causal link cannot be proven based on the collected material. This assessment is further strengthened by the fact that both organisations highly criticised the changes regarding permanent residence and labelled these as a serious step backwards (DIHK, 2012). Therefore, it is concluded that neither trade unions nor business associations had a verifiable influence on the policy-making process.

6.3.5 Conclusion

Germany implemented the Blue Card incorrect and with a significant delay. While the adaption pressure in Germany was only moderate-low and the policy misfit prediction therefore contradictory to the moderate-low compliance level, the observations are in line with the prediction of the veto player theory. The analysis has clearly confirmed that the delay and incorrectness of transposition can be referred to the disagreement between the two coalition parties CDU/CSU and FDP. Regarding the influence of interest groups, the analysis has confirmed that the DGB, although having direct access to the decision-making stage, did not have any considerable influence and eventually did not attain their preference. Concerning the employers' associations, no valid evidence could be found to prove the influence of interest groups regarding the compliance outcome.

Table 16 Summary analysis Germany

Level of compliance	Independent variable	Outcome	In line with prediction(s)
Moderate-low	Adaption pressure	Moderate-low	-
	Veto players	4 (disagreement in coalition delayed decision-making and led to incorrect transposition)	+
	Interest group influence	No valid evidence of influence	o

6.4 The Netherlands

6.4.1 Compliance

In contrast to Germany, the Netherlands had no difficulties to transpose the Blue Card Directive in time. Already in September 2009, the government published the draft proposal for implementing the Blue Card into the national labour migration policy. Fully adopted on 24 July 2010, the Netherlands notified the European Commission on 30 July 2010 about this progress. Because the *Wet Modern Migratiebeleid* (Modern Migration Act), in which the Blue Card was incorporated, entered into force gradually, the Netherlands informed the European Commission on 18 June 2011 that the Blue Card will become effective in a timely manner (EUR-Lex, 2011; Eerste Kamer, 2013).

Besides the timely transposition, the Netherlands also transposed the Blue Card Directive correctly. As Table 17 shows, the country complies with all of the tested requirements the Directive has set. Therefore, the overall level of compliance is assessed high.

Table 17 Correctness of transposition (Netherlands)

Directive requirements	Dutch Blue Card	Compliance
Salary threshold of at least 1.5 the gross annual salary	1.5	Yes
Salary threshold of at least 1.2 the gross annual salary for shortage occupations	Not applied	Yes
Educational background	Higher educational qualification	Yes
Duration of validity	Between 1- 4 years, but depends on duration of work contract	Yes
Length of admission procedure	Within 90 days (if employer is recognised sponsor by the IND, the procedure is shortened to 2 weeks)	Yes
Permanent residence	5 years	Yes

6.4.2 Policy misfit

The Netherlands had a combination of demand-based and points-based system in place before the adoption of the Blue Card. The high-skilled migrant scheme (*kennismigrantenregeling*), which was adopted in 2004, had the aim to make the admission procedure easier and more attractive for high-skilled TCNs. Additionally, the scheme was supposed to support the ambition of the government to transform the Netherlands into a dynamic knowledge-based economy (Staatsblad van het Koninkrijk der Nederlanden, 2004; IND, 2009).

In practise, a highly skilled TCN could obtain a residence permit by showing an official work contract and a specific salary threshold. The latter was nuanced with regards to the age and qualification of the applicant. Thereby, applicants under 30 who obtained a university degree in the Netherlands received more favourable conditions. Moreover, a quick admission procedure and a long validity of the permit underline a more open HSI policy.

Next to this demand-based system, the government in 2009 also implemented a points-based system particularly aiming at attracting recently graduated TCNs by granting a one-year residence permit to search for a job in the Netherlands (Ibid.). Therefore, the Netherlands had the most open HSI policy in place before the adoption of the Blue Card. Interestingly, the national policy granted more favourable conditions to highly skilled than the European Blue Card.

Table 18 Policy misfit (The Netherlands)

Directive requirements	HSI policy of 2009	Required adoption	Policy misfit	Discretion	Level of adaption pressure
Salary threshold of at least 1,5 the gross annual salary	Three different salary thresholds according to age/educational background ⁹ <hr/> 1) Age ≥ 30: 1,20 <hr/> 2) Age < 30: 0,88 <hr/> 3) Age < 30 and graduated in NL: 0,63	Adopt an increased common salary threshold	High	Moderate	Moderate-high
Salary threshold of at least 1.2 the gross annual salary for shortage occupations	No salary threshold applied for scientific researchers and doctors in training to be specialists	Adopt a salary threshold for shortage occupations	High	High	High
Educational requirements	Higher educational qualification or relevant professional experience	Already compliant	Low	Moderate	Low
Duration of validity	max. of 5 years	Adopt a decreased duration of validity	Moderate	Moderate	Moderate
Length of admission procedure	2 weeks	Already compliant	Low	Moderate	Low
Permanent residence	After five years	Already compliant	Low	Low	Low

Table 18 shows that there was a policy misfit between national policy and the Blue Card in three of the six tested requirements. The national salary threshold, was considerably lower than

⁹ Own calculation, based on OECD.Stat (2017).

the threshold defined in the Blue Card. Especially for the lowest category of TCNs, the threshold defined was only half of what the Blue Card required. Due to the discretion allowed, the overall level of adaption pressure was though only moderate-low. Therefore, the policy misfit prediction is confirmed.

6.4.3 Veto players

The political system of the Netherlands can be defined as a parliamentary representative democracy with a constitutional monarchy. Although the head of state, the monarch, can fulfil a few political tasks, such as the signing of legislation, it has rarely ever happened that a Dutch monarch refused to sign. Therefore, the monarch is not taken into account as an institutional veto player.

The Dutch parliament has two chambers. The Second (lower) Chamber (*Tweede Kamer*) is the House of Representatives and the 150 members are elected every four years. Due to the fact that there is no election threshold prescribed in the Dutch political system, the second chamber is highly fragmented. A central consequence of this lack of dominance of a political group is also the constant need for cooperation. However, it is common that the government possesses over the majority in the second chamber.

The First Chamber (*Eerste Kamer*), also called Senate, has less legislative power than the Second Chamber. Although elected by the parliaments of the Dutch provinces, the senators do not represent the interests of the provinces. Moreover, the provinces do not possess any legislative power. Therefore, the position of the first chamber is considerably weaker than of the Second Chamber. Moreover, the coalition parties usually hold the majority in the First Chamber as well (Treib, 2004; Wilp 2012).

In the legislative term 2006-2010, the government consisted of three parties: The Labour Party PvdA, the Christian Democratic Appeal (CDA) and the Christian Union (CU). Together they held 80 seats in the Second Chamber. Interestingly, both PvdA and CU were since 2002 in the opposition of the former cabinets Balkenende I, II and III and in the past highly criticised the Dutch labour migration policy due to its restrictiveness. Also the CDA advocated for policy changes in their election programme. This was the reason why since the beginning of the legislative term, policy changes in the migration and asylum scheme were discussed (EMN, 2009).

Regarding the Blue Card, the new government was positive about the idea of a common European labour migration policy scheme: “De Nederlandse regering is een groot voorstander

van de blue card. Wij hebben de kennismigratie als samenleving nodig, niet alleen economisch maar ook, haast ik mij toe te voegen, sociaal en cultureel.” (Tweede Kamer, 2008). Acknowledging that the Netherlands are not able to control migratory flows alone, the government advocated for a harmonised and effective migration policy regime on the European level during the discussions about the new Stockholm Programme (Tweede Kamer, 2009). At the same time, the government also clearly stated that it does not want the Blue Card to be a substitute for the Dutch policy regarding high-skilled immigrants (Tweede Kamer, 2007).

However, the government changed its preference when the Blue Card Directive was adopted on European level. In fact, the outcome of the Directive seemed rather disappointing for the Dutch government, leading to the decision to focus more on the Dutch HSI policy, which came already into force in 2004 and foresaw an easier admission procedure. Therefore, the implementation of the Blue Card was only seen as a necessity to comply with EU law (Groen and de Lange, 2011). The Blue Card Directive was hence incorporated into the proposal of the Modern Migration Act, which was published on 9 September 2009. Interestingly, neither in the first nor in the second debate in the Second Chamber, the Blue Card was discussed as part of the policy proposal. Minister of Justice, Ernst Hirsch Ballin, pointed out after the adoption that the Blue Card, contradictory to the national HSI policy would not be appreciated by the Dutch industry (Eerste Kamer, 2010). The draft bill got adopted on 16 February 2010 by a large majority in the Second Chamber. Indeed, only the right-wing populist Party for Freedom voted against the proposal (Eerste Kamer, 2013).

Although the government held no majority in the First Chamber since 20 February 2012 due to the resignation of the PvdA from the coalition – and the First Chamber therefore accounted for a possible veto player – the bill was smoothly adopted on 5 July 2010 (Ibid.; Parlement & Politiek, n. d.).

In sum, the Netherlands had no difficulties to quickly transpose the requirements of the Blue Card Directive into national law, even though the government did not possess a majority in the First Chamber and the government preferred the old HSI policy. Notwithstanding that the bill had to be approved by five veto players, the high number did not lead to any delay or incorrectness of transposition. The prediction that a high number of veto players leads to a lower level of compliance is thus disconfirmed.

6.4.4 Interest groups

The Dutch interest group system is integrated into a corporatist system. Next to the biggest trade unions FNV (Federation of Dutch Trade Unions), CNV (Christian Trade Unions) and VCP (Trade Union Federation for Professionals), the employers' interest is represented by VNO-NCW (Confederation of Netherlands Industry and Employers), MKB (SME-association) and the Dutch Agriculture and Horticulture Organisation LTO. All employers' associations are integrated into the RCO, the Council of Employer's Associations, for which VNO-NCW provides the chairman. Among the trade unions, the FNV is by far the biggest trade union and is considered to set the tone (Kleinfeld, 2013).

On a higher level, the social partners exchange views within two institutions – *the Stichting van de Arbeid* (Labour Foundation) and the *Sociaal Economisch Raad* (Social-Economic Council, SER). The Labour Foundation represents the national consultative body of the social partners and incorporates all the major associations from both sides. The SER can be described as the highest advisory body of the government regarding social and economic policy and is regarded very influential in these policy fields. It consists of employers' representatives, employee representatives and experts appointed by the government (Wilp, 2012). The SER plays an important role in advising the Dutch government in reforming the migration system and drives for a more open and attractive HSI policy. This is also highlighted in the 2007 SER advice, which advocated for the points-based system described in 6.4.2. Two years later, the body's advice got implemented by the Dutch government (SER, 2007; IND, 2009).

The Dutch interest groups, which already in the years before the adoption of the Blue Card pressured successfully for a more liberal migration system with the adoption of the *kennismigrantenregeling*, were quite negative about the European system: “Nederland heeft met de Kennismigrantenregeling nu al een vrijer systeem om gewilde buitenlandse arbeidskrachten toe te laten. [...] En dat vrijere systeem moet er ook vooral blijven” (VNO-NCW, 2009). Already in 2007 the employers' associations claimed that the Blue Card is not going far enough (MKB-Nederland, 2007). The employers' associations and the trade union FNV therefore advocated for a remaining national HSI system next to the Blue Card, which would be more attractive compared to the European system (Trouw, 2007). This view was also stated in the advice of the SER, which argued, that Blue Card only marks a first step towards a European migration system (SER, 2007).

In the policy-making process of the Modern Migration Act in which the Blue Card got incorporated, the social partners got consulted in October 2007. Moreover, they also reacted on

the draft bill of the government in 2009. In the explanatory memorandum of the adopted bill, the reasoning is similar to what the interest groups advocated beforehand (Staatsblad van het Koninkrijk der Nederlanden, 2010). Here, it is clearly stated that the national HSI policy is kept, because the Blue Card implies stricter admission criteria. Hereby, it is argued that “[d]e regering heeft er met het oog op het belang van de Nederlandse kenniseconomie [...] voor gekozen de Nederlandse kennismigrantenregeling naast de invoering van de Europese blauwe kaart in stand te houden (Ibid.).

In sum, it can be said that the Dutch social partners were able to attain their preference. The analysis has shown that the social partners and namely the SER have a strong say in influencing Dutch labour migration policy. However, the observations did not apply to the prediction that opposing interest groups would mobilise against effective implementation of the Directive.

6.4.5 Conclusion

The Netherlands was able to transpose the European Blue Card in a timely and correctly manner. Due to the fact that the adaption pressure was only moderate-low, the high compliance level is in line with the prediction of the policy misfit theory. Contrary to that, the analysis has disconfirmed the prediction of the veto player theory. The high number of in total five veto players had no influence on the timeliness or correctness of the transposition. Concerning the influence of interest groups, the causal-process tracing has led to the collection of observations which do not confirm or disconfirm the predictions but lie outside of the theoretical expectations. Similar to Austria, the interest groups were opposing the Blue Card Directive but did not pressure against effective implementation.

Table 19 Summary analysis The Netherlands

Level of compliance	Independent variable	Outcome	In line with prediction(s)
	Adaption pressure	Moderate-low	+
	Veto players	5	-
High	Interest group influence	High preference attainment through direct access to decision-making, no mobilisation against effective implementation	+/-

7 Discussion of findings

Based on the empirical observations highlighted in the previous part, this chapter will now discuss the findings and determine the relevance of the selected theories for each case individually. This discussion is a necessary step before answering the research question in the final chapter.

7.1 Austria

Austria had a moderate-high level of compliance when implementing the Blue Card Directive. Besides the significant delay of almost a year, the country implemented all tested requirements of the Directive correctly.

Regarding policy misfit, the observations are in line with the prediction of the theory. Austria already complied with all tested aspects of the Directive besides the harmonised salary threshold. The moderate-low adaption pressure is thus in line with the moderate-high level of compliance.

However, also the observations regarding the veto player argument are congruent with the theoretical prediction. Austria had the lowest number of veto players compared to the other countries tested in the study. The analysis has shown that the transposition process proceeded smoothly and that neither the two partisan veto players nor the parliament as the institutional veto player delayed or blocked the policy-making process. Thus, both theoretical predictions are in line with the collected observations which makes the observation and the empirical evidence appear very weak.

The interest group influence analysis has led to several observations which on the one hand confirm the predictions, but on the other hand lie outside of it. First, the social partners were opposing the Blue Card and pressured for a new points-based system based on the proposal from the employer's associations, which stood in complete contrast to the demand-based Blue Card system. The social partners, whose influence was strong during the drafting of the policy as well as during the rest of the decision-making process, were able to attain their preference of a criteria-led system. However, they did not pressure against an effective implementation of the Blue Card, which was adopted together with the national HSI policy. It is questionable how the policy outcome would have been without the provision of the Directive to allow the existence of national HSI policies next to it. Nevertheless, the strong influence of the social partners has enabled a complete shift from a restrictive demand-based quota system to an open points-based HSI policy.

7.2 Belgium

Belgium had a very low level of compliance due to the fact that the country implemented the Directive incorrectly with regards to the salary threshold and furthermore had a significant delay of nearly 12 months.

However, the collected observations were not in line with the policy misfit concept. Due to the high discretion allowed in the tested requirements of the directive, Belgium already complied with nearly all aspects of the Blue Card and the ultimate adaption pressure was only moderate-low.

Also the observations regarding veto players were not fully in line with the prediction derived from the theory. Although the high number of Belgian veto players (7) and the low level of compliance would simply speaking confirm the theory's prediction, the causal-process tracing has shown that the decision-making process went very smoothly once the transposition process started. Both coalition partners as well as the parliament could quickly agree on the transposition. Therefore, the transposition delay cannot be explained by the high number of veto players. The causal-process tracing has highlighted that the governmental crisis in 2010-2011 accounted for the significant delay. This observation clearly lies outside of the theoretical prediction. Concerning the incorrect transposition, the analysis has shown that the incorrectness was caused by the respective state secretary responsible for drafting the law, who decided for a lower salary threshold in order to align the Blue Card with the national migration scheme and to thereby ensure its applicability for the Belgium labour market.

With regards to interest group, the study could unfortunately find no empirical evidence of a possible influence. Neither employers' associations nor trade unions publicly mentioned a preference regarding the implementation of the Blue Card and also did not access the decision-making directly or indirectly. In sum, this lack of attention can be explained by different things: (1) the general "migration stop" aim of the Belgian migration policy; (2) the fact that the Blue Card did not highly differ from the Belgian migration system as well as (3) the focus of interest groups and the new government coalition was rather on new naturalisation and regulation laws.

7.3 Germany

Similar to Belgium, the analysis determined a moderate-low level of compliance for Germany. The country transposed the Blue Card Directive essentially incorrect and with a significant delay. The analysis has given strong empirical evidence with regards to the veto player and policy misfit concept. The policy misfit theory could not explain for the low level of compliance due to the fact that the adaption pressure was merely low. Contrary, the observations confirmed that the veto players accounted for the noncompliance. Indeed, the disagreement between the two partisan veto players CDU/CSU and FDP delayed the policy-making process and furthermore led to an incorrect transposition, because the FDP successfully pushed for a more open HSI policy. The analysis of the influence of German interest groups led to no confirmation of the predictions. While the analysis highlighted that the DBG, although having access to the decision-making process, had no considerable influence on the policy outcome, the desk research did not gather sufficient empirical evidence regarding the influence of employer's associations. Although the analysis indicated that the employer's associations jointly pushed for a more open and liberal HSI policy, the collected observations do not allow for an establishment of a causal link between policy outcome and interest group influence.

Interestingly, the German government eventually implemented a much more open HSI policy than initially required, which also negatively influenced the correctness of transposition. Bearing in mind the criticism of the German government while the Blue Card was still discussed on the European level, this is an important observation. The German government strictly opposed the European scheme in the beginning and pointed to the possible loss of national sovereignty. Additionally, the German HSI policy before 2009 was rather restrictive. Summarising these aspects, one could therefore expect the German government to restrictively implement the Directive in line with its national HSI policy. However, Germany was the only tested country which substituted its national HSI policy with the Blue Card. First, this can be explained by the liberal party FDP, which strongly advocated for an opening of the labour market for high-skilled and a transformation towards a points-based HSI system. Eventually, they were not able to push for a complete turnaround of the German HSI policy, but significantly lowered the requirements for admission contradictory to the preferences of their rather conservative coalition partner. Second, the influence of employers' interest groups in pressuring for a more open HSI policy could have also supported the change in this context. However, there was no clear empirical evidence found to undermine this assumption.

7.4 The Netherlands

The Netherlands had the highest compliance outcome when transposing the Directive into national legislation. While all tested aspects of the Directive were transposed correctly, it was also the only tested country in this study which transposed the Directive timely.

This result is also in line with the prediction of the policy misfit. The Netherlands, although they had a mixed HSI approach in place, only had a moderate-low adaption pressure, which – again – can be related to the enormous discretion the Directive allowed.

The observations regarding the veto players are rather contradictory to the derived prediction. Indeed, it was assumed that the compliance level would be rather low, given the fact that the Netherlands had the second highest number of veto players in this study. Nevertheless, the policy-making process went very smoothly and the government already transposed the Directive into national legislation a year before the official deadline expired. However, the Netherlands chose to transpose the European Blue Card not as a substitute for their national HSI policy. This can be explained by the social partners, who in the past pushed for the implementation of a liberal and open HSI policy and pressured for persistence of the national HSI policy. Indeed, the Dutch government clearly pointed out that they favoured the national policy over the Blue Card. The implementation of the Blue Card can thus be regarded as only a necessary task to comply with European law.

The interest group analysis highlighted an interesting finding that lies outside of the theoretical predictions. The interest groups successfully pressured for keeping the national HSI policy in place while implementing the Blue Card, but did not mobilise for noncompliance concerning the Directive. This was probably due to the fact that the persistence of national HSI provisions was still allowed. However, with regard to the power of the interest groups, it raises the question in what way the compliance outcome would change if this provision had not been included in the Blue Card Directive.

8 Conclusion

This thesis tried to answer the research question how different outcomes in Member State's compliance on the EU Blue Card Directive can be explained and which compliance theory has the most explanatory power in doing so. By conducting a congruence analysis, three compliance theories were selected and empirical observations collected with regards to the theoretical expectations. In a second step, the empirical observations were compared to the theory-specific predictions.

The comparison has shown that the factors for a high or low level of compliance highly differed among the tested countries and that no theory was dominant in explaining the different compliance outcomes regarding the Blue Card implementation. Especially for the competing theories veto player and policy misfit, the explanatory power does not differ. Both theories applied to two cases while contradictory observations regarding the theory-specific predictions were collected in the other cases. In fact, there has been one case (Belgium), where none of the selected theories could fully explain the compliance outcome. Similarly, the Austrian delay in implementing the Blue Card Directive cannot be related to the tested theories but to the administrative capabilities of the individual federal states. Regarding the concept of interest group influence, observations did not apply to the derived predictions in the case of the Netherlands and Austria. Although two predictions were compiled to account for opposing and supporting interest groups, the individual cases showed that neither of it was applicable to the predictions and that the explanatory power can be regarded low. However, this can also be explained by the fact that first, little observations could be collected or second, opposing interest groups did not pressure against the correct implementation of the Blue Card Directive, but for a preservation of the national HSI policy or the adoption of a new national HSI policy.

With regards to policy misfit, it needs to be added that the prediction of the theory, although very clear, appeared to be very static due to the fact that discretion was not regarded in the theoretical discussion. Because high discretion was allowed to the Member States while implementing the Blue Card Directive, discretion was however added to the policy misfit approach in this study, acknowledging the fact that it significantly reduces adaption pressure. Indeed, this addition explains the negative applicability of the policy misfit in this study. No tested country in fact scored a high policy misfit. The relevance or reliability of this concept is therefore questionable and should be studied further while thinking about possible adjustments or adaptations concerning discretion of implementation.

To conclude, no dominant factor accounting for compliance or noncompliance could therefore be identified that affected the compliance outcome in all of the tested cases. While in Germany, the veto players blocked the policy-making process and influenced the incorrect transposition of it, the Belgian state crisis delayed the Belgian implementation process. In the case of Austria, the delay can be related to the necessary policy adjustments on the federal level. The Netherlands, the only tested country with a high compliance outcome, decided already in the beginning of the transposition process to only transpose the Blue Card as a side instrument to their more open HSI policy. Indeed, the addition of causal-process tracing to the research design proved to be very helpful in revealing other factors that were not taken into account in the mere congruence analysis. As emphasised already in the literature review in chapter 2, there is no overarching theory in the compliance field. In fact, it can be argued that compliance depends on a large pot full of diverging domestic and external factors which can even interplay in some cases. Scholars should not focus on separate state-based or preference-based explanations but rather study the whole implementation process to grasp every influential factor determining compliance.

As the cases of Austria and the Netherlands have shown, compliance with the EU Blue Card Directive was only achieved due to the inclusion of Article 3, which allowed that Member States could still have own HSI policies in place next to the EU Blue Card. With regards to the upcoming recast of the EU Blue Card Directive, the proposal of the European Commission which was presented in 2016 does not include this provision anymore but sees the Blue Card as a complete substitute for any national HSI policy (European Commission, 2016). Although one can argue that the proposal could again be weakened by opposing Member States in the following decision-making process, the different decision-making procedure since the Treaty of Lisbon makes it likely that less discretion will be allowed to the Member States. However, the current Blue Card Directive and the implementation in the several Member States has shown, that although high discretion was allowed, the current Blue Card system is a political patchwork of highly differing national approaches and is far away from offering an attractive alternative for high-skilled TCNs. With regards to a recast and an expected higher degree of harmonisation, it can be assumed that especially the domestic employers' associations or trade unions could protest against a correct transposition of the Directive, especially in countries with (1) a very open national HSI policy in place and (2) powerful interest groups such as shown in the case of the Netherlands.

Limitations

This study has however several limitations that will be discussed below. First, the level of compliance with the Blue Card Directive was only determined on transposition, the first stage of compliance. Due to the limited scope of this study, enforcement and application were not incorporated, although the literature suggests possible falsifications of the results. Therefore, enforcement and application should be integrated in a further, more comprehensive study. An adaption of the study regarding application could add in-depth information why employers or employees or both sides of the labour market refuse or prefer a specific admission system and which factors need to be changed to allow for a successful European scheme. Second, only four European countries were tested due to language restrictions. Therefore, only a small picture on the factors determining compliance and noncompliance can be drawn. Especially with regards to differing labour demands in the Southern and Eastern European countries as well as national developments with respect to HSI policy, a more encompassing study could reveal more nuanced results. The same accounts for the inclusion of further directives related to migration and the incorporation of more compliance factors, such as in the very extensive study of Falkner et al. (2005) on EU labour policy. Third, very little empirical information could be collected with regards to the influence of interest groups. Although it could be successfully argued that employers' associations and trade unions can have a considerable influence on the direction of HSI policy, this influence could not be made evident for every case in this study. Future qualitative research should consider the conduct of interviews with responsible actors of the interest group.

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