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**Variations in the Blue Card Directive Transposition across the
European Union**

Master's Thesis

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Declaration

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In Prague on 31. July 2020

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Abstract

This work attempts to analyze causes of divergent transposition of the Blue Card directive, regulating the conditions of immigration of highly-skilled workers from third countries, between individual EU Member States. The differences are analyzed on two levels. Firstly, in terms of timeliness and correctness of transposition, secondly, from a perspective of a different manner of transposition of the discretionary clauses entailed in the Blue Card directive (whether the Member States opted for an open or for a restrictive way of transposition of these provisions). Scholarly literature about transposition compliance and highly-silled immigration policies creates the foundation, by means of which the author identifies several variables and articulates hypotheses aiming at providing explanation of the divergent transposition of the directive in the respective Member States. The author classifies the Member States in groups and clusters according to their transposition performance and its results embody a point of departure for a subsequent analysis. From each group, certain number of countries is selected for a detailed country-level analysis in order to ensure universality and geographical representativeness of the outcomes. To review how the individual hypotheses confirmed in the Member States, the author verifies the individual variables by employing qualitative and quantitative methods analyzing data from the respective countries dated in duration of the transposition period. In result of this analysis, the conclusions in respect of validity of individual hypotheses in individual Member States are formulated, as well as the overall conclusions pertaining to the general validity of these hypotheses across the sample under scrutiny.

Abstrakt

Práce si klade za cíl zanalyzovat příčiny rozdílné transpozice směrnice o modré kartě, upravující podmínky migrace vysoce kvalifikovaných pracovníků z třetích zemí, mezi jednotlivými členskými zeměmi Evropské unie. Rozdíly jsou analyzovány na dvou rovinách. Zaprvé z hlediska včasnosti a správnosti transpozice, zadruhé z perspektivy rozdílného způsobu transpozice dispozičních ustanovení obsažených ve směrnici o modré kartě (zda členské státy zvolily otevřený či restriktivní způsob transpozice těchto ustanovení). Teoretická literatura o dodržování transpozičních povinností a o politikách v oblasti vysoce kvalifikované migrace tvoří základ, s jehož pomocí autor identifikuje celou řadu proměnných a formuluje několik hypotéz, jež si kladou za cíl poskytnout vysvětlění různorodé transpozice směrnice v jednotlivých členských zemích. Autor klasifikuje členské země do skupin a klastrů podle jejich transpozičního výkonu, jehož výsledky poskytují pro analýzu výchozí bod. Z každé skupiny je vybrán pro detailní analýzu určitý počet států tak, aby byla zajištěna zobecnitelnost výstupů i geografická reprezentativost. Jak se jednotlivé hypotézy potvrdily v členských zemích následně autor zkoumá ověřením jednotlivých proměnných prostřednictvím kvalitativních i kvantitativních metod analyzujících data z jednotlivých zemí z doby běhu

transpoziční lhůty směrnice o modré kartě. Na základě této analýzy jsou vysloveny závěry ohledně platnosti jednotlivých hypotéz jak pro jednotlivé země, tak z hlediska celkového potvrzení těchto hypotéz napříč zkoumaným vzorkem.

Keywords

Blue Card, highly skilled immigration, transposition, European Union, implementation, directive, third countries

Klíčová slova

modrá karta, vysoce kvalifikovaná migrace, transpozice, Evropská unie, implementace, směrnice, třetí země

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Závěrečné teze student odevzdává ke konci Diplomního semináře III jako součást magisterské práce a tyto teze jsou spolu s odevzdáním magisterské práce do SIS předpokladem udělení zápočtu za tento seminář.

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Charakteristika tématu práce (max 10 řádek):

The Blue Card directive, adopted in 2009, intended to harmonize the immigration of highly-qualified third-country nationals coming to the European Union. An evaluation of the timeliness and correctness of the Blue Card directive transposition on the Member States' level on the one hand and of the openness or restrictiveness of the directive's discretionary clauses on the other hand provide a baseline for the research. In the empirical part, the author explores how the various factors (derived from the scholarly literature focusing on transposition compliance and highly-skilled immigration policies) can be considered to account for the variances in the transposition performance among different EU Member States.

Vývoj tématu od zadání projektu do odevzdání práce (max. 10 řádek):

Since the beginning of the process, the scope of the research has been gradually adjusted to strike a right balance between the feasibility of the research on the one hand and the representativeness of the findings on the other. Based on the assessment of the baseline situation regarding the transposition performance of the 24 EU Member States bound by the Blue Card directive, Member States were divided into clusters according to the author's own calculation of the 'updated transposition index'. From each of the clusters, certain countries were selected for a detailed country-level analysis, while the selection was done in a way to have countries representing all transposition patterns and geographical regions represented in the sample under scrutiny.

Struktura práce (hlavní kapitoly obsahu):

Introduction

1. Context - evolution of the EU labour migration policies
2. Blue Card - main features, conditions and the negotiation process
3. Theoretical framework
 - 3.1. Compliance literature theories
 - 3.2. Highly-skilled immigration policies literature
4. Research design
 - 4.1. Overview of timeliness and correctness of transposition

4.2. Overview of variances in openness and restrictiveness of transposition

4.3. Research question, hypotheses, variables and operationalization

5. Analytical part

5.1. Summary of the country-level analysis

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Conclusion

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Appendix 1. Detailed outcomes of country-level analysis

Appendix 2. Graphics and Figures

Hlavní výsledky práce (max. 10 řádek):

In terms of the causes of the differences in timeliness and correctness of transposition, the analysis showed that there is hardly a single overriding factor or variable that would have determined the transposition regardless all the other possible factors. Therefore, only the veto players hypothesis was confirmed. In terms of the factors potentially explaining for the variances in openness and restrictiveness of transposition, four out of the five variables (and the hypotheses revolving around them) proved to be valid, with the share of research and development expenses on GDP coming out of the analysis as the most influential factor.

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List of Abbreviations

AFSJ	Area of Freedom, Security and Justice
BC	Blue Card
CEE	Central and Eastern Europe
DG	Directorate-General
EC	European Commission <i>or</i> European Communities (depending on context)
EMN	European Migration Network
EU	European Union
EU-15	15 EU Member States before the Eastern Enlargement in 2004/2007
EU-24	24 EU Member States that are bound by the Blue Card directive
EU-27	All of the EU Member States in the period 2009-2011
GATS	General Agreement on Trade in Services
GDP	Gross domestic product
GFMD	Global Forum on Migration and Development
HS	highly skilled
HSI	highly-skilled immigration
HSM	highly-skilled migrant
IOM	International Organization for Migration

JHA	Justice and Home Affairs
MS	Member States
OECD	Organisation for Economic Cooperation and Development
R&D	Research and development
TCN	Third-country national
TI	Transposition index
uTI	updated Transposition index
WGI	World Governance Indicators
WTO	World Trade Organisation

Country Codes

AT	Austria	ES	Spain	MT	Malta
BE	Belgium	FI	Finland	NL	Netherlands
BG	Bulgaria	FR	France	PL	Poland
CZ	Czech Republic	HU	Hungary	PT	Portugal
CY	Cyprus	IT	Italy	RO	Romania
DE	Germany	LT	Lithuania	SE	Sweden
EE	Estonia	LU	Luxembourg	SI	Slovenia
EL	Greece	LV	Latvia	SK	Slovakia

Introduction

For decades – if not centuries – the Old continent had been aptly nicknamed “Fortress Europe“ with reference to its stringent position towards incomers from the outside world. Legal pathways of migration were very limited. Until the middle of the 20th century, net emmigration from Europe prevailed over net immigration. The middle of the past century marked a breakthrough in this trend – for the first time, migratory inflows to Europe outnumbered the outflows. Decolonization happening in the former colonial strongholds of the main European powers resulted in a privileged relationship between several Western European countries and their former colonial states located in the third world, which was manifested in bolder migratory movements. Another phenomenon of 1970s were the “guest-workers“ that came to European countries (most notably Germany) to conduct mostly manual labour. Although originally for time-limited period, many of the former *Gastarbeiter* eventually settled down and established families in the Western Europe, while the second and the third generations of the guest-workers’ descendants are still present in these countries today, already endowed with full citizenship rights. However, as you can infer from the abovementioned historical *entrée*, for the second half of the past century, labour migration policies for third country nationals (TCNs) coming to Europe were managed mostly on bilateral, state-level basis and focused primarily on low-skilled labour.

In parallel to the evolution of the state-level labour migration policies, one could observe a dynamic development of a supranational actor, who had been slowly, but steadily preparing itself to influence the area of migration policies – the European Union (until the Maastricht Treaty the “European Communities“). With inclusion of the migration and asylum area into the so-called third pillar of the European Union (Justice and Home Affairs), EU created a fertile ground for its gradually increasing assertiveness in legal migration area. Although the Amsterdam Treaty provided a momentum to new EU-wide policy proposals, failure of the horizontal directive after the turn of millenium fired a blow to the EU ambitions. Having taken a lesson from its mistake, Union adopted a different strategy – instead of attempts to cover all modes of employment, Commission opted for a so-called sectoral approach, focusing on specific groups of TCNs. One of these groups, perceived as politically the least sensitive – implying the most likely to attain consensus in Council – were the highly skilled migrants.

The focus on highly skilled immigrants was neither solely result of a political calculus nor a coincidence. Besides the already mentioned trends of international migration and Europeanisation (resulting inter alia in supranationalisation), after 2000, globalisation and technological progress rendered the need to attract “the best and the brightest“ ever more acute.

For a long time, Europe had been lagging behind the United States, Canada or Australia in the so-called “global race for talent“ – its ability to attract highly skilled migrants from third countries was significantly weaker compared with these most established HSI destinations. These countries prevail as the dominant host countries of highly skilled TCNs both in absolute and relative terms. What is more striking – higher percentage of highly skilled migrants can be observed even in Switzerland, an European country outside of the EU. Moreover, in case of several countries in the neighbourhood of the Union (such as Morocco), higher numbers of highly-skilled migrants are coming across the Atlantic ocean than to Europe. With globalisation and technological development resulting in gradual changes of the labour market needs, one can reasonably expect an increased number of vacancies in highly-skilled occupations. Thus, Europe has to narrow down a gap between the leading HSI destinations and itself, otherwise, its competitiveness will be called into question.

Another argument behind the proposal entailed the demographic evolution. With Europe ageing, it is probable that in 2050 the ratio between Europeans of productive age and post-productive age will dramatically alter. To maintain sustainability of social systems and European welfare states, immigration will be a must. The more this is true for the HSI that has a potential to increase productiveness and efficiency, contributing exponentially to the growth of GDP.

Commission presented its proposal for the “Council Directive on the conditions of entry and residence of third-country nationals for the purposes of highly qualified employment“ on the 23rd October 2007. The initiative was given a colloquial nickname “Blue Card“ out of a reminiscence to the Green Card, a successful and long-established tool to attract labour migrants to the USA, a country with which the European policy-makers intended to compete.

The proposal was an ambitious attempt to harmonize highly-skilled immigration, up until then managed on the Member States level exclusively. Originally, the intention of the drafters was

to shift the locus of HS migration to the EU level completely, implying that the national HSI programmes would have to be eliminated and substituted by the Blue Card.

However, the negotiations in the Council proved to be extremely difficult and lengthy, lasting 19 months. The version of the Blue Card directive that was finally adopted on the 25th May 2009 vastly differed from the original intentions of the proponents. According to several authors, the directive was “ill-devised, ill-proposed and ill-timed”¹. Member States represented in the Council, acting under unanimity requirement, insisted on several concessions in respect of multiple core elements of the Blue Card. Most importantly, the adopted version enabled Member States to keep in place the national HSI schemes, existing in parallel to the Blue Card. Furthermore, the Directive expressly mentioned the persistent ability of Member States to set quotas on “volumes of admission” that – if set on 0 – would practically render the Blue Card dysfunctional. Generally, the adopted version entailed an excessive number of discretionary clauses (“may clauses”), giving Member States huge leeway to transpose the Blue Card in a restrictive manner to minimize its impact. The level of binding commitments present in the adopted version was quite limited, and according to some, the Directive represents the “lowest common denominator” that Member States were able and willing to agree upon.

After the adoption, Member States were provided a two-year-long transposition period set to expire on the 19th June 2011. Neither the transposition process was without difficulties – out of the 24 Member States bound by the Directive (hereinafter “EU-24”), only four managed to transpose the Blue Card on time. Commission launched infringement procedures against the remaining Member States that did not comply with the transposition deadlines. Sweden was the last Member States to complete the transposition in mid-2013.

More than decade after its adoption, how can we evaluate the effects of the Blue Card? Did it bring about the desired tangible outcomes and live up to the high expectations of its proponents?

After a brief look to the available official data on the Blue Card applications, several conclusions can be made. Firstly, the number of Blue Cards issued rises from year to year, indicating that the Blue Card becomes an established instrument in the European labour migration toolkit. Secondly, around 80 percent of all BCs are issued by only one country

¹ GÜMÜS, Y.K. EU Blue Card Scheme: The Right Step in the Right Direction? *European Journal of Migration and Law* 12, 2010, p. 436.

(Germany), where the BC seems to be outstandingly functioning, in a manifest contrast to the rest of the EU-24. Thirdly, the fact that BC co-exists in parallel to the national HSI schemes implies that in many EU-24 countries the relation between BC on the one hand and the national HSI scheme on the other is the one of competition, not complementarity.²

In general, the purpose of this thesis is to explore the causes of the many divergences observable in the national transposition of the Blue Card directive.

The analysis is carried out on two levels of transposition. First of all, the author analyzes how the most prominent factors of compliance deficit, as derived from the long-established compliance literature, can explain – individually or in their combination – the differences in timeliness and correctness of transposition across the EU-24. Secondly, with use of the scholarly literature on HSI policies, the author seeks to explore which policy considerations might contributed to national policy-makers opting either for restrictive or for open manner of transposition in respect of the discretionary provisions of the Blue Card directive.

The author is convinced that limiting the transposition compliance exploration to mere timeliness and correctness would be insufficient, since the excessive number of discretionary clauses gives Member States the possibility to transpose the Directive timely and correctly, yet deliberately limiting its presumed impact to minimum.

This thesis can among others contribute to answering the questions whether there is a correlation between timeliness and correctness of transposition and the success of subsequent practical implementation (application and enforcement) of the Blue Card in the respective EU-24 Member States and on the second level whether there is a correlation between open transposition and successful practical implementation. In a broader sense, my research may be perceived as an attempt to ascertain if open or restrictive manner of transposition in respect to directives with high level of discretion can pre-determine success of its subsequent actual implementation. More precisely, if such a manner of transposition can be one of factors conducive to satisfactory practical implementation.

² See the Eurostat data in Appendix II. (a) and (b).

Before I proceed further, I would like to make several disclaimers. First of all, please, keep in mind that this is a single-case study, exploring only one specific directive. Wherever conclusions are drawn, they are meant with reference to the Blue Card directive, without a claim for general validity. The author wants to avoid any unsubstantiated generalisations and is fully aware of the fact that migration is a special policy area and different variables may play a different role with regard to different policy areas.

Secondly, any variable tested in the empirical part is not expected to prove to be the only decisive factor causing given outcomes (timely, late, correct, incorrect, open or restrictive transposition). The author recognizes that the policy area in question is extremely complex, multi-faceted and multidimensional. Given this nature of the research terrain, application of any deductive approaches is ruled out, with a researcher having to rely on inductive methods. Induction naturally results in a risk of selection bias – not all potential contributory factors being taken into consideration. I strived to limit the danger of selection bias and the chapters on theoretical framework and research design provide justification of applicable theories chosen (and not chosen). Furthermore, even among the factors explored, the ratio of contributory weight of the respective variables may differ and unfortunately, it is impossible to isolate these variables and quantify their extent of contribution. Therefore, the author expects that multitude of several factors leads to the resulting status of transposition. Although the factors are explored individually, the outcomes should be presented and understood as correlations, not causations. While correlations are undeniable, for causations to be proven, all causes would have to be identified and their respective share of influence would have to be measured – which is impossible in inductive research when number of contributory factors may be unlimited. Nevertheless, we should also acknowledge that while correlation can occur not necessarily implying causation, causation cannot happen in absence of correlation. Thus, it is probable that several variables, based on this research, will prove to be probable contributory factors, in their combination causing timely, late, improper, proper, open or restrictive transposition.

The thesis proceeds as follows. After this introduction, the context of the gradual development of EU policies concerning labour migration is presented. The next chapter describes the Blue Card directive as a culmination of this past effort. The content of both the initial Commission proposal and the final adopted version is discussed in detail, including the policy-making process embodied by the Council negotiations in the lead-up to the adoption of the Directive. The third chapter represents a theoretical framework of compliance literature and literature

dealing with highly-skilled immigration policies and as such, the chapter provides a solid heuristic base for the later empirical analysis. The following fourth chapter puts forward a research design, with the research questions, hypotheses, variables and applicable theories being presented, explained and justified. The Chapter Fifth is the core of the thesis – analysis of the causes behind timeliness, correctness and variances in the Blue Card directive among the EU-24 Member States is conducted.

1. Context – evolution of the EU labour migration policies

Labour immigration policy has several specific features. It has a markable external dimension and touches upon issues widely considered to concern a core of a national sovereignty – the ability to control who can legally enter the country. It is therefore without surprise that for a long time, external labour migration had remained a rather underdeveloped area of European integration, whereby the Europe-wide efforts were limited to a low profile.

The pendulum swung after the outbreak of the 1990s. With the signing of the Maastricht Treaty and the completion of the Single European Market, the European Union was increasingly consolidated internally and voices calling for at least a partial European-level control of the external labour immigration became louder.

The Maastricht Treaty for a first time laid a legal foundation for EU activity in the area of labour migration area. It listed immigration policy among the so-called 'matters of common interest'. Nevertheless, the labour migration agenda was a part of the so-called 'third pillar' of the European Union, where decisions were to be taken by unanimity rule. These institutional requirements determined the unbalanced bargaining power during the 1990s: it was the Member States holding firm grip over any migration-related initiatives tabled on the EU level and the national governments' attitudes towards Europe-wide efforts in this sensitive area were reluctant.

Despite the limited appetite of Member States to allow sharing of competence in migration matters, the European Commission had visible ambitions in such a direction. In 1995, the special 'Task Force on Justice and Home Affairs' was established under the auspices of the

Commission's Secretariat General. The entity was composed of twenty officials, led by Adrien Fortescue, and was responsible for duties ranging across the entire spectrum of justice and home affairs policy area. „This was rather untechnocratic. We (...) were in a position to make real political proposals. Mr. Fortescue understood the importance for the Commission to be active in the field of justice and home affairs prior to the adoption of the Amsterdam Treaty.“³

The impact of the Task Force activities was strengthened by the fact that the Commissioner in charge of migration and asylum portfolio at that time, Anita Gradin, strongly advocated the need to move forward in this policy dossier. Political landscape in the last five years of the 20th century was favourable to elevating the profile of EU institutions (European Commission in particular) as a political actor in migration and asylum policies. European states – and likewise their political leaders, serving as gatekeepers to EU initiatives in migration – were appreciating ideas on how to better manage migration in a period when Europe was hit by migratory inflows from the war-torn Balkans.

Another argument in support of the EU-level policies towards third-country labour immigration included reference to 'natural extension of the EU internal market'. As Paris reveals: „Evidence shows that the 'Task Force' presented its work in the field of justice and home affairs as a means of solving a pressing problem, namely the completion of the internal market. (...) One of the prominent targets was the DG XV, in charge of 'Internal Market and Financial Services', insofar as it dealt with subjects – such as the free movement of EU citizens or social security systems – which could be easily extended to third-country nationals.“⁴ Highlighting the link between labour migration and internal market undeniably increased the leverage of the EU in labour migration policy area, since internal market always embodied the core of the EU exclusive supranational powers.

The entry into force of the Amsterdam Treaty marked a milestone. With this treaty revision, dating back to 1997 and in effect since 1999, the EU was mandated with a task to develop the Area of Freedom, Security and Justice (AFSJ). The most important change, brought about by the Amsterdam Treaty, entailed a 'communitarisation' of the AFSJ agenda – it was moved away from the 'third pillar' to the 'first pillar' of the European Union, in practice meaning that

³ PARIS, S. The European Commission and the Blue Card Directive: Supranational policy entrepreneurship in troubled waters. *Journal of Contemporary European Research*, Vol. 13, Issue 2, 2017.

⁴ Ibid.

qualified majority voting (QMV) instead of unanimity applied. Nevertheless, legal migration was an exception – in contrast to the rest of the AFSJ policy sub-areas, it remained subject to the unanimity threshold even after the Treaty revision. Thus, as Paris reminds, „the rise of Commission activity in legal migration matters was neither smooth nor easy.“⁵

Despite the fact that the Amsterdam Treaty delineated an updated legal framework for new legislative proposals in justice and home affairs area, it did not pave the way for specific measures to give the ‘dead letters’ an actual, tangible content. Indeed, an important step forward, at least in institutional terms, was a transformation of the earlier modest Task Force JHA into a fully-fledged Directorate-general Justice, Freedom and Security.

A breakthrough – a true inception of the development of EU legal migration policies – dates back to October 1999, when the European Council Summit dealing specifically with JHA was held in Tampere. In Tampere, the leaders of the Member States agreed to envisage an EU-wide migration policy, arguing with a need to ensure unrestricted freedom of movement not only to EU citizens, but also to TCNs who had already been residing on the EU territory legally. The main outcome of the summit was the so-called Tampere Programme, a multi-annual strategic document for the years 1999-2004 aiming at laying foundations to the gradual construction of the Area of Freedom, Security and Justice. The programme covered overall four pillars, one of them being a common EU asylum and migration policy. The conclusions from Tampere entailed ‘common standards and minimum rights for immigrants entering the EU’.⁶

Outcomes from Tampere blew a fresh wind to the European Commission’s sails. Commission, against the backdrop of a positive momentum and favourable political constellation (including support and determination of the Commissioner António Vitorino), came up with a proposal that has remained the most ambitious legislative initiative in the area of legal migration ever tabled on the EU level. Proposal for a Directive on ‘the conditions of entry and residence of third-country nationals for the purpose of paid employment and self-employed economic activities’, as its name indicates, was intended to regulate all categories of employees and also entrepreneurs from third countries. The proposal thus represented a horizontal approach, encompassing all categories of economic activities.

⁵ Ibid.

⁶ EUROPEAN PARLIAMENT. Tampere European Council 15 and 16 October 1999. Presidency Conclusions. [online] [visited 10.4.2020] Available at: <https://www.europarl.europa.eu/summits/tam_en.htm>

Commission made significant efforts to maximize the chances of approval of the horizontal Directive. It argued with a pressing need to overcome fragmentation of the Member States labour markets that had an impeding effect on the efficiency of the Single European Market. Also, Commission conceded that the directive was without prejudice to the principle of Community preference, according to which a Member States can decide to introduce a rule that a vacancy can be assigned to a TCN only if no candidate with equivalent qualifications can be found among nationals, other EU Member States' citizens or TCNs already legally residing in a Member State in question.

However, even against this backdrop in mind, the Member States' leaders faced the ambitious EU proposal with apparent resistance. „A plausible explanation for this has to do with the fact that in most EU Member States, immigration falls within the remit of the ministers of the interior, who mainly view immigration under the prism of border control, fight against illegal immigration, and internal security.“⁷

The securitization of the migration agenda, combined with the unwillingness of the Member States to cede their competences over the policy area perceived vital to the national sovereignty, resulted in an impasse in the Council of the European Union that was unable to reach a consensus. After several years of gridlock, the proposal was ultimately formally withdrew in 2006.

Even though the failure of the proposal was at odds with the Commission's initial ambitions, it did not undermine them utterly – it rather forced the proponents to change a strategy. „Although this event put a halt to the horizontal approach to labour immigration of the Commission covering all third-country nationals indistinctively, it did not put an end to Commission entrepreneurship in the area of legal migration.“⁸

The main goal of the Commission in the following years was to avoid another failure by adopting a more modest, piecemeal approach. „From then onwards, the Commission was careful not to repeat its past mistake, adopting a more prudent stance and switching to a slower

⁷ PARIS, S. The European Commission and the Blue Card Directive: Supranational policy entrepreneurship in troubled waters. *Journal of Contemporary European Research*, Vol. 13, Issue 2, 2017.

⁸ Ibid.

pace. In order to make progress, the prime task was to maintain the subject of legal migration on the agenda of the European Union.“⁹

In order to keep the dossier on the table, the commitment to create an Europe-wide immigration policy was reiterated by the European Council summit in Thessaloniki (2003)¹⁰ and by the JHA Council in Brussels (2004).¹¹ It was also stressed by the Green Paper on an EU approach to managing economic migration (2005).¹²

Commission officials chose a different strategy than in the lead-up to the failed proposal for a directive on the paid employment and self-employed economic activities. While earlier, proposal was designed mostly behind closed doors of Berlaymont, the seat of the Commission in Brussels, this time the EU institution decided to conduct an inclusive consultation with all potential stakeholders before the legislative proposals were to be tabled. From the perspective of the drafters, the highest priority was obviously attributed to the preferences and concerns of Member States, since the persistent unanimity requirement implied that even a single Member State was able to ruin the entire venture of all the other members.

The turn of the years 2004 and 2005 marked also the termination of the multi-annual Tampere Programme – and a corresponding need to shape an EU policy for an upcoming period. At the beginning of November 2004, the European Commission adopted the Hague Programme, strategic document aimed at following up on its predecessor – the Tampere Programme – and providing a roadmap for the efforts of the Union in the area of justice and home affairs in years 2005-2009.¹³

The Hague Programme maintained a rather low profile in the legal migration area, relying on continuation of the resolutions laid down in the Tampere Programme: „Legal migration will play an important role in enhancing the knowledge-based economy in Europe, in advancing

⁹ Ibid.

¹⁰ EUROPEAN COMMISSION. Thessaloniki European Council 19 and 20 June 2003. Presidency Conclusions. [online] [visited 10.4.2020] Available at: <https://ec.europa.eu/commission/presscorner/detail/en/DOC_03_3>

¹¹ EUROPEAN COMMISSION. 2618th Council Meeting Justice and Home Affairs. Brussels, 19 November 2004. [online] [visited 2.5.2020] Available at: <https://ec.europa.eu/commission/presscorner/detail/en/PRES_04_321>

¹² COMMISSION OF THE EUROPEAN COMMUNITIES. Green Paper on an EU approach to managing economic migration. COM(2004) 811 final. Brussels, 11.1.2005.

¹³ OFFICIAL JOURNAL OF THE EUROPEAN UNION. The Hague Programme: Strengthening Freedom, Security and Justice in the European Union. C 53/1, 3.3.2005.

economic development, and thus contributing to the implementation of the Lisbon Strategy.¹⁴ The conclusions of the European Council summit from November 2004 gave green light to Commission, which was mandated with a task of developing a concrete policy proposal for the EU legislative activity in legal migration area for the upcoming multiannual period.

Commission fulfilled its task by delivering the Policy Plan on Legal Migration.¹⁵ The most significant change, brought about by this policy plan, was the shift from the horizontal approach of managing labour migration to the fragmented, sectoral approach. In practice, this meant that instead of focusing on all categories of economic migrants by one all-encompassing piece of legislation, Commission was to concentrate on distinct segments of legal economic migrants separately, targeting them with separate directives or regulations.

To fulfil the policy plan, the four sectoral directives were to be presented: concerning highly qualified workers, seasonal workers, intra-corporate transferees and remunerated trainees. In addition to that, Commission also proposed adoption of the so-called framework directive, purpose of which should be to provide a legal scheme to all third-country nationals in legal employment that are already admitted in a country of the EU, but who had not yet been entitled to the long-term residence status.

The selection of the four categories of migrants – implicating omission of all the other – indicates, that the new sectoral approach of the Commission clearly put in a foreground the interests of Member States, instead of providing wide and accessible legal migration pathways to third country nationals. According to many scholars (such as Carrera¹⁶), the principles behind the sectoral approach were „utilitarian, selective and economically-driven“. The Union practically sent a message that it wanted to ‘cherry-pick’ mostly the brightest of the immigrants, who can provide the highest value added to the Member States. Moreover, specifically the area of highly skilled immigration also bore certain practical advantages. Because of its reliance on formal criteria (salary thresholds etc.), its implementation was likely to result in relatively few difficulties.

¹⁴ EUROPEAN PARLIAMENT. Tampere European Council 15 and 16 October 1999. Presidency Conclusions. [online] [visited 10.4.2020] Available at: <https://www.europarl.europa.eu/summits/tam_en.htm>

¹⁵ COMMISSION OF THE EUROPEAN COMMUNITIES. Communication from the Commission. Policy Plan on Legal Migration. COM(2005) 669 final. Brussels, 21.12.2005.

¹⁶ CARRERA, S. et al. Labour Immigration Policy in the EU: A Renewed Agenda for Europe 2020. CEPS Policy Brief No. 240, April 2011.

Although the political reality, materialized in the attitudes of Member States, made the Commission step down from its initial level of ambitions, even proposal for a directive on highly skilled immigration – if approved – was perceived to mark a huge leap forward. For a success of the EU visions, support from the Commissioner Franco Frattini proved critical. Frattini shared the enthusiasm of his predecessor, Antonio Vitorino, and was determined to move the dossier of legal migration forward. The president of the European Commission at that time – José Manuel Barroso – was also loudly supportive of the deepening integration efforts in this policy dossier.

In time of particularly on national level visible increasing tendencies to perceive migration in securitized terms, more as a challenge than as an opportunity, Frattini and his collaborators from the European Commission decided to change the rhetoric and framed the issue as a potential enrichment and chance to European Member States, that – if seized – can increase their competitiveness and close the gap in ‘the global race for talent’, where the EU was lagging behind the United States. For decades, USA had petrified its position as the most successful country in attracting the highly skilled labour migrants from overseas.

In the time before the proposal of the EU directive on highly skilled immigration, reference to the American ‘Green Card’ was often made by the EU institutions’ representatives, proving that Union was genuinely determined to develop a scheme that could become a European counterpart to the well-functioning American system. Initially, Commission even intended to – at least in ‘political marketing’ terms – to ‘copy and paste’ the US scheme, by suggesting the ‘EU Green Card’ to be a short abbreviation for the EU HSI proposal. Nevertheless, after the recommendation voiced by the renowned Brussels-based think-tank Bruegel, the Commission decided to call the proposal ‘EU Blue Card’, to differentiate at least slightly from the American scheme and to reflect the background colour of the EU flag.

The Commission proposal for a directive regulating HSI was tabled as the first one out of the four directives envisaged under the Policy Plan on Legal Migration. This was not a coincidence – HSI was considered as the politically (and also publicly) least sensitive area, where the chances of converging views among Member States were perceived as the highest.

Nevertheless, even the Blue Card proposal did not evade intense resistance in the Council. But

one has to highlight that this statement cannot be generalized to all Member States – on the contrary, many Member States welcomed the Blue Card proposal and became its vocal proponents. The cause of the troubles to a great extent lies not only in political justifications, but also in institutional setting – the unanimity requirement implied that it was not sufficient to have majority of Member States on board, but all of them (apart from the ones that were granted opt-outs from the JHA area).

Surprisingly, it was the two traditionally pro-European Member States, Germany and Austria, that during the Council negotiations on the Blue Card acted as the most opposing Member States towards the adoption of the binding EU legislation in the HSI area. According to some accounts and interviews, 'it was only for reasons of external visibility, that Germany and Austria did not decide to prevent the adoption of the directive'.¹⁷ Then, Berlin and Vienna at least wanted to 'invest much effort into making the Blue Card into a highly restrictive permit'.¹⁸

To the detriment of the European Commission and its initial Blue Card proposal, the Commission was a weaker player in this game against the Member States. Thus, it was forced to concessions if it wanted to avoid repeating the scenario of the failed proposal for the horizontal directive from 2001.

Therefore, the Commission wished to prevent another impasse at all costs and took the Member States' concerns very seriously. The Commission even agreed with otherwise an unprecedented move – it sent the final draft of the proposal to Berlin and gave the German Chancellery and the Ministry of Interior the option to comment on it. The purpose behind this step was to reassure everybody, that the preferences of the most vocal critics were incorporated before the proposal was presented to the Member States represented in the Council.

A disbalance of bargaining power between the Commission and the Member States and an absence of leverage on the Commission's side enabled what was later called by scholars and analysts as a 'watering down' of the initial Commission proposal. Its strongest harmonizing features were either significantly weakened or utterly deleted. Most importantly, the Commission gave up its original idea to create an EU-wide scheme that would substitute and

¹⁷ PARIS, S. The European Commission and the Blue Card Directive: Supranational policy entrepreneurship in troubled waters. *Journal of Contemporary European Research*, Vol. 13, Issue 2, 2017.

¹⁸ Ibid.

replace the existing diverse national HSI policies. Instead of limiting the 24 different national schemes in the EU-24 into the one EU Blue Card, the proposal – after its watering down – effectively created another, 25th scheme on the top of all the national ones that were allowed to remain in place. Thus, the excessive diversification and fragmentation of the EU MS HSI schemes was not reduced, but even strengthened – in a manifest contrast to the Commission’s initial intention.

At the end of the day however, we can conclude that in light of the historical evolution of the EU actorship in the legal migration policy, the final proposal of the Blue Card directive probably should not be assessed as a failure of the European Commission. Put bluntly, the Commission had no other way and because of the valid institutional setting, stood before a dichotomical choice, where it had to select the ‘less evil’ option: ‘The Commission opposed the distortion of its idea until it had no other option but to back down. (...) It was a ‘battle’ between the two institutions: a battle the Commission was willing to fight though in spite of a very limited foreseen success.’¹⁹

The success is a relative term and although watering down of a directive equaled unfulfilment of the Commission’s initial visions, one also has to underscore that according to many observers in the lead-up to the adoption of the Blue Card directive, it was likely that the proposal would be rejected completely, exactly as was the horizontal directive from 2001. From this view of point, the mere adoption of the Blue Card directive can be seen as a success.

Probably whatever sophisticated the Commission proposal could have been, the watering down in the Council would prove unavoidable – because it does not stem from the substance of the Blue Card directive itself, but from the deep-rooted convictions of Member States on how far should the centralization on the EU level reach. As Sidonie Paris reminds: „One could observe an opposition between the two long-standing conceptions of the European construction – the intergovernmental approach, incarnated by the Member States, and the communitarisation view, based on incremental harmonisation, stirred by the European Commission.“²⁰ Combined with the unanimity threshold, the final shape of the Blue Card directive was nothing else but a logical outcome.

¹⁹ Ibid.

²⁰ Ibid.

2. Blue Card – main features, conditions and the negotiation process

The personal scope of the Blue Card directive covers third-country nationals who move from a third country to an EU Member State for the purpose of highly qualified employment. One of the crucial aspects of the directive – and also reasons for disagreements during the fierce Council talks – was the definition of highly qualified employment.

Here, the Commission basically adopted the long-established definition of employment under the jurisprudence of the European Court of Justice and added an element of „higher qualification“ on the top. Therefore, under the BC directive, the person eligible for the Blue Card should be ‘protected as an employee under national employment law for the purpose of exercising genuine and effective work for, or under the direction of, someone else in return for payment, and who has the required ‘higher professional qualifications’.²¹

The ‘higher professional qualifications’ became another object of long discussions in the Council and its working parties. The final version of the directive laid legal foundation for two ways to attest the necessary higher professional qualifications – one compulsory by default, one optional by possible derogations. Higher professional qualifications are understood as higher education qualification, that is further specified as ‘any diploma, certificate or other evidence of formal qualifications issued by a competent authority attesting the successful completion of a post-secondary higher education programme, namely a set of courses provided by an educational establishment recognised as a higher education institution by the State in which it is situated’.²²

This definition causes significant practical difficulties. Firstly, the Member States do not possess a harmonized procedure regarding the recognition of university diplomas attained in third countries. Secondly, stemming from the fact that these recognition processes differ from

²¹ Council Directive 2009/50/EC of 25 May 2009 on the conditions of entry and residence of third-country nationals for the purposes of highly qualified employment. Official Journal of the European Union, L 155/17, 18.6.2009, Art. 2 (b).

²² Ibid, Art. 2 (h).

country to country, the temporal limits for the processment of applications are extremely divergent and in consequence, can render the ability of a Member State to process the BC application within a prescribed time limit impossible. Thirdly, a short inspection into the HSI policies conceptualisations makes evident that there do exist professions prevalently classified as 'highly skilled' although the employees in such do not usually possess tertiary education for their exercise – example of those are nurses and similar medical assistants.

Partially, probably in an attempt to overcome some of the existing weaknesses listed above, Commission initially wanted to provide a second option to fulfil the 'higher professional qualifications' criterion that would be on an equal footing with the educational pathway. Thus, five years of professional qualifications, defined in detail as 'the actual and lawful pursuit of the profession concerned', can serve as an alternative substitute in an absence of relevant education-related credentials. Nevertheless, during the negotiations in the Council, several Member States raised an objection that professional qualifications, in contrast to educational qualifications, provide greater room for potential misuse and can be verified only with greater difficulty. Thus, the final version presents the educational requirement as a default and the equivalent professional qualifications only as an alternative option to be activated 'by way of derogation, when provided for by national law'.²³ The reality check of the transposition process reveals that only a few Member States actually decided to implement this alternative option to prove oneself eligible for the Blue Card without the possession of the educational credentials.

In terms of the personal scope, the directive also entails an exclusionary provision – certain categories of persons are expressly excluded from the possibility to obtain the Blue Card. These include asylum-seekers, researchers, long-term residents, posted workers or seasonal workers.²⁴ The common denominator explaining why these categories of persons are put into a same package in the exclusionary clause of the Blue Card directive is straightforward – they are either already regulated by specific binding sectoral legislation on an EU level, or such legislation was already in a process of preparation when Commission presented the proposal for the Blue Card directive. Hence, omitting to exclude these categories would have led to redundancies, confusion and legal uncertainty.

Several discretionary provisions in the chapter on personal scope and eligibility bear utmost

²³ Ibid, Art. 2 (g).

²⁴ Ibid, Art. 3 (2).

importance and it would not be an overstatement if we conclude that they effectively 'gave face' to the final shape of the Blue Card directive.

One of these clauses envisages that 'the Directive is without prejudice to the right of Member States to issue permits other than in the form of a Blue Card for 'any purpose of employment'.²⁵ This provision led to the situation that instead of strengthening convergence in the EU HSI schemes, the pre-existing fragmentation was even deepened. Also, as accounts of practical implementation of Blue Card directive indicate, in many Member States, the Blue Card co-exists with the national HSI schemes and effectively appears in competition against these national frameworks. Member States are thus granted a leeway to decide if they want their parallel national schemes to be either a complementary tool to Blue Card, providing less favourable conditions than the EU-wide scheme, or to be a primary way to attract the highly skilled immigrants to their country, setting the entry thresholds to such a level that would equip the national schemes with greater attractiveness than the Blue Card.

A situation is further complicated by the fact that the Directive remains silent on the relationship between the Blue Card and the parallel national schemes, which can result in tangible practical difficulties. For instance, as Peers points out, if a Member State applies overall quota on the maximal number of residence/work permits granted, it is not clear whether such a quota would apply only to Blue Card holders, only to national HSI scheme permit holders or to both – by means of certain proportion-based ratio.²⁶

The possibility to introduce quotas on admissions²⁷ is another example of discretionary provisions present in the final approved version of the Directive. This provision can have a very toxic effect on the operationability of the Blue Card scheme, since – as Guild underscores – „A Member State need only set the quota at zero to frustrate the whole project.“²⁸ Short look into the initial implementation accounts shows that Cyprus already decided to materialize such

²⁵ Ibid, Art. 3 (4).

²⁶ PEERS, S. Legislative Update: EC Immigration and Asylum Law Attracting and Deterring Labour Migration: The Blue Card and Employer Sanctions Directives. *European Journal of Migration and Law*, Vol. 11, 2009.

²⁷ Council Directive 2009/50/EC of 25 May 2009 on the conditions of entry and residence of third-country nationals for the purposes of highly qualified employment. *Official Journal of the European Union*, L 155/17, 18.6.2009, Art. 6.

²⁸ GUILD, E. EU Policy on Labour Migration. A First Look at the Commission's Blue Card Initiative. CEPS Policy Brief No. 145, November 2007.

'frustration', while some other Member States transposed the option to introduce quotas on admission, although they have not effectively made use of them up until now.

Another option capable of providing 'back door' to Member States unwilling to grant Blue Cards, although less 'harmful' to the Blue Card than the quotas that can bring the number of admissions to zero, embodies the so-called 'Community preference' principle: „MS may verify whether the concerned vacancy could not be filled by national or Community workforce, by third-country nationals lawfully resident in that MS or by EC long-term residents wishing to move to that MS for highly qualified employment“.²⁹

Thus, the existence of parallel national schemes, the option to introduce quotas on maximal numbers of admission and the possibility of conducting labour market tests in relation to the Community preference principle together contribute to the situation that a would-be highly skilled immigrant is not granted the Blue Card, even though he or she would have otherwise fulfilled all the admission criteria and would have proven himself or herself fully eligible for obtaining the Blue Card.

An interesting discretionary provision is the clause concerning the so-called ethical recruitment.³⁰ If Member States decide to transpose this, it will technically disable immigration of certain professions from certain third countries. However, the reason is not to protect the markets on the side of the target countries – but to prevent the brain drain that the countries of origin could face if their 'brightest minds', who occupy the socially needed professions, left to Europe. Nonetheless, only a minority of Member States transposed the option to introduce ethical recruitment.

If a candidate for a Blue Card possesses higher professional qualifications and a Member State to what he or she wishes to migrate does not apply any of the limitations described above, he or she has to satisfy also the other criteria. These include a valid work contract or a binding job offer with a minimum period of validity lasting at least one year, possession of a comprehensive sickness insurance and not posing a threat to public policy, public security or public health.

²⁹ Council Directive 2009/50/EC of 25 May 2009 on the conditions of entry and residence of third-country nationals for the purposes of highly qualified employment. Official Journal of the European Union, L 155/17, 18.6.2009, Art. 8 (2).

³⁰ Ibid, Art. 3 (3) and Art. 7 (4).

Member States can also derogate and insert an additional requirements on a discretionary basis – eg. ask a prospective Blue Card holder to communicate their address of residence on the territory of a Member State in question.³¹

The most controversial aspect among the Blue Card eligibility criteria is undoubtedly the salary threshold. This means that according to a valid work contract or a binding job offer, a person eligible for a Blue Card must earn a salary at least 1.5 times higher than the national average gross annual salary in the Member State in question.³² Some Member States preferred a salary threshold to be even higher, while some other EU countries adopted an opposing view. At the end of the Council deliberations, the negotiators opted for a compromise – setting a threshold at the 1.5 level with the discretionary option to deviate upwards (put in place higher salary threshold).

Salary threshold evoked divisive reactions of different Member States, political parties and interest groups. As the most burdensome constraint of the Blue Card, it serves to ensure that the Blue Card will retain its privileged status, available only to ‘the best and the brightest’ - only to highly skilled migrants. In other words, it sought to ensure that the instrument will not be overused. On the other hand, HSI theory enlightens that not all professions requiring ‘higher skills’ are remunerated accordingly. For instance, teachers should undoubtedly be considered highly skilled employees, since (besides all the other reasons) an exercise of their profession is conditioned by possession of post-secondary education. However, in many Member States, their salaries do not meet the threshold of 1.5 of the average gross annual salary.

However, in certain specific cases, the wording of the Directive allowed the salary threshold to be more relaxed and lenient – for professions occurring in particular need of third-country workers, the threshold can be reduced to 1.2 times of the average gross annual salary.³³ This option was presented to the Member States by way of – again – their discretionary derogation and one has to reiterate that not all Member States decided to implement this option into their transposition measures.

The initial Commission proposal presented in 2007 also included a provision enabling more

³¹ Ibid, Art. 5.

³² Ibid., Art. 5 (3).

³³ Ibid, Art. 5 (5).

favourable eligibility criteria to young professionals below the age of 30, however, this clause did not survive the Council negotiations.

The Third Chapter of the Directive concerns the details related to the issuance, renewal or withdrawal of the Blue Card. Most importantly, it stresses that the standard period of validity of the Blue Card should be within a range from one to four years. This provides a relatively immense leeway to Member States and makes manifest differences in attractiveness of Blue Card in the Member States.

As far as the grounds for withdrawal and/or non-renewal of the Blue Card are concerned, these include quite predictable situations, when the Blue Card application documents were obtained by fraud or when the holder ceases to meet the eligibility criteria of the Blue Card. The Directive, on a discretionary basis, also provides for optional grounds for withdrawal or non-renewal of the Blue Card. These *inter alia* encompass inability to provide sufficient resources to maintain the holder and/or his family without a help of the Member States' social security system.³⁴

Any refusal (refusal of an application, refusal to renew a Blue Card or a decision to withdraw a Blue Card) according to the wording of the Directive must be notified in writing – and a Blue Card holder must have options for legal recourse to challenge such a decision.³⁵

Even the procedural aspects of the application process entail discretionary provisions – both in a potentially favourable or unfavourable way from the Blue Card holder's perspective. Some Member States could thus transpose the option that applications for a Blue Card can only be filed from outside of their territory.³⁶ Other Member States required the candidates for the Blue Card to file it while being on their territory, but in possession of valid visa or long-term residence permit.³⁷

The time limit for a processment of the Blue Card application was set to 90 days (3 months).³⁸ This was recognized by the drafters as a maximal length, so that the Member States were able

³⁴ Ibid, Art. 9.

³⁵ Ibid, Art. 11 (3).

³⁶ Ibid, Art. 10 (4).

³⁷ Ibid, Art. 10 (2) and (3).

³⁸ Ibid, Art. 11 (1).

to commit themselves through the national transposition measures to swifter adoption of decisions on the Blue Card applications – and many of the Member States agreed to expedite their administrative processes beyond the ‘common denominator’ in the Directive.

The cornerstone of the Blue Card is the Chapter IV, delimiting nature and scope of the rights that Blue Card holders shall be entitled to. It established legal boundaries of the so-called employment mobility and geographical mobility. The former stands for a limitation of job offers that Blue Card holders can uphold during the first two years of Blue Card validity. During that time period, Blue Card holders can take up only such jobs that meet the criteria for granting the Blue Card.³⁹ Even when it comes to change of employer (with continuous fulfilment of the Blue Card eligibility criteria) or changes of conditions of employment under a same employer, the Blue Card directive allows Member States to impose (on discretionary basis) requirements of communication and/or prior authorisation of such information by relevant Member State authorities.⁴⁰ After the initial two-year-long period, again on a discretionary principle, Member State can relax the earlier stringent criteria for ‘employment mobility’ and enable Blue Card holders equal treatment regarding access to highly qualified employment opportunities. However, if a Member State does not opt for this possibility, the conditions valid during the initial two-year-long period continue to apply further. Nonetheless, access to certain categories of occupations – usually related to certain sort of exercise of state authority – can remain excluded to Blue Card holders even if granted equal treatment mentioned above.⁴¹ These categories of occupations usually entail a requirement of citizenship as a prerequisite for their exercise.

As far as a geographical mobility is concerned, the Directive sets out that after 18 months of residence in a Member State that issued the Blue Card, the Blue Card holder can move to a second Member State.⁴² If he had a family members reunited him in the first Member State, they can accompany him also in the second Member State.⁴³ However, before doing so, the Blue Card holder must apply again for a Blue Card in the second Member State.⁴⁴ The application requirements and conditions differ from country to country (because of the many

³⁹ Ibid, Art. 12 (1).

⁴⁰ Ibid, Art. 12 (2).

⁴¹ Ibid, Art. 12 (3) and (4).

⁴² Ibid, Art. 18.

⁴³ Ibid, Art. 19.

⁴⁴ Ibid, Art 18 (2).

discretionary provisions entailed in the Blue Card directive) and therefore the fact that a Blue Card holder had been granted a Blue Card in the first Member State does not render the intuitive outcome that he would also receive the Blue Card in the second Member State. For instance, if such a second Member State chooses to apply national quota on immigration or the Community preference principle,⁴⁵ such an application of a formerly successful Blue Card applicant is deemed to fail. In such a situation, the first Member State has a duty to readmit its Blue Card holder.⁴⁶

Another important sub-section of the chapter concerns rights during unemployment. Member States in the Council finally agreed that if a Blue Card holder becomes unemployed, it does not result in losing his status automatically and immediately. A withdrawal of the Blue Card for the reason of unemployment is justified if a period of unemployment lasts longer than three months or happens more than once during the validity of the Blue Card. Usually a holder of the Blue Card is – based on national provisions – required to inform relevant state authorities about a start and an end of the unemployment period.⁴⁷

With respect to several other areas, including but not limited to pay, dismissal, health and safety regulations, freedom of association, education and vocational training, recognition of professional qualifications, access to goods and services, payment of pensions or access to social security, Blue Card holders are granted the same standard of rights as Member State nationals.⁴⁸ Nevertheless, even the area of entitlements is subject to multiple possible limitations by the Member States – eg. access to education and vocational training can thus be conditioned by ‘specific prerequisites in accordance with national law’.⁴⁹

An interesting part of the Blue Card is its relation to the other EU-level institutes regulating certain legal immigration titles: namely the Family Reunion directive and the Long-term Residence directive.

Regarding the former, family members of Blue Card holders can enjoy a substantially simplified procedure to get a right to residence in an EU Member State territory than under the

⁴⁵ Ibid, Art. 18 (7).

⁴⁶ Ibid, Art. 18 (4) (b).

⁴⁷ Ibid, Art. 13.

⁴⁸ Ibid, Art. 14.

⁴⁹ Ibid, Art. 14 (2) (a).

Family Reunion directive.⁵⁰ Compared to that, close relatives of a Blue Card holder do not have to wait three and more years before being able to accompany their sponsor. Secondly, their sponsor does not need to possess 'reasonable prospects of obtaining permanent residence'.⁵¹ When an application for family reunion of a Blue Card holder is lodged, it must be duly processed within a time period of 6 months, 3 months less than in case of the Family Reunion directive.⁵² Additionally, if family members of a Blue Card holder intend to take up employment in a host Member State, the condition in the Family Reunion directive to wait for one year before entry to the Member State's labour market is waived.⁵³ On a discretionary basis, Member States are free to deviate their transposition in both an open and a restrictive manner. According to the Directive, after five years of residence, family members of a Blue Card holder can apply for an autonomous residence permit.⁵⁴ Member States can apply the option that the time periods spent in other Member States are included in a calculation of the five-year-long time period.⁵⁵ Also, Member States can decide to require family members of a Blue Card holder to undergo certain integration courses, however, in contrast to the Family Reunion directive, these can only be applied after the residence permits are granted.⁵⁶

As far as the relation between the Blue Card directive and the Long-term residence directive is concerned, even in this case Blue Card holders can benefit from several advantages and lenient conditions.⁵⁷

The Blue Card directive stipulates that after five years of residence based on the Blue Card, a Blue Card holder can apply for long-term residence. At this place, the first relaxation comes into play: the Directive does not necessarily require Blue Card holders to spend the entire five years on a territory of a given Member State, when the application for a long-term residence is finally lodged. What is required is only a two-year-long presence in a period immediately preceding the application for a long-term residence, while the remaining three years before could technically be spent on a territory of another Member State.⁵⁸

⁵⁰ Ibid, Art. 15.

⁵¹ Ibid, Art. 15 (2).

⁵² Ibid, Art. 15 (4).

⁵³ Ibid., Art. 15 (6).

⁵⁴ Ibid, Art. 15 (7).

⁵⁵ Ibid, Art. 15 (8).

⁵⁶ Ibid, Art. 15 (3).

⁵⁷ Ibid, Art. 16.

⁵⁸ Ibid, Art. 16 (2).

However, the leniency regarding requirements to be met for long-term residence of Blue Card holders reach even beyond the mobility within the European Union Member States' territories. In total, a Blue Card holder can spend up to 18 months outside of the European Union area and this time will still be included into the five years required to obtain long-term residence, provided that no single absence is longer than 12 months.⁵⁹ If a Blue Card holder succeeds and receives a long-term residence, he can leave the EU territory even for up to two years, while his long-term residence is not withdrawn.⁶⁰ Nonetheless, both two permitted periods of absence can be subject to Member States' derogations – they can require evidence that the period of absence served the purposes of (self-)employment, volunteering or education in a country of origin.⁶¹ When a Blue Card holder receives a long-term residence permit, the standard of rights that he was entitled to by virtue of a Blue Card remains intact.

The final chapter of the Blue Card directive basically lists the most important discretionary provisions of the Directive, whose application are Member States obliged to communicate to the Commission.⁶²

3. Theoretical framework

3.1. Compliance literature theories

As stated by Börzel, why states comply with supranational norms has been one of the crucial questions in the theory on international organizations.⁶³ Tallberg believes that a compliance with the international organisations is dominated by two paradigms: enforcement and management.⁶⁴ Within an EU context, these general conceptualisations of compliance with norms of the international organizations obtain a specific form – the European Union with its

⁵⁹ Ibid, Art. 16 (3).

⁶⁰ Ibid, Art. 16 (4).

⁶¹ Ibid, Art. 16 (5).

⁶² Ibid, Art. 20-25.

⁶³ BÖRZEL, T. et al. Recalcitrance, Inefficiency, and Support for European Integration: Why Member States Do (not) Comply with European Law. Freie Universität Berlin, 13 May 2007.

⁶⁴ TALLBERG, J. Paths to Compliance: Enforcement, Management, and the European Union. *International Organizations*, Vol. 56, No. 3, Summer 2002, pp. 609-643.

specific monitoring and sanctioning mechanisms is an unprecedented international organization, endowed with a centralized compliance system.

The conclusion that the European Union embodies an international organization of its own kind (*sui generis*) is further reinforced by the fact that within a wider spectrum of international relations theories, a specific branch dealing purely with interaction between the European Union and the national level has evolved – the so-called Europeanisation theories. According to Börzel and Risse, Europeanisation means two things: firstly an emergence of a new, distinct structure of governance (EU institutions), secondly an adjustment of domestic politics to this new landscape. The authors add that the Europeanisation processes ‘transcend over politics, policies and politics.’⁶⁵

In another contribution, Börzel lists the three different strategies how Member State respond to Europeanization. These include ‘pace-setting’ (actively pushing policies at the European level, reflecting Member States’ policy preferences and minimizing implementation costs), ‘foot-dragging’ (blocking or delaying costly policies in order to prevent them altogether or achieve at least some compensation for implementation costs) and ‘fence-sitting’ (neither systematically pushing policies, nor trying to block them at the European level, but building tactical coalitions with both pace-setters and foot-draggers).⁶⁶

EU directives are one of the types of legislative norms that the European Union can produce (regulations, directives, decisions, recommendations and opinions). They are binding as to their target, while a selection of a specific means to achieve a desired goal is often left at the discretion of the Member States.⁶⁷ As such, directives engage both perspectives of Europeanisation that Börzel mentions – they embody an outcome of legislative activity on the level of EU institutions, yet at the same time they provide an insight into how Member States adjusted to their requirements and gave effect to their wording.⁶⁸ Thus, national implementation of EU directives is an important element of the broader Europeanisation literature.

⁶⁵ BÖRZEL, T., RISSE, T. When Europe Hits Home: Europeanization and Domestic Change. European Integration Online Paper 2000, Vol. 4, No. 15.

⁶⁶ BÖRZEL, T. Pace-Setting, Foot-Dragging, and Fence-Sitting: Member State Responses to Europeanization. Journal of Common Market Studies 2002, Vol. 40., No. 2, pp. 193-214.

⁶⁷ DUINA, F. Explaining Legal Implementation in the European Union. International Journal of the Sociology of Law, 1997, 25, pp. 155-179.

⁶⁸ BÖRZEL, T. Non-Compliance in the European Union. Pathology or Statistical Artifact? Robert Schuman Centre for Advanced Studies, 2001/28.

Study of the national implementation of EU norms has been widespread and evolved into a specific branch of 'EU compliance literature'. Its core element of study is to whether, to what extent and how Member State comply with the requirements of the EU legislative norms (most notably directives) and what factors can provide an explanation for (non-)compliance.

First of all, we need to conceptualise and delimit the notion of implementation. According to Princen, it denotes 'the process of applying policies and putting them into practice'.⁶⁹ However, implementation can be further specified and partitioned in different phases – authors usually distinguish between the two that are the most important – legal implementation and practical implementation.

Legal implementation (also called 'transposition') is defined – again by Princen – as 'the process of incorporating the legal provisions of EU directives into national legislation.'⁷⁰ Practical implementation follows up on the legal implementation (transposition) and stands for 'actual application and enforcement' of the directive on the Member States level.

An interconnectedness of legal transposition and practical implementation has potentially troublesome effect on research. Many compliance scholars were accused of using the terms interchangeably or viewing the entire implementation through prism of transposition measures only. Obviously, if one applies such approach, the methodology is seriously flawed and the research outcomes incomplete.

Nonetheless, there has been an increasing demand among compliance scholars to 'move beyond the limited focus of compliance' and inspect the aspects of practical implementation also in order to provide a fully-fledged answer to the question why respective EU directives managed or failed to result in outcomes desired by their proponents.

Nevertheless, inspection of practical implementation would require engagement of many

⁶⁹ PRINCEN, S. Implementation. In: LELIEVELDT, H., PRINCEN, S. The politics of the European Union. Cambridge: Cambridge University Press, 2011.

⁷⁰ Ibid.

variables, factors and actors that would be beyond the scope of this thesis. For this reason, I will concentrate on theories concerning legal transposition exclusively.

Compliance literature focusing on causes of transposition deficit (late and incorrect transposition) has been evolving since 1980s and can be categorized into several waves according to the dominating approaches. Below, I will briefly foreshadow the chronological division, although I will not stick to it. I am convinced that the more logical explanation should be centered around the subject-matter of the compliance approaches rather than to be based on the temporal element of when the theory was presented. At the end of the day, many of the transposition variables were articulated decades ago and in majority of quantitative accounts they still seem to maintain explanatory strength. On the contrary, some of the factors tested in the newest period seem to be *impassés*. Thus, the straightforward intuitive idea that the newer the compliance approach, the better, simply does not stand.

The first wave of the compliance approaches dates back to 1980s and lasts until mid-1990s. Its proponents primarily perceived compliance as 'a rather apolitical process whose success primarily depended on clearly worded provisions, effective administrative organisation and streamlined legislative procedures at the domestic level'.⁷¹ The second wave started to develop in late 1990s and is mostly centered around the concept of misfit (degree of fit or misfit between European rules and institutional or regulatory traditions at the domestic level). Later, since multiple studies proved that misfit alone often does not suffice to provide an exhaustive answer to causes of (non-)compliance, several compliance scholars suggested to test misfit in combination with other criteria (eg. veto players or administrative capacity). The third wave entered the terrain after the turn of millenium. Its scholars mostly – in a somewhat refurbished manner – engage the same criteria as the second wave scholars, while misfit is rebranded as 'policy preferences' or 'incentives to deviate' and veto players are turned into 'actors' preferences'. What characterises the third wave researchers is increased reliance on quantitative data and in-depth analysis of various stakeholders who are believed to influence the transposition process.

Now, I will proceed with the subject-matter classifications of different variables stemming from

⁷¹ TREIB, O. Implementing and complying with EU governance outputs. *Living Reviews in European Governance*, Vol. 1, No. 1, 2006.

the transposition compliance literature with the special emphasis attributed to those factors that will be used in the following chapters (Research design and Analytical part).

Kaeding divides variables causing transposition (non-)compliance into three categories: firstly 'EU directive specific variables', secondly 'national implementing measure specific variables' and thirdly 'institutional variables'.⁷² The first group entails factors such as level of detail of the variable, whether a norm in question is a new or an amending directive, deadline for transposition, decision-making mode applied in the Council. The second group includes type of transposition measure, number of transposition measures and number of ministries involved in domestic transposition procedure. The second category also hosts the already mentioned 'goodness-of-fit', one of the dominant concepts in compliance literature. The third package embraces factors such as coalition politics, partisan effects, extent or corporatism, level of public opinion support for EU or level of corruption.⁷³

Haverland mostly undertakes a similar division, with a slight difference: he lists directive-level explanations and domestic explanations, so in his conceptualisation, national implementing measure specific variables and institutional variables are merged into one group.⁷⁴

In the remaining part of this sub-chapter, I will explain what variables I decided to select for application in the analytical part and also shortly justify why I decided to rule out certain other possible factors often raised in the compliance literature.

Firstly, I decided to put aside all variables and factors inherent to the directive itself. Although the complexity of the directive, its level of detail etc. undoubtedly play a role, they cannot be advisable to providing an answer to differences in transposition between Member States for a simple reason that a wording of the directive is the same for all Member States. Despite that, different Member States transposed the Blue Card directive differently, which implies that causes of late, incorrect or restrictive transposition must be sought among the remaining categories of variables – namely under the national implementing measure specific variables or under the domestic institutional variables.

⁷² KAEDING, M. Determinants of transposition delay in the European Union. June 2005.

⁷³ Ibid.

⁷⁴ HAVERLAND, M. et al. Sectors at Different Speeds: Analysing Transposition Deficits in the European Union. *Journal of Common Market Studies*, 2011, Vol. 49, No. 2, pp. 265-291.

3.1.1. Misfit

The first criterion, one that has been dominating over the compliance literature for two decades, is the so-called misfit (or 'goodness-of-fit'). Its author is Francesco Duina, who formulated the main logic of misfit: 'When a directive demands major transformations of institutions it targets, implementation suffers. If a directive is consistent and/or it strengthens current institutional arrangement, it leads to a successful implementation.'⁷⁵

Misfit, described as a divergence of pre-existing institutional and regulatory norms and requirements of a new European directive, has been further employed in uncounted studies of many other scholars. Börzel argued that 'compliance problems should only be expected if there is a significant misfit between the EU policy and corresponding national policy'.⁷⁶ She further explains that when EU policy challenges existing national policies, an implementation imposes considerable costs that public administration does not want to bear.

However, in the following years, different authors presented studies showing that misfit alone cannot explain transposition deficit, presenting examples of countries with relatively consistent policy traditions that demonstrated poor transposition compliance and the vice versa.

In this vein, Bailey explored that in a case of the packaging waste directive, the United Kingdom achieved better compliance record despite relatively higher policy misfit. On the contrary, the transposition process in Germany proved to be more cumbersome, despite the fact that the pre-existing national policies in Germany had been more consistent with the EU directive and thus the misfit was low.⁷⁷ Falkner et al in their study in 2007 acknowledged that misfit is the most prominent hypothesis within the scholarly literature on transposition compliance. However at the same time, in their view it had only a limited explanatory power and did not always worked according to logical predictions. Most importantly, Falkner et al argued that if misfit really was an overriding variable able to determine to a large extent success of transposition compliance,

⁷⁵ DUINA, F. Explaining Legal Implementation in the European Union. *International Journal of the Sociology of Law*, 1997, 25, pp. 155-179.

⁷⁶ BÖRZEL, T. et al. Recalcitrance, Inefficiency, and Support for European Integration: Why Member States Do (not) Comply with European Law. Freie Universität Berlin, 13 May 2007.

⁷⁷ BAILEY, I. National Adaptation to European Integration: Institutional Vetoes and Goodness-of-Fit. *Journal of European Public Policy*, October 2002, pp. 791-811.

it would imply that all the policy actors are positioned against any changes of status quo.⁷⁸ The reality does not follow such logic and we can observe frequent policy amendments that are disruptive towards the previous path dependence. As Falkner states: 'It may be a welcomed political opportunity to change status quo, costs of non-compliance are taken into account, certain adaptational pressure may have even positive effect on transposition performance'.⁷⁹

Instead, Falkner et al suggested completely a different approach. In their view, there are different transposition compliance patterns observable across the EU and no single theory applies in every Member State in the same manner. In other words, different factors have different explanatory weight in different groups of Member States. Based on a quantitative study Falkner et al in their seminal article on 'World of Compliance' identified three of such worlds within the EU: a world of law observance, a world of domestic politics and a world of transposition neglect. The first group can be characterised by the prevalent compliance and members of this group are led mostly by logic of appropriateness that forces them to be compliant with EU legislation at any cost. The last group is the opposite – Member States on average transpose EU directives significantly more often late and/or improperly than countries in the first or second group, because they clearly prioritize domestic policy considerations. The second group – world of domestic politics – in its pattern differs on a case-by-case basis: a salience of an issue in question decides whether the tendency to compliant behavior or the prioritization of domestic motivations will prevail. After the Eastern Enlargement of the European Union, Falkner revisited this conceptualisation by adding a fourth 'world of compliance', composed of countries of Central and Eastern Europe, the so-called 'world of dead letters'.⁸⁰ By this shortcut, the authors describe that while legal transposition is usually done correctly in these countries, practical implementation in Central and Eastern European countries is frequently lagging behind and thus, words are not turned into real action.⁸¹

However, the latter conceptualisation of 'world of compliance' did not evade criticism. Even before its articulation, Leiber pointed out that Central and Eastern European EU Member States

⁷⁸ FALKNER, G. et al. Worlds of compliance: Why leading approaches to European Union implementation are only 'sometimes-true theories'. *European Journal of Political Research*, 2007, pp. 395-416.

⁷⁹ Ibid.

⁸⁰ FALKNER, G., TREIB, O. Three Worlds of Compliance or Four? The EU15 Compared to New Member States. IHS Political Science Series, Working Paper 112, 2007.

⁸¹ Ibid.

are far from being an uniform group.⁸² She also confirmed that Poland, the country that her study focused on, was performing outstandingly well in terms of legal transposition, while admitting that in terms of practical application, there were reasons for a more skeptical view.⁸³ Nonetheless, many authors who were in the middle of the first decade of the 21st century mentioning satisfactory legal transposition in the newly admitted Member States did not forget to mention possible cause – the arrangement of the pre-accession process that required the so-called ‘pre-accession conditionalities’: meaning that the newly acceding Member States had to comply with majority of *acquis communautaire* even before the accession, which might have contributed significantly to their subsequent good transposition compliance record.

Indeed, the recent research (2016) by Zhelyazkova et al appears to show that these considerations were misleading. In terms of legal transposition, she arrives at the following unequivocal conclusion: ‘CEE countries of Eastern enlargement are forerunners in the transposition of EU directives.’⁸⁴ Regarding the actual compliance, she finds that ‘with the exception of social policy directives, the Central and Eastern European Member States do not lag behind the EU-15 with respect to practical implementation’.⁸⁵ Thus, we can observe that the doctrine about the fourth ‘world of compliance’ - namely the ‘world of dead letters’ - has been put on a serious doubt on two levels. Firstly, on a principle level, because of the extreme heterogeneity among the respective Member States allegedly belonging to this group. Secondly, on an empirical level, with reference to the outcomes of the quantitative analysis.

This criticism can be raised also against the remaining ‘worlds of compliance’. Even in their cases, one can observe substantive differences between Member States in different policy areas. While in a given policy area, several Member States might appear to belong to the same group and follow the same pattern, in a different policy area, group compositions and patterns might be completely different. We can therefore for the purposes of this study articulate a preliminary conclusion, that if Falkner and others tried to criticize the misfit theory for its excessive determinism and inability to prove to be the ‘single overriding cause of the transposition deficit’, the similar criticism can also be used against their alternative ‘worlds of compliance’

⁸² LEIBER, S. Implementation of EU Social Policy in Poland: Is there a Different ‘Eastern World of Compliance’? 2005.

⁸³ Ibid.

⁸⁴ ZHELYAZKOVA, A. et al. Notified and substantive compliance: With the EU law in an enlarged Europe: Evidence from four policy areas. MAXCAP Working Paper No. 20, May 2016.

⁸⁵ Ibid.

conceptualisation. Moreover, we should also be aware of the fact that the 'world of compliance' can serve as a better baseline for a quantitative research exploring transposition of large numbers of directives across many different policy areas in multiple Member States. Regarding the specific example of the Blue Card directive, the first look at the number of Blue Cards issued and the timeliness and/or correctness of application, we may say that the specific case of the Blue Card directive does not seem to indicate that the geographical division presumed by the 'worlds of compliance' applies.

Another objection towards the misfit theory was raised by Mastebroek and Kaeding. In their article with a self-explanatory title 'Europeanization Beyond Goodness-of-Fit', they argued that the misfit or goodness-of-fit approach 'lacks empirical and conceptual strength'.⁸⁶ Using the similar arguments as Falkner, Mastebroek and Kaeding point out that in majority of cases, misfit can be recognized as a factor conducive to transposition (non-)compliance only in conjunction with other factors. Therefore, they suggest to focus on these factors (such as policy preferences of domestic actors, their incentive to deviate etc.) directly and to leave aside the 'auxiliary factor' of misfit.⁸⁷

Francesco Duina, the 'founding father' of the misfit theory, replied to their critics that the various actors-based and preference-based explanations that they suggest as substitutes for the misfit actually embody a link between the (mis-)fit and the outcomes.⁸⁸ Therefore, he believes that these approaches are not mutually exclusive, but complementary.

Political and legal misfit in a simplified manner stands for the divergence between the existing domestic political and regulatory framework in a given policy area and the requirements of the new EU-wide directive. The policy preferences of domestic actors during the negotiation phase of the EU measure to a large extent reflect this level of (in-)compatibility. Therefore, it is not without surprise that especially the bigger and more powerful Member States during the Council talks try to minimize the misfit and bring the final version of a directive more in line with the preferred national constellation. This fact was spotted by several compliance literature scholars. Börzel et al called this 'power of assertiveness', explaining that 'the more country

⁸⁶ MASTENBROEK, E., KAEDING, M. Europeanization Beyond the Goodness of Fit: Domestic Politics in the Forefront. *Comparative European Politics* 4, 2006, pp. 331-354.

⁸⁷ Ibid.

⁸⁸ DUINA, F. Domestic Actors and Europeanization: Why 'Fit' Still Matters. *Comparative European Politics*, September 2007, pp. 339-341.

succeeds in uploading its interests during the policy-making process, the less it is to deviate'.⁸⁹ Zhelyazkova confirms this hypothesis. She concludes her analysis with findings that conflict in the Council leads to shorter delays in transposition and that Member States are less likely to comply with directives (and its provisions) if national delegates objected to them during the Council meetings.⁹⁰ The same, inhibitory effect of Council conflict during the EU legislative process on timeliness and correctness of transposition was found by König and Luetgart.⁹¹ Thomson in his important contribution to the compliance literature also identified a significant link between the ability of a Member State to limit its misfit before the final wording of a directive is approved by means of an effective uploading of national interest to the EU level.⁹² He claims that oftentimes, when Member States fail to upload their preferences to the EU level, they can resort to sub-optimal compliance (both in terms of legal transposition and practical implementation) as a way of an 'opposition through the back door'.⁹³

Because of the prominence and spread of the misfit theory, combined with the fact that its criticism is partially flawed, the author of this thesis is convinced that the misfit theory engages ones of the most important factors that can possibly account for transposition (non-)compliance. Its critics surely delivered valid objections, however, these should not be considered to rule out any explanatory strength of the misfit theory, but rather to relativize its impact. Misfit cannot be viewed as an omnipotent, overriding variable. But probably no single factor can have such explanatory weight and in such a complex terrain, only combination of substantial number of factors can provide a persuasive reasoning. Thus, for the purposes of the empirical part, misfit theory will be operationalized. However, because of its high level of generality – which was also a target of criticism – it will be subdivided in three more specific sub-factors: presence/absence of previous legislative tradition in a given policy area; whether the country was successful in uploading its national interest onto the EU level; and the extent of policy misfit between the existing domestic measures in this policy area and the EU directive.

⁸⁹ BÖRZEL, T. et al. Recalcitrance, Inefficiency, and Support for European Integration: Why Member States Do (not) Comply with European Law. Freie Universität Berlin, 13 May 2007.

⁹⁰ ZHELYAZKOVA, A. Complying with EU directives' requirements: the link between EU decision-making and the correct transposition of EU provisions. *Journal of European Public Policy*, May 2013, pp. 702-721.

⁹¹ KÖNIG, T. Troubles with Transposition? Explaining Trends in Member-State Notification and the Delayed Transposition of EU Directives. *British Journal of Political Science* 39, January 2009, pp. 163-194.

⁹² THOMSON, R. *Opposition through the back door in the transposition of EU directives*. European Union Politics, SAGE Publications, 2010.

⁹³ Ibid.

3.1.2. Veto players

When the quantitative studies of compliance scholars started to make clear that misfit alone can only rarely explain transposition deficits, several authors adopted a rather different stance – that misfit in conjunction with other theories can provide the answer.

The most prominent became the theory of veto players. According to that, not the divergence of policy or regulatory preferences (misfit), but the presence of various political and institutional veto points can hinder or accelerate the process. In other words, if there is a misfit, it not necessarily causes transposition deficit. But if there is a misfit in respect of preferences or incentives to deviate of one or more institutional points whose affirmative position is instrumental for a smooth transposition, this can easily materialize in late and/or incorrect transposition.

Bailey in his study (2002) demonstrated on the case of the packaging waste directive's transposition in Germany that the influence of domestic veto points prolonged difficulties in complying.⁹⁴ Börzel also engaged the veto players approach, although exposing the opposite scenario – when attitude of a 'veto player' is consistent with a directive, it can actually embolden transposition compliance even against the backdrop of existing policy misfit.⁹⁵ Although Börzel does not mention the notion of veto players expressly, she argues that in cases of a policy misfit, the implementation costs are high, rendering the timely and correct transposition less probable. However, if there is simultaneously a high level of mobilization of the domestic actors, such as political parties, environmental organizations, media or interest groups, this pressure from the bottom, exerted by the domestic societal actors can help to overcome the misfit and high adaptation costs related to it.⁹⁶ In her another contribution, co-authored by Risse, Börzel counts misfit as a 'necessary condition of domestic change' and an

⁹⁴ BAILEY, I. National Adaptation to European Integration: Institutional Vetoes and Goodness-of-Fit. *Journal of European Public Policy*, October 2002, pp. 791-811.

⁹⁵ BÖRZEL, T. et al. Recalcitrance, Inefficiency, and Support for European Integration: Why Member States Do (not) Comply with European Law. Freie Universität Berlin, 13 May 2007.

⁹⁶ Ibid.

existence of multiple veto points as a 'facilitating factor' ('sufficient condition of domestic change').⁹⁷

Bursens also deals with the role of intervening institutions: 'Institutions can have a constraining or an empowering impact on the strategies.'⁹⁸ He recalls the earlier finding of Börzel that European-level factors can be ruled out as possible explanations for differences in transposition performance, because if they had been the crucial factors, the transposition would have been the same in every Member State, which is not the case.⁹⁹ Hence, differences in transposition performance must be explained by national institutional contexts. That – according to Bursens – means 'sector-specific features and general political aspects'.¹⁰⁰

Various veto points are also dispersed in the work of Dimitrakopoulos, who identifies three groups of factors influencing transposition compliance: institutional, political and substantive.¹⁰¹ Among those, there are several variables that can be classified as 'veto points' or 'veto players' - number and strength of decision points or 'fixers' that intervene at critical moments.¹⁰²

Importance of institutional veto points was further underscored by Haverland, one of the leading scholars of the transposition compliance literature. He also adopts the view that combination of various factors and variables derived from the misfit theory and veto points theory can most likely provide the trustworthy explanation for differences in timeliness and correctness of transposition. He claims that 'gaps in the goodness-of-fit are important as major cause of domestic opposition'.¹⁰³ His study highlighted the significance of 'national institutional opportunity structures', a notion closely linked and partially overlapping with veto points or

⁹⁷ BÖRZEL, T., RISSE, T. When Europe Hits Home: Europeanization and Domestic Change. *European Integration Online Paper* 2000, Vol. 4, No. 15.

⁹⁸ BURSENS, P. Why Denmark and Belgium Have Different Implementation Records: On Transposition Laggards and Leaders in the EU. *Scandinavian Political Studies*, 2002, Vol. 25, No. 2, pp. 173-195.

⁹⁹ BÖRZEL, T. et al. Recalcitrance, Inefficiency, and Support for European Integration: Why Member States Do (not) Comply with European Law. *Freie Universität Berlin*, 13 May 2007.

¹⁰⁰ BURSENS, P. Why Denmark and Belgium Have Different Implementation Records: On Transposition Laggards and Leaders in the EU. *Scandinavian Political Studies*, 2002, Vol. 25, No. 2, pp. 173-195.

¹⁰¹ DIMITRAKOPOULOS, D. The Transposition of EU Law: 'Post-Decisional Politics' and Institutional Autonomy. *European Law Journal*, Vol. 7, No. 4, pp. 442-458.

¹⁰² *Ibid.*

¹⁰³ HAVERLAND, M. *National Adaptation to European Integration: The Importance of Institutional Veto Points*. 1999.

decisional points. Haverland concludes with a finding that 'veto points tend to determine timing and quality of implementation'.¹⁰⁴

Treib also pointed on a limited explanatory power of misfit approach and a need to combine it with the influence of factors stemming from domestic party politics in order to analyze properly the differences in transposition compliance. He states that 'policy preferences of political actors (such as partisan opposition and partisan veto points) seem to be more decisive' and arrives at a straightforward conclusion that 'parties do matter'.¹⁰⁵

Steunenberg also builds on the veto players theory. According to him, more importantly than their presence, their attitude (policy preferences) towards the policy issue in question plays a role: 'preference configuration of actors is important and not just their number'.¹⁰⁶ In his further work co-authored by Toshkov, he argues that the diverging view of veto players can hinder timely and correct transposition especially in cases of directives with high discretion ratio: 'discretion in combination with preference heterogeneity causes delay'.¹⁰⁷ He further explains that 'only if domestic players can make a choice, which is a result of discretion, the possibility of conflict may arise'.¹⁰⁸

Based on this brief overview of the leading scholars of compliance literature, we can find that the veto players theory is one of the most prominent and sound explanations for differences in transposition performance. In order to duly assess its influence, we have to explore firstly a presence of veto players and secondly their policy preferences regarding the issue in question. Therefore, the following factors derived from the veto players theory will be employed in the empirical part: the level of concentration of the state power (federalism vs. unitarism), the partisan veto points embodied by the attitudes of the political parties in charge of the ministry that deals with the immigration agenda and the partisan veto points represented by the coalition partners in government coalitions.

¹⁰⁴ Ibid.

¹⁰⁵ Ibid.

¹⁰⁶ STEUNENBERG, B. Turning Swift Policy-Making into Deadlock and Delay. *European Union Politics*, SAGE Publications, 2006, 7 (3), pp. 293-319.

¹⁰⁷ STEUNENBERG, B., TOSHKOV, D. The swift, the slow, and the slack: Comparing transposition of EC law in the enlarged European Union. 2009.

¹⁰⁸ Ibid.

3.1.3. Administrative factors: Instruments of national implementation

Again recalling Tallberg, we can remind that enforcement and management has been established as the two dominant paradigms in the international organisations compliance literature. While the former stands more for the incentives to comply (or deviate) and is related to the policy preferences of domestic actors at the beginning or during the process, the latter concerns mostly not political, but administrative subjects whose effective engagement is critical for successful – timely and correct – transposition.¹⁰⁹

Börzel explains that the management approach to compliance can be characterised (and differentiated from the enforcement approach) that non-compliance is involuntary and related to the factors inherent to administrative capacity of a given Member State.¹¹⁰ Variables related to the apolitical features of administrative machinery than to a deliberate political choice are also upheld by Bursens (smooth and efficient inter-ministerial coordination)¹¹¹ and Dimitrakopoulos (well-resourced implementing institutions, efficient coordination mechanisms).¹¹²

The more recent research highlights the importance of administrative factors and modes of implementation even more; the latter scholars perceive transposition more as an administrative exercise than a political game and assign proportionately higher explanatory power to the administrative factors explaining differences in transposition compliance.

Dimitrova and Steunenberg thus understand the EU policy as ‘a patchwork of domestic processes in which implementing actors affect outcomes within limits set by national and European decision-makers’.¹¹³ They follow up: ‘To be effective for the EU as a whole, many

¹⁰⁹ TALLBERG, J. Paths to Compliance: Enforcement, Management, and the European Union. *International Organizations*, Vol. 56, No. 3, Summer 2002, pp. 609-643.

¹¹⁰ BÖRZEL, T. et al. Recalcitrance, Inefficiency, and Support for European Integration: Why Member States Do (not) Comply with European Law. Freie Universität Berlin, 13 May 2007.

¹¹¹ BURSENS, P. Why Denmark and Belgium Have Different Implementation Records: On Transposition Laggards and Leaders in the EU. *Scandinavian Political Studies*, 2002, Vol. 25, No. 2, pp. 173-195.

¹¹² DIMITRAKOPOULOS, D. The Transposition of EU Law: ‘Post-Decisional Politics’ and Institutional Autonomy. *European Law Journal*, Vol. 7, No. 4, pp. 442-458.

¹¹³ DIMITROVA, A., STEUNENBERG, B. The power of implementers: a three-level game model of compliance with EU policy and its application to cultural heritage. *Journal of European Public Policy*, 2017, Vol. 24, No. 8, pp. 1211-1232.

(if not all) EU policies require alignment between politics and bureaucracy at different levels of governance.¹¹⁴

Administrative factors such as inter-ministerial coordination or administrative efficiency are employed also by the other authors – Haverland¹¹⁵, Falkner¹¹⁶ or Kaeding.¹¹⁷ Steunenbergh carried out an in-depth analysis of domestic policy coordination between various administrative actors involved in the transposition. He articulated the findings that if transposition requires only limited number of lower-level instruments, single-player coordination is more likely. Single-player coordination also results in an increased ability to cater to domestic needs, that on the contrary brings about the risk that the final outcome of the transposition will differ from what the directive requires. On the other hand, in case that more than one higher-level players are involved in the process, there is a risk of deadlock and ensuing delay of transposition.

Because of the undisputed role played by administrative mechanisms and the technical aspects of the transposition process, the administrative factors will compose the third group of variables to be tested – after the misfit theory and the veto players theory. In the final selection of factors to be employed in empirical part, the author inspired mostly from Kaeding,¹¹⁸ who within the broader group of ‘national implementing measure specific variables’ proposed to explore type of transposition instruments, number of transposition instruments and number of ministries involved. For the purposes of this thesis, the former two factors are used. With regard to the latter one – number of ministries involved – the author will instead employ two indexes measuring administrative capabilities based on the official data of the World Bank Group (the so-called Worldwide Governance Indicators).

3.2. Highly-skilled immigration policies literature

The second part of this chapter will discuss the theories applicable to highly skilled immigration

¹¹⁴ Ibid.

¹¹⁵ HAVERLAND, M. National Adaptation to European Integration: The Importance of Institutional Veto Points. 1999; HAVERLAND, M. et al. Sectors at Different Speeds: Analysing Transposition Deficits in the European Union. *Journal of Common Market Studies*, 2011, Vol. 49, No. 2, pp. 265-291.

¹¹⁶ FALKNER, G. et al. Non-Compliance with EU Directives in the Member States: Opposition through the Backdoor? *West European Politics* 27(3), 2004, pp. 452-473.

¹¹⁷ KAEDING, M. Determinants of transposition delay in the European Union. June 2005.

¹¹⁸ Ibid.

policies (HSI policies). While the former sub-chapter, dealing with the transposition compliance scholarly literature, laid foundations for the first part of research analyzing the causes of timeliness and correctness of transposition, this sub-chapter intends to provide a fertile ground that will sew seeds for a sound analysis of variations in openness and restrictiveness of transposition of the Blue Card directive. From the mere fact that the mode of transposition of discretionary clauses involves policy choices between certain policy options, it goes without saying that in contrast to the previous sub-chapter, here we have to take into account substantive policy criteria that are distinct to the area of migration and cannot be generalized to transposition of any directive in any policy area.

The notion of highly skilled immigration involves a value judgement. By qualifying certain group of persons (migrants) as 'highly skilled', other groups are impliedly disqualified as 'not highly skilled'. Therefore, HSI policies literature is to a large extent centered around the proper delimitation and definition of 'highly skilled immigration'.

Some authors presume that highly skilled immigrants hold a university degree or equivalent skills and training, while others claim that these migrants 'fall within the part of workforce often described as professional, technical, kindred and related workers'.¹¹⁹ For instance, professions such as IT specialists, engineers, health-care professionals or teachers are recognized as highly skilled. According to the scholarly estimates, around one fifth of the immigrants coming to the developed world (OECD) could fulfil the threshold of highly skilled immigration.

Interestingly, HSI policies are frequently depicted as zero-sum games. The 'best and brightest' are pulled from their countries of origin into the countries of destination, resulting in brain drain happening to the former and brain gain obtained by the latter. Target countries of immigration consider HSI to be beneficial for their economies and thus enter into a competitive international arena, in which they try to become more attractive destination to the HSMs than other countries. Thus, the international management of HSI can be more characterized by competition than cooperation. Betts and Cerna find the following: 'Where once states competed primarily at the level of military power, today great powers compete primarily in terms of their relative

¹¹⁹ BETTS, A., CERNA, L. High-Skilled Labour Migration. In: BETTS, A. Global Migration Governance. Oxford: Oxford University Press, 2011.

economic power and high-skilled labour.¹²⁰ Therefore, according to the leading HSI policies scholars, the global governance of the HSI policy area is done mostly on unilateral basis.

Betts and Cerna explain the causes. While protection of refugees can be considered a 'global public good' that necessitates international cooperation and management of irregular migration and low-skilled labour migration can be recongnized as a 'club good' necessitating regional cooperation, HSI policies are different. They are a 'private good', in case of what the benefits of governance are 'excludable and rival' between states.¹²¹ Hence, it is without surprise that global HSI policy governance shows prevalent patterns of unilateralism and bilateralism, while multilateral and regional cooperation remains rather an underdeveloped complementary tool.

This multilateral management of HSI policies involves mostly two institutes – the World Trade Organization (WTO) General Agreement on Trade in Services (GATS) Mode 4 and the Global Forum on Migration and Development (GFMD). Although the former has a binding nature of the international treaty, it is very limited in terms of scope. The latter serves more like a platform for dialogue, without ambitions to yield binding outcomes.

The dominant pattern of HSI policies is unilateralism. This in practice translates in the fact that states have unrestricted power over who they admit into their area and to whom they grant work permit. Betts and Cerna further explain that: 'Based on the preferences of domestic interest groups, states can define their labour immigration policies in accordance with their own economic needs. They will generally determine labour immigration strategies based on an analysis of their structural and cyclical economic circumstances, identifying the economic sectors and quotas within which visas will be available to high-skilled foreign workers.'¹²² This logic can be telling as to why Member States opted either for open or restrictive mode of transposition of the many discretionary provisions included in the Blue Card directive.

Lucie Cerna, a leading scholar focusing both on HSI policies in general and the Blue Card directive in particular, authored several articles revealing how the diverging national preferences regarding the HSI policies reflected in the divergence of the policies themselves.

¹²⁰ Ibid.

¹²¹ Ibid.

¹²² Ibid.

Cerna frames her findings in this manner: 'Divergence between advanced industrial countries' high skilled immigration policies continues, even where national governments display converging policy pressures for a more open HSI policy in order to fill labour market shortages at the high-skilled end. A universal trend toward greater HSI liberalisation is visible. However, both the pace and the depth of this process vary.'¹²³

To substantiate her claims, Cerna constructed a special 'Highly-Skilled Immigration Index' to evaluate and measure the degree of openness or restrictiveness of the national HSI policies. By means of a desk research that she conducted, she analyzed the admission policies of HSMs in various OECD countries. She therefore analyzed only the legal conditions, not policy implementation and policy outcomes – and in that sense her research shares similarities with this thesis. Cerna took into consideration two categories of factors. Firstly, the admission mechanisms such as admission quotas, economically oriented work permit fees and employer-demand. Secondly, the rights that the highly-skilled immigrants are entitled to – length and possible renewal of permit, option to transform temporary residence into a permanent one, clauses on the conditions of family reunification.¹²⁴

Her research showed striking differences in openness and restrictiveness of the national HSI policies and thus confirmed the premise that the governance of HSI policies is done mostly on national level by unilateral means. What, in her view, explain the diverging scores of the countries, many of whom are situated in a geographical proximity? Several possible reasons exist. Firstly, setting of a national HSI policy can be a reflection of public or governmental expectations of what the actions in this politically sensitive area of labour migration should be. Secondly, it can be a reaction to the recent economic developments, most prominently as regards the unemployment level.¹²⁵ Nevertheless, the range of possible justifications is broader and changes over time.

Paulina Kość in her research focused specifically on the conceptualisation of labour migration

¹²³ CERNA, L. Towards and EU Blue Card? The Proposed Delegation of National High-Skilled Immigration Policies to the EU level. 2008.

¹²⁴ Ibid.

¹²⁵ Ibid.

policy on the EU level and the Blue Card directive in particular. The research design constructed in the next chapter to a great extent builds on her scholarly activity.

In her article from 2012, Kość presented a view that the approach of Member States towards the labour migration regulation on EU level can be characterised by a combination of cooperation and competition – which she therefore called ‘coopetition’.¹²⁶ States agree on the minimal standards and the lowest common denominator on the EU level and approve a directive that is binding upon them, while at the same time they retain substantive national powers as to the ability to shape the final outcome of the transposition process and to adjust it to their state-specific needs and preferences.

Kość also specifically dealt with the Blue Card. She created a ‘Transposition Index’ in order to measure how the respective Member States decided to transpose the selected most important discretionary provisions entailed in the Blue Card directive.¹²⁷

She then tested several hypotheses that could account for the divergences in the mode of transposition: the existence of parallel national HSI policy, strength of economy and high migration inflows, rate of unemployment. While all of the hypotheses and variables that she tested yielded only mixed results, she suggested in the conclusion the future research should include other possible explanatory factors such as the GINI index and research and development expenses in relation to GDP.¹²⁸

In the research design and empirical part below, I will follow the recommendations of Kość and employ the two latter additional explanatory variables. Apart from them, I will also explore possible relation between the public and governmental positions towards labour immigration and the open/restrictive mode of transposition. Unemployment will also be included in the research.

¹²⁶ KOŚĆ, P. Cooperative competition in international relations: a coopetition theory of EU highly skilled migration policy. 2012.

¹²⁷ KOŚĆ, P. Domestic adaptation and modalities of implementation of the Blue Card directive. 2013.

¹²⁸ Ibid.

4. Research design

In this chapter, I provide a description of the baseline situation characterizing the status quo regarding firstly, timeliness and correctness of transposition, and secondly, concerning variances in the open and restrictive mode of transposition of the discretionary clauses in the Blue Card directive. Particular emphasis is put on the different results observed among the EU-24 Member States. Countries are classified into compliance groups (in terms of timeliness and correctness) and transposition clusters (in terms of variances of transposition). This classification will be a starting point for the later analysis (in the Section 5.), for which it will serve as a frame of reference.

4.1. Overview of timeliness and correctness of transposition

The table below provides a summary of the timeliness and correctness of the Blue Card directive transposition.

	AT	BE	BG	CY	CZ	EE	FI	FR	DE	EL	HU	IT	LV
timeliness	0	0	0	0	1	1	0	0	0	0	0	0	0
correctness	1	1	1	1	1	1	1	1	0	1	1	0	1
	IT	LV	LT	LU	MT	NL	PL	PT	RO	SI	SK	ES	SE
timeliness	0	0	0	0	0	1	0	0	0	0	0	1	0
correctness	0	1	1	1	1	1	1	1	1	1	1	1	1

Evaluation table of timeliness and correctness of the Blue Card directive transposition. Own representation.

With regard to timeliness, value 1 is assigned if the Blue Card directive was transposed into the national legal order of the respective Member States timely, meaning by the official transposition deadline of 19 June 2011. On the contrary, value 0 implies that the country in question transposed the Directive after the expiry of the transposition period.

With regard to correctness, value 1 is attributed if a Member State transposed the subject-matter of the Blue Card directive into its national legal order correctly. On the contrary, if a country

failed to transpose certain substantive elements of the Blue Card directive or transposed them incorrectly, value 0 is assigned.

Therefore, values „1-1“ imply that a Member State transposed the directive both in time and correctly, values „0-0“ denote that a Member State transposed the Blue Card late and incorrectly. Combination of values 1 and 0 is inherent to situations where a Member State transposed the directive either timely but incorrectly or late but correctly.

As far as timeliness is concerned, only four Member States completed the transposition process in time (Czech Republic, Estonia, Netherlands and Spain). In July 2011, the Commission handed letters of formal notice to 18 countries. A majority of them ensured compliance with transposition requirements with a slight delay, however, several MS remained in default. In October 2011, the Commission addressed reasoned opinions to Cyprus, Germany, Italy, Malta Poland, Portugal and Sweden, followed by reasoned opinions to Austria and Greece dating to February 2012 and to Slovenia in May 2012. On 25 April 2013, Commission issued an additional reasoned opinion to Sweden and that marked the last step in the infringement procedures, that were discontinued by the Commission, since at the end of the day all of the belated Member States managed to finally transpose the Blue Card directive.

As far as correctness is concerned, given the fact that the Directive provides excessive number of discretionary provisions, Member States generally succeeded in transposing the Blue Card correctly. The single point where several outliers can be observed is the salary threshold. While the wording of the Directive stipulates that a minimum salary threshold of 1,5 of the national gross average annual salary that have to be satisfied in a work contract or binding job offer for an applicant to be eligible to Blue Card, there have been a few Member States that disrespected this minimum borderline, namely Germany (threshold 1,14) and Italy (threshold 1,26). While this kind of incorrect transposition does not inhibit its practical application and enforcement – on the contrary, by lowering the salary threshold Member States rendered the Blue Card attainable to a wider spectrum of potential applicants – it is without prejudice to the conclusion that the way transposition was conducted by German and Italian policy-makers was in circumvention of the wording of the Blue Card directive. Whilst it undoubtedly made the Blue Card more attractive (which can be observed in case of Germany, who issues around four fifths of all BCs), it also resulted in a further fragmentation of the HSI schemes across the European Union: apart

from national HSI schemes, there are also Blue Cards “of different shades“ among the Member States.

Member States classified according to timeliness and correctness of the Blue Card directive transposition:

EU-24 MS that transposed BC directive timely and correctly	CZ, EE, NL, ES
EU-24 MS that transposed BC directive late but correctly	AT, BE, BG, CY, FI, FR, EL, HU, LV, LT, LU, MT, PL, PT, RO, SI, SK, SE
EU-24 MS that transposed BC late and incorrectly	DE, IT

**Member States in bold are analyzed in the empirical part below.*

4.2. Overview of variances in openness and restrictiveness of transposition

As a start point to measure variances in openness and restrictiveness of the Blue Card directive transposition, we will utilize the transposition index created by Kość. She selected four criteria (salary threshold, initial maximal length of permit, introduction of labour market test option, maximal time of application processing) and attributed values in order to identify which Member States opted for more open or restrictive options of transposition within a remit of these four features. In the end, she calculated an average for each EU-24 Member State to formulate its overall open or restrictive mode of transposition.¹²⁹

However, I am convinced that by focusing solely on these four criteria, she narrowed down the focus too much. Despite the fact that some features of the Blue Card bear without any doubt more significance than others, as I described above, the Directive entails many more ‘may clauses’ and majority of them, if (not) transposed are capable to render the resulting nationally transposed Blue Card either more attractive or less, either more attainable or less – in terms of the (number and scope of) rights it can provide to a holder or in terms of how burdensome are

¹²⁹ See tables by Kość, Appendix II. (c) (d).

the administrative procedures related to its issuance according to the national transposition laws.

Therefore, I decided to update the transposition index by including not four, but 26 criteria in respect of whom divergent transposition was observed.

In a table below, you can find the list of the additional criteria (discretionary clauses enabling open/restrictive transposition) that I added in order to create an *updated transposition index (uTI)*:

a)	more favourable provisions applied
b)	notification of changes in address not required
c)	labour market test option not applied
d)	access to tertiary education not subject to prerequisites
e)	derogations from Directive 2003/109/EC regarding periods of absence not restricted
f)	option to reject application for ethical recruitment grounds
g)	longer standard period of validity for renewals
h)	option to withdraw BC for lack of sufficient resources not applied
i)	option to withdraw BC if address was not communicated not applied
j)	after 2 years equal treatment is granted
k)	setting volumes of admission not presumed in transposition laws
l)	allowing application when applicant legally present but not in possession of visa
m)	lowered salary threshold of 1,2 for certain categories of professions
n)	option to withdraw BC if holder applies for social assistance not applied
o)	equal treatment when BC holder moves to 2nd Member State not limited
p)	Community preference principle not verified
q)	communication/authorisation of modifications affecting conditions of admission not required
r)	options of restrictions as regards access to education, training, goods/services not applied
s)	authorisation of change in employer during the first 2 years not required
t)	option to replace qualifications with 5 yrs of professional experience
u)	minimum duration of work contract of 1 year not required
v)	proof of adequate housing not required

w)	application does not have to be submitted from outside the territory only
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Blue Card directive discretionary provisions used for assessing variances in mode of transposition. Own representation.

Based on a study of the national transposition measures and implementation reports submitted by the Member States, I composed a table indicating if the Member States decided to transpose the listed discretionary clauses – and by doing so, to make its national Blue Card more open or restrictive.

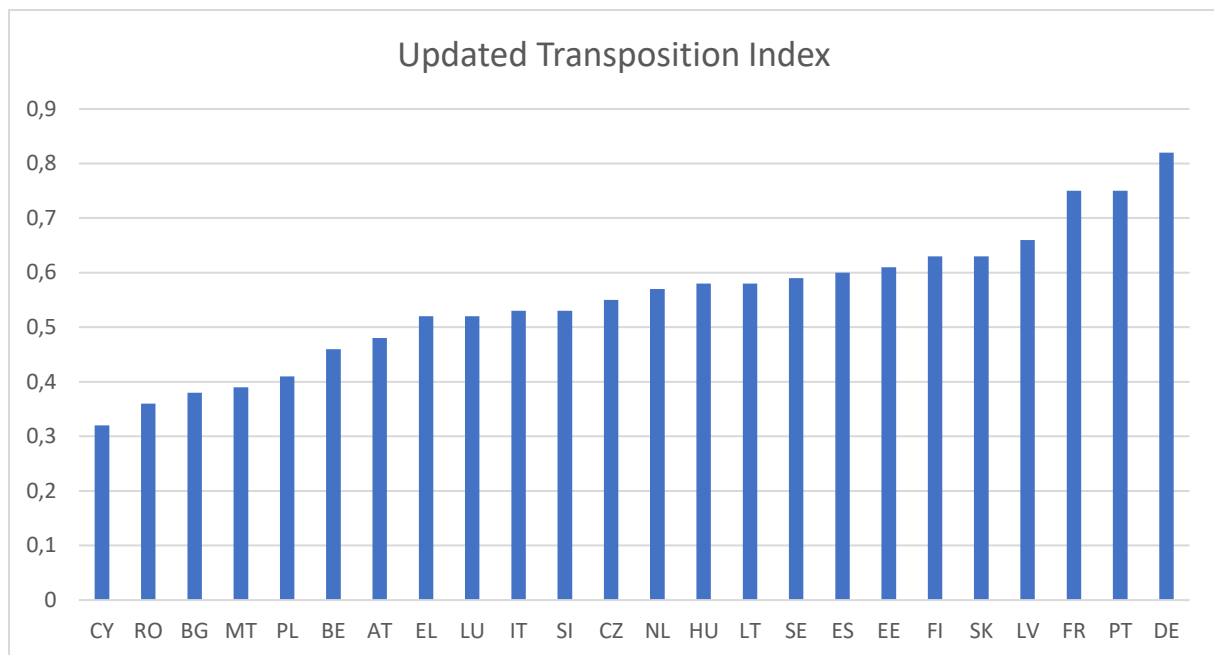
In order to calculate an “Updated Transposition Index“, I attributed value 1 to open transposition of respective provisions and 0 to restrictive transposition. Furthermore, I included the three range-based criteria utilized by Kość (i – salary treshold; ii – initial length of BC validity; iii – processing time).¹³⁰ Finally, I determined an average of all 26 discretionary provisions:

uT)	i	ii	iii	a	b	c	d	e	f	g	h	i	j	k	l	m	n	o	p	q	r	s	t	u	v	w		
AT	0,5	0,5	0,5	1	0	0	0	0	0	0	1	1	1	1	1	0	1	1	0	0	1	0	0	0	1	1	0,48	
BE	0,5	0,25	0,25	1	0	0	0	1	1	1	0	0	0	1	1	0	1	1	0	0	1	0	0	0	1	1	0,46	
BG	0,5	0,25	1	0	1	0	1	1	0	0	0	0	0	0	0	0	1	1	0	0	1	0	0	0	1	1	0,38	
CY	0,8	0,25	0,25	0	1	0	0	1	1	0	0	0	0	0	1	1	0	0	0	0	0	0	0	0	1	1	0,32	
CZ	0,5	0,5	0,25	1	1	1	0	1	0	0	1	1	0	1	1	0	0	1	1	0	1	0	0	0	1	1	0,55	
EE	0,8	0,5	0,5	0	1	1	1	1	0	1	0	1	0	1	0	1	1	0	1	1	0	1	0	1	0	1	0,61	
FI	0,5	0,5	0,25	1	1	1	0	1	0	0	0	1	1	1	1	0	1	1	1	1	0	1	0	0	1	1	0,63	
FR	0,5	0,75	0,25	1	1	1	1	1	0	0	1	1	1	1	0	0	1	1	1	1	1	1	1	0	1	1	0,75	
DE	1	1	0,25	1	1	1	0	1	1	0	1	1	1	1	1	1	1	1	1	1	1	0	0	1	1	1	0,82	
EL	0,8	0,5	0,25	1	1	1	0	1	1	1	0	1	0	0	0	1	0	1	0	0	0	0	1	0	1	1	0,52	
HU	0,8	1	0,25	1	1	0	1	1	0	0	0	0	1	0	1	1	1	1	0	1	1	0	0	0	1	1	0,58	
IT	1	0,5	0,25	1	1	0	1	1	0	0	0	1	1	1	0	0	1	1	0	1	1	0	0	0	0	1	0,53	
LV	0,5	1	0,75	1	1	1	1	1	0	0	1	1	0	1	0	0	1	1	1	0	1	0	0	1	1	1	0,66	
LT	0,3	0,25	0,5	0	1	1	0	1	0	0	0	1	1	1	1	0	1	1	0	1	1	0	1	0	1	1	0,58	
LU	0,8	0,5	0,25	1	1	0	0	1	1	0	0	1	1	1	1	1	1	1	0	0	0	0	1	0	0	0	0,52	
MT	0,8	0,25	0,25	0	1	0	0	1	1	0	0	0	0	0	1	1	0	1	0	0	0	0	1	0	1	1	0,39	
NL	0,5	1	0,25	1	0	1	0	1	0	0	0	1	1	1	1	0	1	1	1	0	1	0	0	0	1	1	0,57	
PL	0,5	0,5	0,75	0	1	0	0	1	0	0	1	0	0	1	0	0	1	1	0	0	0	0	1	0	1	1	0,41	
PT	0,8	0,25	0,5	1	1	1	1	1	0	1	0	1	1	1	1	1	1	1	0	1	0	1	0	1	1	1	0,75	
RO	0	0,5	0,75	0	1	1	0	1	0	0	0	1	1	0	0	0	1	0	0	0	0	0	0	0	1	1	0,36	
SI	0,5	0,5	0,75	1	1	0	1	1	0	0	0	1	1	0	1	0	1	1	0	0	1	0	0	0	1	1	0,53	
SK	0,8	0,75	0,75	0	1	0	1	1	0	0	1	1	1	1	1	0	0	1	0	1	1	0	1	0	1	1	0,63	
ES	0,8	0,25	0,5	0	1	0	1	1	0	1	0	0	1	1	0	1	1	1	1	1	1	0	0	1	0	1	1	0,6
SE	0,5	0,5	0,25	1	1	1	1	1	0	0	1	1	0	1	1	0	1	1	0	0	1	0	1	0	1	0	0,59	
	0,6	0,53	0,44	0,63	0,88	0,5	0,46	0,96	0,25	0,21	0,33	0,67	0,63	0,67	0,67	0,38	0,71	0,96	0,33	0,38	0,63	0,1	0,5	0,08	0,9	0,92		

Calculation of an updated transposition index, reflecting the variances in mode of transposition of discretionary clauses. Own representation.

In the column graph below, you can see the country scores of the updated transposition index in an order from the most restrictive to the most open.

¹³⁰ KOŚĆ, P. Domestic adaptation and modalities of implementation of the Blue Card directive. 2013.



Column graph depicting the updated transposition index; Member States in order ranging from the most restrictive to the most open variance of transposition. Own representation.

Based on the proximity of the updated transposition index scores, I classified the countries into four clusters reflecting their pattern of transposition: restrictive, moderate-restrictive, moderate-open, open.

The cluster of Member States with a restrictive pattern of transposition of discretionary clauses entails the following 5 Member States: Cyprus (uTI 0,32), Romania (0,36), Bulgaria (0,38), Malta (0,39) and Poland (0,41).

The moderate-restrictive cluster is composed of two countries: Belgium (0,46) and Austria (0,48).

The moderate-open cluster is the most represented one, encompassing in total 14 countries: Greece (0,52), Luxembourg (0,52), Italy (0,53), Slovenia (0,53), the Czech Republic (0,55), the Netherlands (0,57), Hungary (0,58), Lithuania (0,58), Sweden (0,59), Spain (0,6), Estonia (0,61), Finland (0,63), Slovakia (0,63) and Latvia (0,66).

Finally, three Member States represent the open pattern of transposition: France (0,75), Portugal (0,75) and Germany (0,82).

Division of Member States into clusters according to the prevalent mode of discretionary clauses' transposition:

MS with restrictive mode of transposition	CY, RO, BG, MT, PL
MS with moderate-restrictive mode of transposition	BE, AT
MS with moderate-open mode of transposition	EL, LU, IT, SI, CZ, NL , HU, LT, SE, ES, EE, FI, SK, LV
MS with open mode of transposition	FR, PT, DE

**Member States in bold are analyzed in the empirical part below.*

4.3. Research question, hypotheses, variables and operationalization

In this thesis, I will attempt to answer two main research questions, one related to timeliness and correctness of transposition and the another one looking for reasons behind variances in transposition of the Blue Card's discretionary clauses. For each of the research questions, five hypotheses are formulated based on the most acclaimed theories derived from the compliance literature and the HSI policies literature respectively. In most of the cases, a hypothesis concerned revolves around a given variable (factor), that it corresponds with. There are certain cases however, in which there is more variables tested for the purposes of validation of a single hypothesis. In such cases, an average of both or all variables is taken into account for the purposes of comparison with the hypotheses. However, all variables related to the misfit hypothesis shall be viewed also as potentially alternative (it is sufficient if only one of the veto points exercises its veto potential to cause a transposition delay).

As far as timeliness and correctness of transposition is concerned, the variables extracted from the transposition compliance theories may be perceived as belonging to three distinct groups – factors related to misfit and policy preferences, factors inherent to national implementation process and variables revolving around the so-called veto players. Concerning exploration of the variances in transposition, here all of the variables (operationalized in order to verify validity of the corresponding hypotheses) were derived from the established contributions to the highly-skilled immigration policies research journals and academic literature.

Various primary sources and documents, collected by desk research, are subjected to content analysis. Its outcomes are attributed a value between 1-3, while 3 indicates an outcome which is in line with the assumption of the hypothesis concerned and 1 stands for a situation contrary to what an hypothesis presumes.

The first research question explores the reasons behind divergences in terms of timeliness and correctness of the Blue Card directive transposition.

RQ1: What factors cause differences in timeliness and correctness of transposition of the Blue Card directive in the EU-24?

Five hypotheses are articulated as possible explanations. The first one builds on one of the recently established considerations among the transposition compliance scholars, based on a logic that a Member State that has been successful in elevating its national interest and preferences to the EU-level minimizes its incentive to deviate from the final requirements of the EU legislative norm, because it has been able to adjust its shape to its expectations. This – from the perspective of a Member State concerned – positive consequence can even outweigh the initial policy misfit (difference in the national and EU-level regulation of the policy area), if there had been any.

***H1a: More successful uploading of Member States' interests to the EU level during the negotiation phase of the Blue Card directive leads to better compliance.** (variable to test this hypothesis: 1.2)*

For evaluation of this hypothesis, reports and minutes from several meetings of the Council Working Group on Migration and Expulsion are gathered and analyzed by means of the content

analysis.¹³¹ Research articles by scholars such as Eisele¹³² and Bellini¹³³ serve as complementary sources. Working group met several times since the initial proposal of the Blue Card directive was tabled in 2007 until the agreement in the Council was reached and the final version of the proposal was approved in 2009. During the negotiations in the Council working group, Member States' representatives could make objections, comments and even reservations towards the respective provisions of the proposal. The author of this thesis thoroughly studied the working group reports and in case of each Member State under study, made notices of these Member States' observations and evaluated, to what extent these were (or were not) reflected in the final version of the Blue Card directive proposal. If the uploading of the national interests on the EU level was absent or limited, value 1 is assigned and worse compliance is expected according to the hypothesis. On the contrary, when a country's uploading of preferences to the EU level is assessed as high, value 3 is attributed, leading to presumption of satisfactory transposition correctness and timeliness record. If uploading is assessed as moderate or partial (value 2), this variable cannot be deemed to play significant role in determining timely and/or correct transposition and the hypothesis will be considered neither proven, nor disproven.

The second hypothesis concerns the core of the policy misfit concept, that has been deeply embedded in the transposition compliance research for the past two decades. Misfit (also goodness-of-fit), although it has not escaped vocal criticism, emerges in a leading position as one of the most frequently quoted factors potentially conducive to differences in timeliness and correctness of transposition. The advocates of the policy misfit theory argue that in case a misfit – denoting difference between the national policy and the EU-level policy – is low, there is less barriers (both technical and political) that could inhibit a smooth, timely and correct transposition.

H1b: The lower is the policy misfit between the Blue Card and the pre-existing domestic HSI policy, the better is the compliance. (variable to test this hypothesis: 1.3, 1.1)

¹³¹ COUNCIL OF THE EUROPEAN UNION. Working Party on Migration and Expulsion – Outcome of Proceedings, 4 April 2008. Brussels, 8 May 2008; COUNCIL OF THE EUROPEAN UNION. Working Party on Migration and Expulsion – Outcome of Proceedings, 13-14 May 2008. Brussels, 19 June 2008; COUNCIL OF THE EUROPEAN UNION. Working Party on Migration and Expulsion – Outcome of Proceedings, 3-4 July 2008. Brussels, 24 July 2008; COUNCIL OF THE EUROPEAN UNION. Working Party on Migration and Expulsion – Outcome of Proceedings, 28-29 July 2008. Brussels, 1 August 2008.

¹³² EISELE, K. Why come here if I can go there? Assessing the 'Attractiveness' of the EU's Blue Card Directive for 'Highly Qualified' Immigrants. CEPS, October 2013.

¹³³ BELLINI, S. EU Blue Card: A promising tool among labour migration policies? A comparative analysis of selected countries. Working Paper No. 76, Institute for International Political Economy Berlin, 2016.

Two variables are explored in order to verify validity of this hypothesis. Firstly, rather to provide a starting point before analysing the gist of the misfit, it is essential to identify if there had been any HSI policy in place in a country concerned before the adoption of the Blue Card. This identification, however, obviously does not provide answer to the question what is the character of the pre-existent domestic HSI policy, it only states if there had been any. The mere pre-existence of a developed domestic HSI scheme does not imply any probability that the misfit will be lower or higher. The actual provisions of the relevant domestic norms have to be scrutinized to arrive at such finding. On the contrary, absence of a domestic HSI policy should not be interpreted as automatically rendering misfit low, because of the absence of a set of norms with which the Blue Card directive could potentially contradict. Indeed, high degree of HSI policy development may also implicate more experience and familiarity with this policy area, having a significant facilitating impact on future regulatory efforts. Nonetheless, it shall be emphasized that cases of the non-development of the HSI policies on domestic level are unlikely to result in high level policy misfit – in most cases, they lead to an impossibility to verify this hypothesis, because from the operationalization of these variables isolatedly, it would not be feasible to discern what considerations discouraged the domestic political leadership from devising a national HSI scheme (whether it was a conviction that this area should be managed on the EU level or a belief that labour immigration is an inferior option and development of domestic skilled workforce shall take precedence).

For the purposes of identifying the domestic legislative frameworks regulating HSI policy area and assess, how their crucial aspects had (not) been consistent with the substantial provisions of the Blue Card directive, the European Commission's Impact Assessment accompanying the initial proposal for the Blue Card serves as a primary source, subjected to content analysis.¹³⁴ Consistence between the pre-existing national HSI policies and the Blue Card is assessed in respect of the following features: type of definition of the highly skilled immigrants, criteria to be fulfilled, type of permit, complexity of documents to be presented, role of employer in the application process, acceptance of in-country requests, internal mobility, period of grace to seek new job in case of unemployment, acquisition of permanent residence, family reunification support. While the Impact Assessment provides a basis for this comparative analysis, the

¹³⁴ EUROPEAN COMMISSION. Commission staff working document. Accompanying document to the Proposal for a Council Directive on the conditions of entry and residence of third country nationals for the purpose of highly qualified employment. Impact Assessment. SEC(2007) 1403, Brussels, 23.10.2007.

official documents of the other international networks and organizations (European Migration Network, Organization for Economic Cooperation and Development, International Organization for Migration) are used as complementary sources to collect data necessary for assessment of these variables and the corresponding hypothesis.¹³⁵

The following hypothesis operates with the two variables centered around the characteristics of the Member State-specific legal transposition instruments. The logic is twofold – number and strength of the legal implementation measures is what pre-determines how burdensome the national implementation process will be. The more burdensome it is, the more likely is either an emergence of a transposition delay, or an incorrect transposition. On the contrary, in case of less complex national transposition requirements, we can expect a smooth – timely and correct – transposition.

H1c: The less complex is the nature of the national implementing measures, the better is the compliance. (variables to test this hypothesis: 2.1, 2.2)

To verify this hypothesis, two variables need to be tested – one concerning the amount of legislative measures, the other one focusing on their legal force. In terms of the former, this hypothesis assumes that if the number of legislative measures taken is small, this will put the national administrative bodies under lesser strain, paving a way for better transposition compliance (especially regarding timeliness of transposition). On the contrary, higher number of domestic transposition measures is expected to create an additional pressure on the authorities, leading to transposition non-compliance. Up to 2 transposition measures is considered as „low“ number, assigned value 3 for the purposes of the analysis. 3-5 measures is deemed medium amount, without significant effect regarding transposition compliance. More than 6 measures is recognized as high number of implementation measures and value 1 is attributed, indicating that according to the hypothesis, transposition non-compliance is expected. The source of the ground data to operationalize this variable is an inspection of the official EUR-Lex database collecting all of the legislative measures enacted on the national level as reported by the Member States.¹³⁶ With regard to the list of the transposition measures

¹³⁵ EUROPEAN MIGRATION NETWORK. Synthesis Report for the EMN Focussed Study 2015. Changes in immigration status and purpose of stay: an overview of EU Member States' approaches; OECD. Recruiting Immigrant Workers: Europe 2016. Assessment and Recommendations.

¹³⁶ EUR-Lex. National transposition measures communicated by the Member States concerning: Council Directive 2009/50/EC of 25 May 2009 on the conditions of entry and residence of third-country nationals for the

of the Blue Card directive, made available on the EUR-Lex database online interface, we need to be aware of the fact that not only legislative measures adopted to transpose the Blue Card directive are included in the list, but also (in case of some of the Member States) any subsequent laws that amended these measures afterwards. Thus, in order to avoid misleading analysis, we need to set a time deadline, beyond which the measures reported are not included into the data set. For the purposes of the operationalization of this variable, legal transposition measures dating to the year 2012 (transposition period officially expiring in 2011 + 1 year) are taken into account, since majority of the Member States had been overdue in terms of the transposition and measures were adopted even several months after the official expiry of the period. The only exception is Sweden, when also a transposition measure from 2013 was included, having regard to the fact that Sweden was the country with the longest transposition delay.

Concerning the legal force of the domestic transposition measures, the compliance literature scholars often raised the theory that in case of legislative norms of the highest legal force (laws, acts), procedural requirements are the toughest, thus, the most complex and demanding, possibly leading to transposition delays. Thus, value 1 is assigned in such cases. Conversely, legal measures of lower legal force (ministerial orders, cabinet degrees or their equivalents) are attributed values 2 and 3 respectively, in the later case giving rise to an expectation of a suboptimal transposition compliance. Similarly as in case of the previous variable, EUR-Lex database provided a source of the information concerning the type of the legal instruments utilised by the national administrations and their position in the legal hierarchy of a Member State in question.¹³⁷

The next hypothesis, that according to many renowned transposition compliance scholars accounts for differences in timeliness and correctness of transposition, revolves around the features inherent to performance of administrative bodies in charge of transposition. Particularly, two aspects are verified by means of a quantitative analysis: government effectiveness and regulatory quality.

H1d: The stronger is the administrative capacity of the national implementation bodies, the better is the compliance. (variables to test this hypothesis: 2.3, 2.4)

purposes of highly qualified employment. [online] [visited 18.5.2020] Available at: <<https://eur-lex.europa.eu/legal-content/EN/NIM/?uri=CELEX:32009L0050>>

¹³⁷ Ibid.

Both variables are operationalized in a straightforward manner – the higher the relative score of government effectiveness and regulatory quality, the better prospects of transposition timeliness and correctness – and vice versa. The score for both categories is obtained from the Worldwide Governance Indicators (WGI), the official online statistical interface administered by the World Bank.¹³⁸ WGI collects ground data for each scrutinized category from around ten trustworthy sources that include besides the World Bank also the World Economic Forum, Economic Intelligence Unit, Bertelsmann Transformation Index or Gallup World Poll. For selection of source data, the author decided to use the WGI data from the year 2011. In May 2011, the transposition period officially ended, so the data collected from this year are the most likely to reflect the developments that might have occurred during the preceding two-year-long transposition period.

Once the scores for all of the Member States selected for country-level analysis are extracted, the percentile range between the best-ranked and the worst-ranked Member States is divided by thirds. In terms of government effectiveness, Member States with the percentile score between 60.19-73.46 are assigned value 1, between 73.47-86.73 value 2 and between 86.74-100.00 value 3. In terms of regulatory quality, value 1 is attributed to countries with the percentile ranging between 70.62-80.10, value 2 receive Member States whose percentile score is situated in the range 80.11-89.58 and the highest value 3 belongs to countries with the percentile 89.59-99.05.

The last hypothesis formulated to provide possible explanation for the differences in transposition compliance – particularly in correctness and timeliness of transposition – includes the so-called veto players theory. This concept is one of the widely renowned and frequently quoted doctrines among the transposition compliance scholars. Veto players denote the institutional and political veto points, specific institutions and actors, that can influence the transposition process. Their interaction can play both a facilitating and an inhibiting role – the former in case that (some of) the veto players pursue their supportive position towards the EU-level proposal, the latter in situations when (some of) the veto players expose their rejecting stance towards the proposal.

¹³⁸ Worldwide Governance Indicators. [online] [visited 22.5.2020] Available at: <<https://info.worldbank.org/governance/wgi/Home/Reports>>

H1e: The negative attitude of the veto players leads to worse compliance. (variables to test this hypothesis: 3.2, 3.3, 3.1)

The composition and relative weight of veto players obviously differ country-to-country, depending on both the long-term constitutional setting of a given country and the short-term political constellation in the country in question. Exploration of both is needed to arrive at reliable conclusions regarding the role held by veto players across the Member States under scrutiny.

The most significant veto players are embodied by the ministry in charge of the labour immigration policy area. If a political party, whose representative heads such a ministry, adopts generally affirmative position towards labour immigration, this can facilitate a smooth transposition of the Blue Card directive (in such situations, value 3 is assigned). Conversely, when the political party responsible for this agenda stands for a more strict approach towards labour immigration, considering it as a 'second-best option' inferior to the domestic labour force (and its promotion), such generally opposing stance translates into a value 1 being assigned. For the collection of the data necessary for the assessment, political programmes and electoral manifestos of the political parties in charge of the labour immigration policy area in the period 2009-2011 are the primary sources, with the scholarly articles, newspaper articles and other media content from the same time period serving as complementary sources.

Second potential veto player whose position is being examined in the analysis is a coalition partner. In majority of the Member States under study, the strongest political parties in power during the Blue Card directive transposition period were not able to compose a single-party cabinet. Thus, the dominant scenario was that they created government coalitions with other political parties. Hence, it is those coalition partners, who filtered and adjusted the views of the main ruling parties in the countries scrutinized. Thus, also their political programmes and electoral manifestos are exposed to qualitative content analysis in order to identify their orientation towards the labour immigration policy area. If the view of the coalition partner with regard to the Blue Card is supportive, value 3 is attributed. On the contrary, if coalition partners perceive labour immigration as overwhelmingly problematic, value 1 is assigned.

Finally, in some countries, veto players might also be represented by the regional units – in

countries with a federalized or highly decentralized administrative structure. This shall be reflected by the 3.1 variable, which determines the level of federalization. At this point however, we need to carefully distinguish between the mere veto potential and the actual exercise of the veto power. It is clear that in countries with unitary or overwhelmingly centralized structure, this veto player will not cause any transposition compliance obstacles. Even in case of Member States with federalized or decentralized structure, apart from a mere identification of the potential veto players, the author has to inspect the relevant sources (primary documents, minutes and reports) from the bodies representing the regional units in order to evaluate the real orientation of such bodies towards the labour immigration and to assess, whether the regional units exercised their veto potential. To divide the Member States for the purposes of this variable, Lijphart's methodology and classification¹³⁹ are utilised, with value 3 assigned to unitary states, value 1 to federal states and value 2 to the hybrid models in between.

The second research questions aims at identifying the motivations that led the responsible Member States' bodies and representatives to opting either for a more open or for a more restrictive manner of transposition of the many discretionary provisions present in the Blue Card directive.

RQ2: What factors caused differences in variances (restrictive / open) of transposition of discretionary clauses in the EU Blue Card directive?

The first hypothesis comes out from the widely held consideration of the authors of the HSI policies scholarly literature, according to whom we should search domestic considerations behind the attempts to maximize or minimize the impact of the directive with the many discretionary clauses that leave significant room to manoeuvre for the Member States' representative to adjust its final shape by means of the content of the transposition measures.

H2a: If the government's position towards migration is generally affirmative, MS tend to transpose the Blue Card directive in an open manner. (variable to test this hypothesis: 4.1)

To verify the validity of this hypothesis, similar documents as for the purposes of the veto

¹³⁹ LIJPHART, A. Patterns of Democracy. Government Forms and Performance in Thirty-Six Countries. Second edition. Yale University Press, 2012.

players-related variables 3.2 and 3.3 were collected and subjected to qualitative content analysis. Thus, political programmes, electoral manifestos, coalition agreements and other relevant primary sources were visited and examined. As a complementary source, online media content (articles etc.) was used to further elucidate the situation in some of the Member States. For the purposes of this variable's operationalization, value 3 is assigned if a government's attitude towards labour immigration was appraised as generally affirmative, providing a fertile ground for an open mode of the Blue Card discretionary clauses' transposition. Conversely, if the author after study of the documents finds the governmental position to be generally opposing, value 1 is attributed.

The second hypothesis operates with another variable related to the attitude of potential stakeholders, whose views and perceptions may compel policymakers to opt for either an open or for a restrictive mode of the Blue Card directive transposition – public. Political parties composing the government coalition strive for re-election and thus, intend to satisfy their electorates and reach out to the broader public. Therefore, their conduct usually to certain extent reflects the expectations of the voters. According to the assumption behind the following hypothesis, supportive public view towards immigration may facilitate it, while opposing attitudes can hamper it and translate into policymakers' reluctance to transpose the Blue Card directive in an open manner.

H2b: If the public position towards migration is generally affirmative, MS tend to transpose the Blue Card directive in an open manner. (variable to test this hypothesis: 4.2)

To verify validity of this hypothesis, a corresponding variable 'Public position towards migration' is operationalized. Eurobarometer public opinion surveys provide source data for evaluation. Particularly relevant is the Standard Eurobarometer 74, published in February 2011, for which data had been collected in November 2010.¹⁴⁰ In this survey, respondents were asked the following question: 'What are the two most important issues facing your country at the moment?'¹⁴¹ The percentage of those who listed immigration among the two most serious challenges their country had been encountering, differed greatly from one Member State to

¹⁴⁰ EUROPEAN COMMISSION. Standard Eurobarometer 74. Public Opinion in the European Union. Report. Autumn 2010.

¹⁴¹ Ibid.

another, with the EU-27 average of 11 percent.¹⁴² The author of this thesis interprets this survey in a way that the Member States with relatively low percentage of people perceiving immigration as an issue provide generally less securitized and more positive ambience to what potential immigrants can move. For the purposes of the variable's operationalization, Member States with the result of the survey floating within a range of three percentage points below or above the EU average (8-14) are marked as having public with mixed or indifferent stances towards immigration. Member States with the percentage of 7 and lower are assigned a value 3, giving rise to an expectation of open transposition, while Member States with the percentage of 15 and above are attributed a value 1, expressing the presumption that the policymakers, aware of the sensitivity of the immigration issue as perceived by their public, will rather limit themselves to a more restrictive manner of transposition.

The third hypothesis aiming at providing possible explanation for variances in the mode of the Blue Card discretionary clauses' transposition concentrates on the issue of unemployment. Unemployment stands out from the HSI scholarly literature as one of the most prominent factors that policymakers take into consideration when devising their labour immigration policies – in particular when deciding whether or not resort to an open mode of transposition. The assumption behind this hypothesis is intuitive – low unemployment (ideally in confluence with a high demand for highly skilled personnel) implies solid foundations for open transposition, high unemployment compels policymakers to give priority to interests of domestic workforce.

H2c: If the level of unemployment is low, MS tend to transpose the Blue Card in an open manner. (variable to test this hypothesis: 4.3)

To operationalize the variable that corresponds with this hypothesis, official Eurostat data from the year 2010 are utilized (since this year covers the middle of the transposition period).¹⁴³ Also, to conduct more precise and relevant analysis, the analysis focuses only on unemployment in highly-skilled occupations. The EU-wide average was 16,1 percent.¹⁴⁴ For the highly-skilled unemployment lower than 14,6 %, value 3 is assigned, expressing a higher probability of open mode of transposition. Conversely, for unemployment rates higher than 17,6 %, value 1 is

¹⁴² Ibid.

¹⁴³ EUROSTAT. Unemployment Statistics. [online] [visited 19.4.2020] Available at: <https://ec.europa.eu/eurostat/statistics-explained/index.php/Unemployment_statistics>

¹⁴⁴ Ibid.

attributed, indicating probable restrictive transposition manner, as anticipated in the hypothesis. Unemployment levels between 14,6-17,6 percent implicate medium value 2.

Another hypothesis revolves around a variable related to the one of the most common indexes measuring economic development of a society, the so-called GINI index. GINI index states the inequality in economic standing within a given population. The lower the GINI index, the lower the inequality. Low inequality levels usually characterize more developed countries, while high 'gap between the rich and poor' is typically faced by the developing or non-developed states. Paulina Kość, the scholar who already explored possible causes of variances in open and restrictive transposition of the Blue Card, suggested that GINI index could be another variable potentially accounting for divergent transposition and proposed that this should be verified in a future research.¹⁴⁵ In an effort to build up on her advice, I articulate the following hypothesis.

H2d: If the GINI index is low, MS tend to transpose the Blue Card in an open manner.
(variable to test this hypothesis: 4.4)

To operationalize this variable and by doing so, to verify validity of this hypothesis, relevant data are collected from the official statistical database of the World Bank Group.¹⁴⁶ GINI index rates from the year 2010 are used for the assessment, because – as already mentioned above – this year emerges in the middle of the transposition period and covers its lengthiest part. Member States with the relatively lowest GINI index scores (25-29,9) are assigned value 3, countries with GINI index in the range 30-32,9 receive a medium value 2 and finally, value 3 is obtained by Member States whose GINI index ranges between 33-36 (no of the Member States under scrutiny had GINI index above 36 in the year 2010).

The last hypothesis formulated in effort to provide explanation for variances in the Blue Card discretionary clauses' transposition concerns a share of research and development expenses on the gross domestic product (GDP) of the Member States. This hypothesis presumes that higher ratio of research and development expenses indicates overall higher motivation of a Member State to excel in highly-skilled professions. In line with this presumption, the hypothesis

¹⁴⁵ KOŚĆ, P. Domestic adaptation and modalities of implementation of the Blue Card directive. 2013.

¹⁴⁶ WORLD BANK GROUP. Data. GINI index (World Bank estimate). [online] [visited 15.4.2020] Available at: <<https://data.worldbank.org/indicator/SI.POV.GINI>>

therefore presumes that higher share of research and development expenses makes an open transposition of the Blue Card directive more likely.

H2e: If the R&D expenses' share of GDP is high, MS tend to transpose the Blue Card in an open manner. (variable to test this hypothesis: 4.5)

The World Bank Group serves again as a source of data that were utilized for operationalization of this hypothesis.¹⁴⁷ Again, similarly as in case of the previous variable, data from the year 2010 were used for the analysis, for the same reason as mentioned above. Among the 14 Member States under scrutiny, the lowest share identified was 0,56 percent and the highest share equaled 3,72 percent. Countries with the share of research and development expenses below 1 percent of GDP were assigned value 1, expressing a presumption of a restrictive mode of transposition. Member States that invested in research and development between 1-2 percent of their GDP receive medium value 2 for the purposes of this variable's operationalization. Finally, Member States with the research and development expenses exceeding 2 percent of their GDP are attributed value 3 and therefore, the likelihood of open transposition is in their case – in line with this hypothesis – considered to be the highest.

In the chart below, you can find a summary of all the variables, the indicative list of the sources extracted for their operationalization and the values assigned in result of the analysis.

A/ Timeliness & correctness of transposition		
1 – Misfit and policy preferences		Data sources
1.1 Legislative tradition in this area	1 – absent or highly underdeveloped; 2 – partially developed; 3 – (highly) developed	-EC Impact Assessment accompanying Proposal for Directive 2009/50/EC -EMN/OECD/IOM studies
1.2 Uploading national interest to EU level	1 – absent or very limited; 2 – partial / moderate; 3 – high	-primary documents from the Council Working Group on Migration and Expulsion -secondary literature (Eisele, Bellini etc.)
1.3 Policy misfit between EU measure and domestic measures in this area	1 – high; 2 – moderate; 3 – low	-EC Impact Assessment accompanying Proposal for Directive 2009/50/EC -EMN/OECD/IOM studies
2 – National implementing instrument		

¹⁴⁷ WORLD BANK GROUP. Data. Research and development expenditure (% of GDP). [online] [visited 16.4.2020] Available at: <https://data.worldbank.org/indicator/GB.XPD.RSDV.GD.ZS?name_desc=false>

2.1 Type of implementing instrument (if more: the highest used)	1 – law; 2 – ministerial order; 3 – cabinet decree	-European Commission EUR-Lex database
2.2 Number of implementing measures	1 – high 2 – medium 3 – small	-European Commission EUR-Lex database
2.3 Government effectiveness	1 – low effectiveness 2 – medium effectiveness 3 – high effectiveness	-Worldwide Governance Indicators
2.4 Regulatory Quality	1 – low quality 2 – medium quality 3 – high quality	-Worldwide Governance Indicators
3 – Veto players		
3.1 Federalism / unitarism	1 – low concentration 2 – moderate concentration 3 – high concentration	-Lijphart classification (adjusted)
3.2 Partisan effect – responsible ministry	1 – responsible ministry opposing the directive 2 – responsible ministry indifferent / mixed 3 – responsible ministry supportive of the directive	- manifestos of the parties holding the ministerial post - relevant primary documents of government -other media content
3.3 Partisan effect – coalition partners	1 – coalition partners against the directive 2 – coalition partners indifferent / mixed 3 – coalition partners supportive of the directive	-coalition agreement, manifestos of the coalition parties - relevant primary documents of government - other media content
B/ Variances of transposition		
4 - Policy-specific variables		
4.1 Government position towards migration	1 – opposing 2 – indifferent / mixed 3 – affirmative	-coalition agreement, manifestos of the coalition parties - other media content
4.2 Public position towards migration	1 – opposing 2 – indifferent / mixed 3 – affirmative	-public opinion surveys (Eurobarometer)
4.3 Level of unemployment	1 – high 2 – medium 3 – low	-Eurostat data
4.4 GINI index	1 – high 2 – medium 3 – low	-World Bank/OECD data
4.5 R&D expenses relative to GDP	1 – low 2 – medium 3 – high	-World Bank/OECD data

4.3.1. Limitations of the research

Concerning the limitations of the research method used, we need to admit that as many transposition scholars before already pointed out, there hardly is any overriding hypothesis that could account for the differences alone. It is rather a confluence of different variables that are conducive to the final outcome, keeping in mind that the specific composition of factors and their respective share of contribution operates differently in different setting.

Therefore, we should be aware of generalizations and when interpreting the results, keep emphasizing that the specific hypothesis seems to (not) play a role in a specific case and although the aggregate outcomes may indicate that they are irrelevant, this rather means that they did not play a decisive role in a majority of cases, leaving intact the option that they indeed proved their relevance for certain cases.

Secondly, it can be objected that the triple scale of values (1-2-3) is not sensitive enough, incapable of capturing the slight nuances. While obviously this argument may be given some credit, for the purposes of this thesis (its size, amount of data for analysis etc.) it is sufficient to classify the assessments' outcomes into binary categories (low-high, correct-incorrect, timely-late).

Lastly, a potential criticism may be raised concerning both the selection of variables and of sources analyzed for their operationalization. To avoid a risk of 'selection bias', it is necessary to argue why certain factors were chosen for analysis and others not. Here, the author reiterates that selection is needed in any kind of inductive research, when the potential pool of aspects for analysis is virtually unlimited. Simply put, the research needs to be narrowed down and focused on the most relevant elements, otherwise, it would have not been feasible. It is of essential importance that the selection is done in a transparent and unbiased way. I strived for that by extracting the variables from those theories, that bear the highest credit and recognition in the scholarly literature. Regarding the selection of the data for operationalization, I attempted to choose the most relevant types of content from the most significant time period, that could again bear the highest explanatory value. By these working methods, I tried to offset the potential weaknesses and limitations described.

5. Analytical part

The selection of the countries to be analyzed in the empirical part of this thesis was carried out with the intention to include Member States representative firstly of all the compliance categories and clusters of varying transposition and secondly representative of different geographical regions within the European Union (Western European countries, Mediterranean, Nordic countries, Central and Eastern Europe, Baltic states). At least one representative of each transposition cluster and geographical region is present in the forthcoming analysis. The availability of source data served as a secondary criterion when making the choice between the Member States belonging to the same transposition cluster and geographic group.

5.1. Summary of the country-level analysis

In the following part, I provide the summarization of country-level analysis that was carried out by operationalization of the variables listed in the section 4.3. above, in order to evaluate the validity of the hypotheses potentially explaining for the differences in timeliness/correctness and openness/restrictiveness of transposition. Overall, 14 Member States were selected for a detailed country-level analysis. In case of every Member State explored, both sub-parts are followed by short overview tables that visually depict whether the empirical findings of the country-level analysis confirmed (+) or disproven (-) the hypotheses tested in the specific case of a country in question. The detailed findings based on which the author evaluated the validity of the hypotheses are available in the Appendix 1.

5.1.1. Belgium

A/ Timeliness & correctness of transposition

In terms of timeliness and correctness of transposition, Belgium – as we know from the information above – transposed the Blue Card directive correctly, but late. The country-level analysis revealed that regarding the H1a hypothesis, Belgium had a low level of success in

uploading the national interests on the EU level during the Council working group negotiations. The resulting directive thus differed vastly from the Belgian ideal expectation, that could render its transposition process more burdensome, resulting in the delay. The H1a hypothesis thus might be considered confirmed in the Belgian case. Regarding the policy misfit, the analysis of the main features of the Belgian HSI scheme that had been in place before the adoption of the Blue Card directive revealed high level of misfit between the two schemes, that may again render the transposition more difficult. Even the H1b hypothesis can be deemed confirmed. In terms of type and number of transposition measures, it was observed that Belgium enacted a relatively high number of measures, including the ones of highest legal force. This is in line with the prediction articulated in the hypothesis H1c. Belgium scored relatively high in the indexes that measure capability of its administrative bodies (Governance effectiveness and Regulatory Quality). This is contrary to the hypothesis H1d, according to what high scores in administrative capabilities should imply better compliance record. Finally, regarding the veto players, the country-level analysis led to the result that both the ministry in charge of migration agenda and the coalition partners were either moderately or highly supportive towards the proposal. Although Belgium is a decentralized country with highly autonomous regional units, even those have not exerted their veto potential. Therefore, the H1e hypothesis cannot serve to explain for the delay in transposition and is not fulfilled in the Belgian case.

Summary table A - Belgium

Nr.	Hypothesis	Validity
H1a	Uploading	+
H1b	Policy misfit	+
H1c	Number/type of measures	+
H1d	Administrative capability	-
H1e	Veto players	-

B/ Variances of transposition

In terms of the variances in the open/restrictive mode of transposition of the discretionary clauses, Belgium was classified as a country with a moderate-restrictive mode of transposition. This corresponds with the overall attitude of the government towards labour immigration that have been appraised as mixed. Therefore, the H2a hypothesis was confirmed. Concerning the

public position, immigration had been perceived as an extremely sensitive topic among the Belgian public and its voice towards incomers can be classified as mostly opposing. This is also in line with the assumption of the H2b hypothesis. Thirdly, level of unemployment of highly skilled professionals in Belgium was assessed as medium, which also positively correlates with the moderate-restrictive mode of transposition. Thus, the H2c hypothesis is deemed to be confirmed. Fourthly, the GINI index of Belgium was low, which means that the H2d hypothesis is rendered invalid. Lastly, the ratio of research and development expenses on GDP was high in Belgium, which is also disapproving in respect of the validity of the H2e hypothesis.

Summary table B - Belgium

Nr.	Hypothesis	Validity
H2a	Position of government	+
H2b	Position of public	+
H2c	Level of unemployment	+
H2d	GINI index	-
H2e	Share of R&D expenses / GDP	-

5.1.2. Bulgaria

A/ Timeliness & correctness of transposition

Bulgaria is another example of the most represented group of countries that transposed the Blue Card directive correctly, but late. It was not particularly active during the negotiations in the Council working group and proposed relatively low number of amendments compared to the other delegations. Its success in uploading its interest on the EU level can be assessed as moderate. The link between late transposition and this variable thus cannot be confirmed in line with the hypothesis H1a. The policy misfit between the previous labour immigration laws and the Blue Card was also assessed as moderate – mostly due to the limited focus and development of this legislation in Bulgaria before the Blue Card. Therefore, neither this hypothesis can be deemed responsible for the late transposition. Thirdly, in terms of number/type of transposition measures, Bulgaria used moderate amount of measures including the ones of the highest legal force. This corresponds with the premise expressed in the hypothesis H1c. Fourthly, Bulgaria achieved relatively low scores in the indexes measuring its administrative capabilities

(government effectiveness and regulatory quality). This confirms the hypothesis H1d. Finally, regarding the veto players, the exploration of the 'coalition partners' variable showed that the minority government led by the GERB political party had to rely on support of opposition parties, while some of them stood for extremist values and positioned themselves against the directive. Thus, the H1e hypothesis referring to the possible inhibitory effect of veto players can be acknowledged as confirmed in Bulgarian case.

Summary table A - Bulgaria

Nr.	Hypothesis	Validity
H1a	Uploading	0
H1b	Policy misfit	0
H1c	Number/type of measures	+
H1d	Administrative capability	+
H1e	Veto players	+

B/ Variances of transposition

Bulgaria was identified as one of the countries with the restrictive mode of transposition. The governmental position towards labour immigration has been assessed as indifferent or mixed – with the ruling GERB party formally declaring its support for economically beneficial labour immigration, however then forced back by the opposition parties on whose loyalty its minority government had to rely. Therefore, the H2a hypothesis can be considered proven. In the survey, Bulgarian public adopted the view that immigration had not been posing an important issue to their country. Thus, the public attitude towards labour immigration can be perceived as affirmative, which is contrary to the assumptions of the H2b hypothesis. The level of unemployment in highly skilled professions has been evaluated as moderate, which does not enable confirmation of the H2c hypothesis. Finally, Bulgaria had relatively high degree of GINI index and low level of expenses on research and development, which is in line with both the hypotheses H2d and H2e.

Summary table B - Bulgaria

Nr.	Hypothesis	Validity
H2a	Position of government	+

H2b	Position of public	-
H2c	Level of unemployment	0
H2d	GINI index	+
H2e	Share of R&D expenses / GDP	+

5.1.3. Czech Republic

A/ Timeliness & correctness of transposition

The Czech Republic was one of the few countries that transposed the Blue Card both timely and correctly. Country-level analysis of the primary documents (minutes from the Council working group negotiations) led to the finding that the Czech Republic managed to upload its interest on the EU level to a moderate extent. Thus, the H1a hypothesis can be neither confirmed, nor denied. Policy misfit between the Czech HSI system and the Blue Card was also assessed as moderate. Therefore, neither the H1b hypothesis can be deemed confirmed. Thirdly, as far as number/type of transposition measures is concerned, the country analysis showed altogether 41 legislative norms that had to be amended in the Czech Republic to transpose the Blue Card properly. Hence, the H1c hypothesis was persuasively denied in the Czech case. Fourthly, both indexes measuring administrative capability (government effectiveness and regulatory quality) placed the Czech Republic to the middle in the relative comparison with the other EU Member States explored. Thus, these variables cannot be of any advice in respect of the hypothesis H1d. Fifthly, majority of the veto players in case of the Czech Republic adopted an indifferent stance towards the labour immigration (on the one hand acknowledging the positive benefits this immigration can yield to national economy, on the other hand warning of risk of abuse of immigrant labour, additional strain to welfare system and cultural frictions). Overall, the veto players seem not to play a decisive role conducive to the overall success of the Blue Card transposition process in the Czech Republic.

Summary table A – Czech Republic

Nr.	Hypothesis	Validity
H1a	Uploading	0
H1b	Policy misfit	0

H1c	Number/type of measures	-
H1d	Administrative capability	0
H1e	Veto players	0

B/ Variances of transposition

Czech Republic represents an example of a moderate-open mode of transposition. Government's attitude towards labour immigration has been evaluated as mixed, which is in line with the H2a hypothesis. The public position towards immigration had been also relatively affirmative, which laid good foundations for a moderate-open transposition and corresponded with the assumption of the H2a hypothesis. Level of unemployment has been assessed as medium, also in accordance with the considerations behind the H2c hypothesis. GINI index in the Czech Republic had been low and therefore, also the H2d hypothesis can be deemed valid. Finally, the percentage amount of the expenses spent on research and development was medium, being again in line with the H2e hypothesis.

Summary table B – Czech Republic

Nr.	Hypothesis	Validity
H2a	Position of government	+
H2b	Position of public	+
H2c	Level of unemployment	+
H2d	GINI index	+
H2e	Share of R&D expenses / GDP	+

5.1.4. Estonia

A/ Timeliness & correctness of transposition

Estonia was another of the four EU Member States that complied with both the requirement of correctness and timeliness of the Blue Card transposition. The records of the negotiations of the Council working group disclosed that Estonia was relatively successful in uploading its preferences to the EU level. Thus, in its case, the hypothesis H1a can be recognized as confirmed. With regard to the policy misfit, the analysis led to finding that the misfit between

the Estonian HSI policies and the Blue Card had been low. Hence, also the hypothesis H1b can be deemed confirmed. Concerning the number/type of transposition measures, Estonia adopted a moderate amount of transposition norms including laws of the highest legal force. The H1c hypothesis was denied. Fourthly, Estonia achieved relatively high scores in the government effectiveness index and especially in the regulatory quality index. The H1d hypothesis was confirmed. Fifthly, all of the potential veto players shared similar – and mostly supportive – attitude in respect of the highly-skilled labour immigration. Thus, this outcome is in line with the H1e hypothesis.

Summary table A – Estonia

Nr.	Hypothesis	Validity
H1a	Uploading	+
H1b	Policy misfit	+
H1c	Number/type of measures	-
H1d	Administrative capability	+
H1e	Veto players	+

B/ Variances of transposition

Estonia is another country with a moderate-open pattern of transposition. Governmental attitude towards labour immigration has been recognized as affirmative, hence, the H2a hypothesis was proven. The public opinion surveys showed that vast majority of Estonians do not consider immigration to be a challenge for their country, therefore, neither the public stance embodies an obstacle to moderate-open pattern of transposition and even the H2b hypothesis was rendered proven. Thirdly, the level of unemployment in highly qualified professions was highly above average. Thus, the H2c hypothesis was disproven in the Estonian case. Fourthly, both the GINI index and the ratio of research and development expenses were in a relative comparison appraised as medium, rendering both the H2d and H2e hypotheses validated.

Summary table B - Estonia

Nr.	Hypothesis	Validity
H2a	Position of government	+
H2b	Position of public	+

H2c	Level of unemployment	-
H2d	GINI index	+
H2e	Share of R&D expenses / GDP	+

5.1.5. Finland

A/ Timeliness & correctness of transposition

Finland satisfied the requirement of correctness of transposition, but failed in terms of timeliness. Finnish delegates in the Council working group achieved a relatively high degree of uploading their preferences to the EU level. This finding therefore contradicts the logic behind the H1a hypothesis. Finnish HSI legislation represented a low degree of policy misfit when compared with the stipulations of the Blue Card directive. Thus, even this outcome questions the validity of the H1b hypothesis. Thirdly, the national transposition in Finland featured amendments to the 24 legislative norms (in the majority of cases laws). Therefore, this variable is in line with the H1c hypothesis. Furthermore, Finland scored outstandingly high in the two indexes evaluating national administrative capabilities – government effectiveness index and regulatory quality index. This finding renders the assumption of the H1d hypothesis disproven. Finally, all of the potential veto players exposed positive stance towards the highly skilled immigration of third-country nationals. Hence, this puts the H1e hypothesis on doubt.

Summary table A – Finland

Nr.	Hypothesis	Validity
H1a	Uploading	-
H1b	Policy misfit	-
H1c	Number/type of measures	+
H1d	Administrative capability	-
H1e	Veto players	-

B/ Variances of transposition

Finland also belongs among countries with moderate-open mode of transposition. Governmental stance towards labour immigration policy has been assessed as affirmative, thus,

the H2a hypothesis has been confirmed. Public perception of immigration as a challenge had shared 11 percent of the Finnish population and the public attitude can thus be appraised as mixed. This implies that the H2b hypothesis has been neither confirmed, nor disproven. Level of unemployment among the highly educated professions has been found as medium, which is in line with the H2c hypothesis. GINI index had been low and ratio of expenses on research and development high, rendering both the hypotheses H2d and H2e validated.

Summary table B - Finland

Nr.	Hypothesis	Validity
H2a	Position of government	+
H2b	Position of public	0
H2c	Level of unemployment	+
H2d	GINI index	+
H2e	Share of R&D expenses / GDP	+

5.1.6. France

A/ Timeliness & correctness of transposition

France transposed the Blue Card directive correctly, but late. Inspection of its efforts to upload the national interests on the EU level during the Council working group negotiations evidences a moderate level of success. Thus, this variable and the corresponding H1a hypothesis cannot be of any advice in respect of explaining for the delay in transposition. Secondly, the policy misfit between the Blue Card and the pre-existent French regime applicable towards highly skilled immigration of third-country nationals has been assessed as moderate as well. Therefore, also the H1b hypothesis has been neither confirmed, nor disproven. Concerning the number and type of transposition measures, France reported only the two legislative norms – a law accompanied by its implementation ordinance. Thus, the H1c hypothesis cannot account for late transposition. Fourthly, French authorities achieved relatively satisfactory score in the administrative capability indexes (particularly in terms of government effectiveness variable), which is again contrary to the assumptions of the H1d hypothesis. Lastly, regarding the veto players, we arrived at the observation that the minister in charge of the immigration policy area had hold strongly anti-immigrant attitudes. Hence, the H1e hypothesis was rendered valid.

Summary table A – France

Nr.	Hypothesis	Validity
H1a	Uploading	0
H1b	Policy misfit	0
H1c	Number/type of measures	-
H1d	Administrative capability	-
H1e	Veto players	+

B/ Variances of transposition

France belongs to the countries with the most open pattern of transposition. Despite this fact, the general attitude of the government towards labour immigration had been rather reluctant and mixed. Thus, the H2a hypothesis has not been validated. Also the French public shared the mixed feelings when asked in the opinion survey about the perception of immigration as an issue. Hence, neither the French public attitude could be classified as clearly supportive and the hypothesis H2b has been put on doubt as well. Thirdly, the level of unemployment in highly educated professions was found to be medium. This would correspond with a moderate and/or moderate-open mode of transposition, however, France opted for a clearly open pattern of transposition. Therefore, the H2c hypothesis has been rendered invalid as well. GINI index in France in the time period concerned had been relatively high, hence, the H2d hypothesis is also considered invalidated. Finally, France belongs to the countries with high ratio of research and development expenses on GDP, which confirms the H2e hypothesis.

Summary table B - France

Nr.	Hypothesis	Validity
H2a	Position of government	-
H2b	Position of public	-
H2c	Level of unemployment	-
H2d	GINI index	-
H2e	Share of R&D expenses / GDP	+

5.1.7. Germany

A/ Timeliness & correctness of transposition

Germany is one of the two countries that transposed the Blue Card directive in an incorrect manner and late. This outcome emerged despite the fact that Germany was undeniably one of the countries that managed to a large extent upload its national interests and preferences on the EU level during the negotiations in the working group of the Council. Therefore, the H1a hypothesis was disproven. In terms of the policy misfit observable between the stipulations of the Blue Card and the pre-existing national HSI scheme, Germany was in a relative comparison among the countries with the lowest degree of policy misfit. Hence, also the H1b hypothesis was rendered invalid in this case. In terms of the number/type of transposition measures, Germany adopted only one law to implement the Blue Card directive into its legal order. Thus, even the H1c hypothesis appeared to be disproven in result of the empirical analysis conducted. Fourthly, Germany scored comparably very well in terms of their percentile rank in the administrative capabilities' indexes of governance effectiveness and regulatory quality. Neither this finding is in line with the assumption contained in the H1d hypothesis. Finally, as far as the potential veto players are concerned, the two strongest political parties within the government coalitions disagreed upon the substantial aspects of the Blue Card directive transposition. The inhibitory effect of veto players was further intensified by the fact that Germany is a federal country and representatives of the federal states also utilised their veto capacity to inhibit the transposition process at its earlier stages. Therefore, the H1e hypothesis related to veto players was clearly proven true in the case of Germany.

Summary table A – Germany

Nr.	Hypothesis	Validity
H1a	Uploading	-
H1b	Policy misfit	-
H1c	Number/type of measures	-
H1d	Administrative capability	-
H1e	Veto players	+

B/ Variances of transposition

Germany emerged to be a country with the most open pattern of discretionary clauses' transposition out of the 24 EU Member States bound by the Blue Card directive. The governmental stance towards labour immigration had been largely affirmative, confirming the assumption of the H2a hypothesis. The public feelings regarding immigrants had been more indifferent and mixed, which we would not have expected of a country that resorts to the most open mode of transposition. Thus, the H2b hypothesis is disproven. The level of unemployment among the highly educated professions in Germany had been below the average, paving a way for an open transposition to maximise the attractiveness of the Blue Card scheme. The operationalization of this variable is in line with the H2c hypothesis. GINI index was in the German case – taking into consideration the relative comparison with the other scrutinized countries bound by the Blue Card – found to be medium, which would have corresponded better with a moderate-open pattern of transposition. Thus, the H2d hypothesis has been disproven. Lastly, percentage ratio of the German expenses on research and development had been high, being in line with the assumption of the H2e hypothesis.

Summary table B - Germany

Nr.	Hypothesis	Validity
H2a	Position of government	+
H2b	Position of public	-
H2c	Level of unemployment	+
H2d	GINI index	-
H2e	Share of R&D expenses / GDP	+

5.1.8. Italy

A/ Timeliness & correctness of transposition

Italy was the second country that transposed the Blue Card directive both late and incorrectly. Italian efforts to upload their national interests and preferences on the EU level were to a large extent fruitless and the final version of the Blue Card directive proposal reflects the Italian expectations only to a minor degree. Therefore, the H1a hypothesis was validated by the analytical research. In terms of the policy misfit evaluation, the analysis conducted points on

the fact that the way in which Italy had regulated highly-skilled immigration of third country nationals differed substantially from the requirements of the Blue Card. Thus, the H1b hypothesis was proven in this case. As far as the national implementing instruments are concerned, Italy was found to adopt only two transposition measures of a moderate legal force. Hence, the assumption behind the H1c hypothesis was disproven. Fourthly, Italy was assigned relatively low scores in both indexes of administrative capabilities (government effectiveness and regulatory quality). This implies that the H1d hypothesis was confirmed. Finally, concerning the veto players, the research revealed prevalent disapproving stances to labour immigration among the representatives of both the party holding the relevant ministerial post and its coalition partners. Hence, the H1e hypothesis was affirmed after having tested the respective veto players-related variables.

Summary table A – Italy

Nr.	Hypothesis	Validity
H1a	Uploading	+
H1b	Policy misfit	+
H1c	Number/type of measures	-
H1d	Administrative capability	+
H1e	Veto players	+

B/ Variances of transposition

Italy belongs to the most numerous group bringing together countries with the moderate-open mode of transposition. Despite that, the stance of the government coalition parties towards immigration had been rather restrictive and opposing. Therefore, the H2a hypothesis should be considered as disapproved. The public attitude was mixed, with 10 percent of Italians considering immigration among the two greatest issues their country had been encountering. The mixed stance of public however should not be deemed incompatible with the moderate-open mode of transposition, indeed according to the H2b hypothesis these two positions are expected to go hand in hand. The H2b hypothesis is therefore deemed validated. The level of unemployment had been highly above average which contradicts the presumptions behind the moderate-open mode of transposition. The H2c hypothesis is therefore disproven. GINI index in Italy had been relatively high, again rendering the H2d hypothesis invalidated. Finally, the

ratio of the expenses on research and development was medium, in line with the H2e hypothesis.

Summary table B - Italy

Nr.	Hypothesis	Validity
H2a	Position of government	-
H2b	Position of public	+
H2c	Level of unemployment	-
H2d	GINI index	-
H2e	Share of R&D expenses / GDP	+

5.1.9. Malta

A/ Timeliness & correctness of transposition

Malta transposed the Blue Card directive into its national legislation correctly, but with a delay. In terms of the degree to what Maltese representatives managed to elevate their national preferences on the EU level, research showed that Malta filed only a few proposals for changes of the draft directive. Out of the Maltese suggestions, comparable parts were upheld and dismissed. Thus, the analysis of this factor cannot provide any assistance in respect of (dis-)approving the H1a hypothesis. With regard to the policy misfit, the research led to a finding that Malta had not had any specific HSI scheme in place before the Blue Card directive was adopted and its general immigration policy largely dealt with the issues of preventing illegal entries and ensuring saving migrants on sea. The level of misfit was classified as moderate, therefore, the H1b hypothesis could be considered neither confirmed, nor disproven. Thirdly, Malta used only one transposition measure (a law) to implement the Blue Card into its legal order. This finding implies that the H1c hypothesis was rendered invalid. Fourthly, Malta ranked relatively on average of the Member States explored in respect of the administrative capability indexes. Thus, the H1d hypothesis could not be recognized as confirmed or not. Lastly, in relation to the veto players, inspection of the limited sources available did not show that any of the actors possessing veto capacity actually did exert an influence to hinder the transposition process. Therefore, also the H1e hypothesis was rendered rather disproven.

Summary table A – Malta

Nr.	Hypothesis	Validity
H1a	Uploading	0
H1b	Policy misfit	0
H1c	Number/type of measures	-
H1d	Administrative capability	0
H1e	Veto players	-

B/ Variances of transposition

Malta is a country representing the restrictive pattern of transposition. The governmental attitude towards labour immigration was mixed, thus, the H2a hypothesis has been disproven. The public perception was rather reluctant and the voices expressing opposition against immigration were comparatively more present in the Maltese society. Hence, the H2b hypothesis has been confirmed. Level of unemployment was relatively low, rendering the H2c hypothesis invalid. Likewise, the GINI index was low, in contrast to the presumptions of the H2d hypothesis, which has been put on doubt. Finally, the percentage ratio of the research and development spending was low, attesting to a fulfillment of the H2e hypothesis.

Summary table B - Malta

Nr.	Hypothesis	Validity
H2a	Position of government	-
H2b	Position of public	+
H2c	Level of unemployment	-
H2d	GINI index	-
H2e	Share of R&D expenses / GDP	+

5.1.10. Netherlands

A/ Timeliness & correctness of transposition

The Netherlands was among the four Member States that transposed the Blue Card directive both timely and correctly. In terms of uploading the national interests and preferences on the EU level, the Dutch representatives in the working group of the Council succeeded to upload some of their most vital expectations (such as allowing the co-existence of parallel national HSI schemes), at the same time however many remarks and proposals for amendments met disagreement of the other delegations and were ruled out. Thus, the extent of uploading was assessed as moderate. Therefore, based on the evaluation of this variable one cannot conclude whether the H1a hypothesis was proven or not. In terms of policy misfit, it must be observed that the Netherlands had already had in place an elaborated programme to attract third-country highly-skilled labour immigrants. This programme in respect of many significant features emerged in conflict with the provisions of the Blue Card. Thus, the H1b hypothesis should be considered disproven. Concerning the implementation instruments, the Dutch utilised only two transposition measures of moderate legal force. This implies a finding that the H1c hypothesis was rendered true. In terms of the administrative capabilities indexes, the Netherlands scored very high, hence even the operationalization of this variable is in tune with the assumption of the H1d hypothesis. Finally, all of the potential veto players exposed quite supportive attitudes towards the labour immigration policies. Therefore, also the H1e hypothesis was confirmed.

Summary table A – Netherlands

Nr.	Hypothesis	Validity
H1a	Uploading	0
H1b	Policy misfit	-
H1c	Number/type of measures	+
H1d	Administrative capability	+
H1e	Veto players	+

B/ Variances of transposition

The Netherlands also belongs among the countries with a moderate-open pattern of transposition. The attitude of the Dutch government with regard to labour immigration has been mixed. On the one hand, the Dutch government held generally pro-migration stances, at the same time however, its representative expressed fear that the EU scheme could emerge in competition with the highly developed Dutch national HSI scheme. All in all however the

mixed attitude corresponds with the moderate-open pattern of transposition and indicates fulfillment of the H2a hypothesis. The Dutch public also exposed mixed attitudes in respect of immigration, with not an insignificant segment of the Dutch society considering immigration to present a challenge. Nonetheless, this position is also in line with the moderate-open mode of transposition and also the H2b hypothesis can be deemed confirmed. Thirdly, the level of unemployment in the Netherlands was below the average and therefore attested to a fulfilment of the H2c hypothesis. Fourthly, the GINI index in the Netherlands was relatively low, again in line with the assumption of the H2d hypothesis. Finally, the relative extent of the research and development expenses was of a medium level, confirming the H2e hypothesis.

Summary table B - Netherlands

Nr.	Hypothesis	Validity
H2a	Position of government	+
H2b	Position of public	+
H2c	Level of unemployment	+
H2d	GINI index	+
H2e	Share of R&D expenses / GDP	+

5.1.11. Poland

A/ Timeliness & correctness of transposition

Poland transposed the Blue Card directive correctly, but with a delay. In terms of uploading the national interests to the EU level, Polish representatives in the Council working group were successful to a moderate extent. Thus, the H1a hypothesis was neither proven nor rendered invalid. Concerning the degree of policy misfit, Polish labour immigration policy prior to the adoption of the Blue Card demonstrated a moderate level of misfit, implying that even in case of the H1b hypothesis no definite classification can be inferred as to its (in-)validity. Furthermore, Poland used only a single law to transpose the Blue Card directive. Hence, the H1c hypothesis should be deemed invalid. Fourthly, Poland received relatively low scores in both of the indexes measuring administrative capabilities (government effectiveness and regulatory quality), which is in line with the H1d hypothesis. Lastly, regarding the effect of veto players, research led to the finding that all of the potential veto players held quite indifferent

attitudes towards third-country labour immigration, rendering the validity verification of the H1e hypothesis inoperable.

Summary table A – Poland

Nr.	Hypothesis	Validity
H1a	Uploading	0
H1b	Policy misfit	0
H1c	Number/type of measures	-
H1d	Administrative capability	+
H1e	Veto players	0

B/ Variances of transposition

Poland embodies another example of a country that opted for a restrictive mode of transposition. Despite that, the government held rather indifferent positions regarding labour immigration. Because of that, the H2a hypothesis is considered invalid. Polish public represented a rather affirmative stances in respect of immigration, with only about 1 % of Poles recognizing immigration to be one of the two biggest issues that their country had been facing. Thus, the H2b hypothesis has been disproven as well. Thirdly, Poland was experiencing a medium level of unemployment, which is again contrary to the assumption of the H2c hypothesis. Fourthly, the GINI index of Poland was relatively high, rendering the H2d hypothesis validated. Finally, the ratio of research and development expenses in relation to GDP was relatively low, confirming the H2e hypothesis.

Summary table B - Poland

Nr.	Hypothesis	Validity
H2a	Position of government	-
H2b	Position of public	-
H2c	Level of unemployment	-
H2d	GINI index	+
H2e	Share of R&D expenses / GDP	+

5.1.12. Slovakia

A/ Timeliness & correctness of transposition

Slovakia belonged under the most numerous category of Member States that transposed the Blue Card directive in a correct manner but not within a prescribed timeframe. Regarding the ability to upload national policy preferences to the EU level during the Council working group sessions, the research revealed that vast majority of the amendments proposed by the Slovak delegation were rejected and the uploading thus remained only on a minor degree. The H1a hypothesis thus can be deemed proven. Regarding the policy misfit variable, analysis led to a conclusion that in the Slovak case the misfit was moderate, hence, a finding in respect of validity of the H1b hypothesis cannot be drawn. Thirdly, concerning the number/type of implementing measures, Slovakia was found to have enacted and/or amended 18 laws. Therefore, validity of the H1c hypothesis was confirmed. Fourthly, Slovakia scored around an average in terms of the indexes quantifying administrative capabilities, which means that the H1d hypothesis was neither approved, nor denied. Finally, in terms of the veto players, the situation was complicated by the fact that during the relevant time period under scrutiny, two different cabinets held office in Slovakia. While the cooperation among the latter one ran rather smoothly, in case of the former government some of the ideologically more remote coalition partners exerted their veto potential. Overall, the impact of misfit was assessed as moderate. Hence, the H1e hypothesis was neither confirmed, nor disapproved.

Summary table A – Slovakia

Nr.	Hypothesis	Validity
H1a	Uploading	+
H1b	Policy misfit	0
H1c	Number/type of measures	+
H1d	Administrative capability	0
H1e	Veto players	0

B/ Variances of transposition

Slovakia follows a moderate-open pattern of transposition. The moderate-open mode of

transposition corresponds with the government's attitude to labour immigration, which was assessed as mixed. The H2a hypothesis can be deemed confirmed. The public did not perceive immigration as a threat and therefore, the public view can be appraised as relatively affirmative, also in line with the H2b hypothesis. The level of unemployment was relatively high, rendering the H2c hypothesis invalid. The GINI index was low, attesting to a fulfilment of the H2d hypothesis. Finally, the research and development expenses were relatively minor, invalidating the H2e hypothesis.

Summary table B - Slovakia

Nr.	Hypothesis	Validity
H2a	Position of government	+
H2b	Position of public	+
H2c	Level of unemployment	-
H2d	GINI index	+
H2e	Share of R&D expenses / GDP	-

5.1.13. Spain

A/ Timeliness & correctness of transposition

Spain was one of the countries that transposed the Blue Card directive both timely and correctly. In terms of the first variable – uploading the national preferences on the EU level – it was found that the Spanish delegation to the Council working group managed to elevate its interests on the EU level only to a minor degree. Thus, the H1a hypothesis was rendered invalid in the Spanish case. Secondly, it was identified that there had been a high level of policy misfit between the Blue Card and the pre-existent labour immigration policies in Spain. Thus, also the H1b hypothesis was disproven. Thirdly, the list of implementing measures adopted by Spain to transpose the Blue Card directive into its legal order entailed only one law. Hence, the H1c hypothesis can be considered proven. Fourthly, Spain achieved – compared to the other countries concerned – relatively average scores in administrative capability indexes, and therefore this outcome does not allow for drawing a definite conclusion as to the validity of the H1d hypothesis. Finally, the Spanish veto players resorted mostly not to exercise their veto potential, thus enabling us to conclude that the H1e hypothesis was confirmed.

Summary table A – Spain

Nr.	Hypothesis	Validity
H1a	Uploading	-
H1b	Policy misfit	-
H1c	Number/type of measures	+
H1d	Administrative capability	0
H1e	Veto players	+

B/ Variances of transposition

Spain is one of the countries representing a moderate-open pattern of transposition. This might be surprising given the fact that the Spanish government did not conceal its fear from illegal immigration and priority assigned to integrating people already present on the Spanish soil. Overall, the stance of the Spanish government was rather disapproving and the H2a hypothesis had been rendered invalid. Views of the Spanish public towards immigration were inbetween the opposing and affirmative voices, being in line with the presumptions of the H2b hypothesis. Level of unemployment in Spain was high, resulting in disproving the H2c hypothesis. GINI index was relatively high, which leads to the H2d hypothesis disapproved. Share of the research and development expenses was a medium one, corresponding with the H2e hypothesis.

Summary table B - Spain

Nr.	Hypothesis	Validity
H2a	Position of government	-
H2b	Position of public	+
H2c	Level of unemployment	-
H2d	GINI index	-
H2e	Share of R&D expenses / GDP	+

5.1.14. Sweden

A/ Timeliness & correctness of transposition

Sweden transposed the Blue Card directive correctly, but late. In its case, the ability to upload the national preferences to the EU level was limited. Therefore, validity of the H1a hypothesis can be acknowledged. Regarding the policy misfit, it was observed that Sweden had had in place a labour immigration system that differed in significant features from the requirements of the Blue Card. Interestingly, among other issues, Sweden repeatedly proposed to prolong the transposition period to three years instead of two years. This leads us to the finding that validity of the H1b hypothesis was proven. In terms of the national implementing instruments, Sweden adopted or amended overall 25 transposition measures, out of that 13 were laws and 12 ordinances. This allow us to hold that the H1c hypothesis was proven. On the contrary, based on the fact that Sweden scored very high in both of the two indexes measuring administrative capabilities, in terms of the H1d hypothesis we have to articulate a conclusion that validity was disproven. Finally, recalling the observation that the Swedish veto players did not utilise their veto potential, the H1e hypothesis was rendered invalid as well.

Summary table A – Sweden

Nr.	Hypothesis	Validity
H1a	Uploading	+
H1b	Policy misfit	+
H1c	Number/type of measures	+
H1d	Administrative capability	-
H1e	Veto players	-

B/ Variances of transposition

Sweden is another example of a country that opted for a moderate-open mode of transposition. This transposition is in line with the generally affirmative attitude of the Swedish government in respect of labour immigration. Therefore, the H2a hypothesis can be deemed valid. Although the Swedish public demonstrated more mixed feelings regarding immigration, this position is also in line with the moderate-open transposition pattern and attests to a fulfilment of the H2b hypothesis. The level of unemployment was relatively low, in line with the considerations behind the H2c hypothesis. The GINI index was relatively low and the share of the research and development expenses was high, both criteria proving validity of the hypotheses H2d and H2e.

Summary table B - Sweden

Nr.	Hypothesis	Validity
H2a	Position of government	+
H2b	Position of public	+
H2c	Level of unemployment	+
H2d	GINI index	+
H2e	Share of R&D expenses / GDP	+

5.2. Summary of the hypotheses' verification

In this section, I provide a overall quantitative summary of validity of the hypotheses tested to explain the differences in firstly timeliness and correctness of the Blue Card directive transposition and secondly variances in the open or restrictive mode of transposition of the Blue Card discretionary clauses. Digits in the columns indicate the amount of cases (Member States subjected to analysis) in which the hypothesis concerned was proven, disproven or the empirical findings were of such a nature that disables determination of the validation of the hypothesis concerned in a given Member State.

A/ Timeliness & correctness of transposition

The H1a hypothesis (*More successful uploading of Member States interests to the EU level during the negotiation phase of the Blue Card directive leads to better compliance*) was proven in 5 cases and disproven in 3 cases. In 6 cases, determination was not possible. Therefore, this hypothesis can be considered neither proven, nor disproven. It is possible that in case of certain Member States, successful uploading might have played a role, being conducive to timely and correct transposition, yet the empirical analysis does not provide sufficient basis (that could not be overturned by the N/A options) to persuasively conclude that its effect can be generalized.

The H1b hypothesis (*The lower is the policy misfit between the Blue Card and the pre-existing domestic HSI policy, the better is the compliance*) was proven in 4 cases, disproven in 4 cases as well and in 6 cases, determination was not possible. Since the occurrence of the N/A option

provides an amount that could reverse the current ratio between the two former options, even this hypothesis shall be treated as neither proven, nor disproven.

The H1c hypothesis (*The less complex is the nature of the national implementing measures, the better is the compliance*) provided mixed results as well, with the equal amount of 7 cases in line with the hypothesis and 7 cases against its assumption, rendering it neither proven, nor disproven.

The H1d hypothesis (*The stronger is the administrative capacity of the national implementation bodies, the better is the compliance*) again offered extremely equal outcomes. It has been verified with an affirmative result in 5 cases and invalidated in 5 cases as well. In case of 4 Member States, clear determination was impossible. Therefore, even this hypothesis may be considered neither proven, nor disproven.

The H1e hypothesis (*The negative attitude of the veto players leads to worse compliance*) was confirmed in 7 cases and disproven in 4. Given the fact that the remaining 3 cases offered mixed results and thus their validation was impossible, they could at best equalize the amount of proven cases (if all of them were validated with a negative outcome). Therefore, the veto players hypothesis can be considered proven.

Nr.	Hypothesis	Proven (+)	Disproven (-)	Validation N/A (0)
H1a	Uploading	5	3	6
H1b	Policy misfit	4	4	6
H1c	Number/type of measures	7	7	0
H1d	Administrative capability	5	5	4
H1e	Veto players	7	4	3

B/ Variances of transposition

The H2a hypothesis (*If the government's position towards migration is generally affirmative, MS tend to transpose the Blue Card directive in an open manner*) was proven in 9 cases and disproven in 5. Therefore, this hypothesis can be considered overall proven.

The H2b hypothesis (*If the public position towards migration is generally affirmative, MS tend to transpose the Blue Card directive in an open manner*) was proven in 9 cases, disproven in 4 and in the case of 1 Member State, validation was not possible. Thus, this hypothesis can be deemed proven as well.

The H2c hypothesis (*If the level of unemployment is low, MS tend to transpose the Blue Card in an open manner*) was proven in 6 cases, disproven in 7 cases and determination was inoperable in one case. Therefore, this hypothesis can be deemed disproven, although by a very slight margin, because of which different finding cannot be ruled out had all of the 24 Member States binding by the Blue Card directive been included in the detailed country-level analysis. Indeed, with regard to the sample explored, this hypothesis can be overall assessed as not proven.

A verification of the H2d hypothesis (*If the GINI index is low, MS tend to transpose the Blue Card in an open manner*) led to 8 proven and 6 disproven cases, rendering the hypothesis as overall proven. We should keep in mind however, that the margin is again rather narrow.

Finally, the H2e hypothesis (*If the R&D expenses' share of GDP is high, MS tend to transpose the Blue Card in an open manner*) was proven in 12 cases and disproven only in case of 2 Member States. This hypothesis was therefore persuasively proven.

Nr.	Hypothesis	Proven (+)	Disproven (-)	Validation N/A (0)
H2a	Position of government	9	5	0
H2b	Position of public	9	4	1
H2c	Level of unemployment	6	7	1
H2d	GINI index	8	6	0
H2e	Share of R&D expenses/ GDP	12	2	0

Conclusion

This thesis attempted to provide response to the two main research questions. The first one read *What factors cause differences in timeliness and correctness of transposition of the Blue Card directive in the EU-24?* The second research question was the following: *What factors cause*

differences in variances (restrictive / open) of transposition of discretionary clauses in the EU Blue Card Directive?

Based on a thorough study of the transposition compliance scholarly literature, the author selected the factors that throughout the last two decades crystallized among the distinguished experts and academics as the variables that could account for divergences in transposition with the highest likelihood.

As a basic point of departure for his analysis, the author firstly thoroughly assessed the status quo and divided the countries into different groups and clusters according to their position in respect of firstly timeliness and correctness of transposition and secondly variances in the open or restrictive mode of the discretionary clauses' transposition.

Subsequently, the author carried out a thorough country-level analysis to verify the role played by various variables that could be, according to the established compliance literature, conducive to the different transposition track record.

Regarding the first research question, the empirical analysis confirmed the conclusion of some of the previous transposition compliance scholars who pointed out that it is probably impossible to identify a single one dominating factor that would overrule all the others in all the countries. Indeed, the variables operate differently in different settings and their relative share of attribution to a final outcome varies as well. In other words – composition, operation and relative significance of different variables is always country-specific and context-specific. Therefore, we should approach the quantitative summaries with caution, because it is an interplay of all of the factors (out of which we analyze only several ones in this thesis) that results in a subsequent manner of transposition in a given country.

The foreshadowed fact that the dynamics between the different factors is specific in every single case can be also considered to provide the explanation to the question how it may be possible that in terms of the timeliness and correctness of transposition, with the exception of the one variable, none of the factors proved to be valid for a majority of the countries studied. We must keep in mind that in case of timeliness and correctness, it is enough if there is only a one deciding factor in a given country that causes late or incorrect transposition even in the absence of all the other factors developing in a way as predicted in our hypotheses. The question what

variable will stand out as the determining one is again country- and situation-specific. Thus, we might have observed that in Germany, even though all of the other variables seemed to pave the way for a timely and correct transposition, the presence of a one influential variable (veto players) had a determining force and at the end of the day rendered the transposition late and incorrect. In case of the other countries, such determining role might have been played by some of the other factors (insufficient uploading of the national interests on the EU level, suboptimal administrative capability or a high degree of policy misfit), even if these factors in terms of the overall cross-country score did not prove valid in majority of countries under study.

Overall, regarding the first research question, we can conclude that the only hypothesis that was persuasively confirmed in a majority of the countries concerned the role of the veto players. Policy misfit hypothesis was not proven, but this can be arguably attributed to the fact that the provisions of the Blue Card directive were in the result of the Council negotiations 'watered down' and the Member States were allowed to maintain the parallel national HSI schemes with different (even more favourable) conditions. This justification can help to explain why in this analysis, policy misfit seems to be deprived of its usual explanatory strength. The watering down of the final text of the directive can also account for the mixed results regarding the uploading hypothesis – although a Member State was not particularly successful in uploading its preferences on the EU level, at the end of the day it did not matter, because the proposal was narrowed down to the mere 'minimal common denominator'. The two remaining hypotheses, related to the implementing measures and administrative capability, also provided mixed results. Therefore, the author is convinced that the variables contained in these hypotheses serve as amplifiers – they can improve or worsen the situation, but only rarely can be considered to play as crucial role as e.g. veto players.

As far as the variances in the open or restrictive mode of transposition are concerned, in this case the factors tested – and their corresponding variables – provide a slightly clearer picture. While the level of unemployment and GINI index come out of the analysis as not playing a decisive role, positive attitude of government and/or public frequently correlates with a will to transpose the directive in an open manner. The most visible significance can be observed in case of the share of research and development expenses, the variable that indirectly mirrors in the importance that a given country assigns to highly-skilled immigration and because of what it strives to transpose the directive with the aim to maximize its allegedly positive impact to a national economy.

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List of Appendices

Appendix 1. Detailed outcomes of country-level analysis

I. BELGIUM

A/ Timeliness & correctness of transposition

1 – Misfit and policy preferences		
1.1 Legislative tradition in this area	3	Before the adoption of the Blue Card directive, Belgium had in place the national HSI immigration policy that set forth specific rules for entry and residence of highly qualified immigrants. ¹⁴⁸
1.2 Uploading national interest to EU level	1	Belgium proposed several amendments and alterations during the discussion on the Blue Card directive proposal in the Council working group. However, majority of the points raised by Belgian representatives did not meet support of the other delegations and the Presidency. For instance, Belgium disagreed with introducing a special status of former Blue Card holders who qualify for long-term residence. ¹⁴⁹ Also, Belgium was not in favour of granting more favourable conditions to the family members of the Blue Card holders – compared to the ones granted under the Family Reunification directive. ¹⁵⁰ Belgium, in contrast to multiple other delegations, opposed the provision according to which the first Member State is obliged to readmit the holder of the Blue Card in case his application is rejected in the second Member State, ¹⁵¹ general disagreement faced also the Belgian proposal to introduce an alternative of ten years of professional experience. ¹⁵² Belgium finally also expressed its concerns with the two-year-long internal mobility limitation that in its view inhibited intra-Community mobility. ¹⁵³
1.3 Policy misfit between EU measure and domestic measures in this area	1	The Belgian HSI scheme before the adoption of the Blue Card directive demonstrated a high level of policy misfit. Although the national policy enabled immigration of highly qualified workers from third countries, there was an absence of a definition of highly skilled immigrants, who were treated indistinctly from other groups of labour immigrants. The only criterion to be taken into consideration in case of HS immigrants was salary threshold. Belgium did not provide a single permit, did not enable internal mobility, neither a grace period to seek another job in case of temporary unemployment, nor a simplified procedure for obtaining permanent residence and privileged conditions for family members of highly skilled immigrants in terms of access to residence and work. ¹⁵⁴

¹⁴⁸ EUROPEAN COMMISSION. Commission staff working document. Accompanying document to the Proposal for a Council Directive on the conditions of entry and residence of third country nationals for the purpose of highly qualified employment. Impact Assessment. SEC(2007) 1403, Brussels, 23.10.2007.

¹⁴⁹ COUNCIL OF THE EUROPEAN UNION. Working Party on Migration and Expulsion – Outcome of Proceedings, 4 April 2008. Brussels, 8 May 2008.

¹⁵⁰ COUNCIL OF THE EUROPEAN UNION. Working Party on Migration and Expulsion – Outcome of Proceedings, 13-14 May 2008. Brussels, 19 June 2008.

¹⁵¹ Ibid.

¹⁵² COUNCIL OF THE EUROPEAN UNION. Working Party on Migration and Expulsion – Outcome of Proceedings, 3-4 July 2008. Brussels, 24 July 2008.

¹⁵³ Ibid.

¹⁵⁴ EUROPEAN COMMISSION. Commission staff working document. Accompanying document to the Proposal for a Council Directive on the conditions of entry and residence of third country nationals for the purpose of highly qualified employment. Impact Assessment. SEC(2007) 1403, Brussels, 23.10.2007.

2 – National implementing instrument		
2.1 Type of implementing instrument (if more: the highest used)	1	In order to transpose the Blue Card directive, Belgium adopted a law (loi), an ordinance (ordonnantie), a decree (décret), a government order (besluit) and three royal decrees (arrêté royal). ¹⁵⁵
2.2 Number of implementing measures	1	Belgium reported 7 implementation measures enacted to transpose the Blue Card directive into its legal order. ¹⁵⁶
2.3 Government effectiveness	3	Belgium reached percentile 94,31 on Worldwide Governance Indicators. ¹⁵⁷
2.4 Regulatory Quality	2	Belgium reached percentile 86,73 on Worldwide Governance Indicators. ¹⁵⁸
3 – Veto players		
3.1 Federalism / unitarism	1	Belgium has a federal political system, encompassing three linguistic communities with far-reaching legislative powers enshrined in the constitution. ¹⁵⁹
3.2 Partisan effect – responsible ministry	3	Between the years 2008 and 2011, composition of the Belgian government underwent repeated reshuffles and so did the management of the migration agenda. During the Leterme I government (March 2008-December 2008), there was a special ministry for migration and asylum policy. During the subsequent Van Rompuy government (December 2008-November 2009) ministry was abolished and substituted with a post of state secretary for (among others) asylum and immigration. Then, under the Leterme II government (November 2009-April 2010, serving as a caretaker government until December 2011), the agenda was processed by the Ministry of Interior. During the Leterme I and II governments, labour immigration agenda was led by Annemarie Turtelboom from the Open Flemish Liberals and Democrats (Open VLD) party. ¹⁶⁰ This party has been known for its liberal approach and welcoming attitude towards immigration – Bart Somers, its chairman in the years 2004-2009, even received an international award for – in his capacity as a mayor of the Belgian municipality of Mechelen – enacting policies that facilitated refugees' integration. ¹⁶¹
3.3 Partisan effect – coalition partners	2	Not all of the coalition partners of the Open VLD party (that was in charge of immigration agenda, see above) shared the overly positive attitude towards the proposal. E.g. the Christian-democratic CDV, who hold the prime minister's post for all the three relevant periods, declared the following: 'Sometimes that (immigration from third countries benefitting Belgian economy, such as IT workers from India – note of the author) can be useful, but first we have to exhaust our own labour market reserve. And then see what is possible within Europe. Migration from outside the EU is only the last step.' ¹⁶²

B/ Variances of transposition (open x restrictive transposition in regard to discretionary clauses)

¹⁵⁵ EUR-Lex. National transposition measures communicated by the Member States concerning: Council Directive 2009/50/EC of 25 May 2009 on the conditions of entry and residence of third-country nationals for the purposes of highly qualified employment. [online] [visited 18.5.2020] Available at: <<https://eur-lex.europa.eu/legal-content/EN/NIM/?uri=CELEX:32009L0050>>

¹⁵⁶ Ibid.

¹⁵⁷ Worldwide Governance Indicators. [online] [visited 22.5.2020] Available at: <<https://info.worldbank.org/governance/wgi/Home/Reports>>

¹⁵⁸ Ibid.

¹⁵⁹ LIJPHART, A. Patterns of Democracy. Government Forms and Performance in Thirty-Six Countries. Second edition. Yale University Press, 2012.

¹⁶⁰ BELGISCH STAATSBLAD – MONITEUR BELGE. Wetten, decreten, ordonnanties en verordeningen – Lois, décrets, ordonnances et règlements. 21.3.2008.

¹⁶¹ FLANDERS TODAY. Mechelen mayor Bart Somers wins World Mayor Prize. [online] [visited 20.4.2020] Available at: <<http://www.flanderstoday.eu/politics/mechelen-mayor-bart-somers-wins-world-mayor-prize>>

¹⁶² VRT NWS. Open VLD over asiel en migratie. [online] [visited 26.4.2020] Available at: <https://www.vrt.be/vrtnws/nl/2010/05/19/open_vld_over_asielenmigratie-1-783219/>

B1 – Policy-specific variables		
4.1 Government position towards migration	2	The coalition agreement from 2007 emphasized support for those categories of migration, that can bring benefits to the Belgian economy. However, the wording of the agreement at the same time ruled out any 'open door' policy, highlighting that the migration policy of Belgium would be 'humane, balanced and firm'. Concerning the labour migration, Belgian government declared intention to articulate clear conditions for entry and residence of labour immigrants, however, the policy considerations also took into account the position of the domestic workforce ('The government, together with the regions and in consultation with the social partners, will determine conditions for economic immigration, with temporary and beyond definitive work permits, that can help fill vacancies in the bottleneck professions.'). ¹⁶³
4.2 Public position towards migration	1	In the Eurobarometer survey, 25 % of the Belgian respondents considered immigration to be one of the two most pressing issues that Belgium had been facing. ¹⁶⁴
4.3 Level of unemployment	2	The level of unemployment in highly educated professions was 16 % (2010). ¹⁶⁵
4.4 GINI index	3	GINI index of Belgium was 28,4 (2010). ¹⁶⁶
4.5 R&D expenses relative to GDP	3	The ratio of research and development expenses on GDP in Belgium was 2,051 (2010). ¹⁶⁷

II. BULGARIA

A/ Timeliness & correctness of transposition

1 – Misfit and policy preferences		
1.1 Legislative tradition in this area	1	Before the adoption of the Blue Card, Bulgaria neither had any rules regulating conditions of entry and residence of highly skilled immigrants in place nor was in the process of drafting any legislative proposals in that direction. ¹⁶⁸
1.2 Uploading national interest to EU level	2	Bulgarian representatives at the Council working group negotiations managed to push through the clear declaration that if the Member States decide to apply Community preference principle to prioritize workforce from the other EU Member States, the Acts of Accession concluded with the countries of the so-called Eastern Enlargement should be recognized as parts of the EU primary law and thus persons from the new Member States should be given precedence even if they had been subjects to limitations of intra-EU labour mobility due to transitional agreements. ¹⁶⁹ Furthermore, Bulgaria also succeeded with endorsement of a possibility to maintain the co-existence of the parallel national

¹⁶³ Regeerakkoord gesloten door de onderhandelaars van CD&V, MR, PS, Open Vld en cdH. 2007.

¹⁶⁴ EUROPEAN COMMISSION. Standard Eurobarometer 74. Public Opinion in the European Union. Report. Autumn 2010.

¹⁶⁵ EUROSTAT. Unemployment Statistics. [online] [visited 19.4.2020] Available at: <https://ec.europa.eu/eurostat/statistics-explained/index.php/Unemployment_statistics>

¹⁶⁶ WORLD BANK GROUP. Data. GINI index (World Bank estimate). [online] [visited 15.4.2020] Available at: <<https://data.worldbank.org/indicator/SI.POV.GINI>>

¹⁶⁷ WORLD BANK GROUP. Data. Research and development expenditure (% of GDP). [online] [visited 16.4.2020] Available at: <https://data.worldbank.org/indicator/GB.XPD.RSDV.GD.ZS?name_desc=false>

¹⁶⁸ EUROPEAN COMMISSION. Commission staff working document. Accompanying document to the Proposal for a Council Directive on the conditions of entry and residence of third country nationals for the purpose of highly qualified employment. Impact Assessment. SEC(2007) 1403, Brussels, 23.10.2007.

¹⁶⁹ COUNCIL OF THE EUROPEAN UNION. Working Party on Migration and Expulsion – Outcome of Proceedings, 4 April 2008. Brussels, 8 May 2008.

		HSI schemes. ¹⁷⁰ Some of the other Bulgarian recommendations, including the proposal for a requirement to present an appropriate accommodation, were not accepted by majority of the delegations. ¹⁷¹
1.3 Policy misfit between EU measure and domestic measures in this area	2	Labour immigration policy of Bulgaria before the adoption of the Blue Card directive had been rather restrictive. Bulgaria had not been a target country of large volumes of immigrants. Despite the generally limited will to devise schemes with the aim to attract foreign talented minds, the absence of developed schemes for highly skilled immigration also resulted in the fact that the EU-level directive did not face that many domestic provisions with what it could potentially contradict. ¹⁷²
2 – National implementing instrument		
2.1 Type of implementing instrument (if more: the highest used)	1	In order to transpose the Blue Card directive, Bulgaria adopted two laws (Закон), one ordinance (НАРЕДБА) and one procedural rules on application of the main implementing law (ПРАВИЛНИК за прилагане). ¹⁷³
2.2 Number of implementing measures	2	Bulgaria reported 4 implementation measures enacted to transpose the Blue Card directive into its legal order. ¹⁷⁴
2.3 Government effectiveness	1	Bulgaria reached percentile 60,19 on Worldwide Governance Indicators. ¹⁷⁵
2.4 Regulatory Quality	1	Bulgaria reached percentile 70,62 on Worldwide Governance Indicators. ¹⁷⁶
3 – Veto players		
3.1 Federalism / unitarism	3	The political system of Bulgaria is unitary and centralized. ¹⁷⁷
3.2 Partisan effect – responsible ministry	3	For the majority of the time period explored, there was a minority government of the GERB party led by the current (as of 2020) Bulgarian prime minister Boyko Borisov. Borisov I government took office in 2009 and remained in power until 2013. The cabinet consisted only of the GERB party members and several independent ministers. GERB (in translation meaning 'Citizens for European Development of Bulgaria'), although by political scientists usually considered as a conservative populist party, adopted a programme in 2009 that indicated its rather positive attitude towards labour immigration from outside of the EU: 'In the field of labour migration management, the government pursues for (...) permanent settlement in the country of persons who are third-country nationals. We want to achieve a balanced reception of third-country nationals in accordance with the conditions of the labour market in Bulgaria, as well as for their successful integration and establishment on the territory of the country.' (Искаме да постигнем балансиран прием на граждани на трети държави съобразно условията на пазара на труда в България, както и за тяхната успешна интеграция и установяване на територията на страната.) ¹⁷⁸

¹⁷⁰ COUNCIL OF THE EUROPEAN UNION. Working Party on Migration and Expulsion – Outcome of Proceedings, 3-4 July 2008. Brussels, 24 July 2008.

¹⁷¹ Ibid.

¹⁷² EUROPEAN COMMISSION. Commission staff working document. Accompanying document to the Proposal for a Council Directive on the conditions of entry and residence of third country nationals for the purpose of highly qualified employment. Impact Assessment. SEC(2007) 1403, Brussels, 23.10.2007.

¹⁷³ EUR-Lex. National transposition measures communicated by the Member States concerning: Council Directive 2009/50/EC of 25 May 2009 on the conditions of entry and residence of third-country nationals for the purposes of highly qualified employment. [online] [visited 18.5.2020] Available at: <<https://eur-lex.europa.eu/legal-content/EN/NIM/?uri=CELEX:32009L0050>>

¹⁷⁴ Ibid.

¹⁷⁵ Worldwide Governance Indicators. [online] [visited 22.5.2020] Available at: <<https://info.worldbank.org/governance/wgi/Home/Reports>>

¹⁷⁶ Ibid.

¹⁷⁷ LIJPHART, A. Patterns of Democracy. Government Forms and Performance in Thirty-Six Countries. Second edition. Yale University Press, 2012.

¹⁷⁸ ПРОГРАМА НА ПРАВИТЕЛСТВОТО НА ЕВРОПЕЙСКОТО РАЗВИТИЕ НА БЪЛГАРИЯ 2009-2013 (Programme of the European development of Bulgaria 2009-2013). Sofia, 2009.

		In particular regard to the Blue Card directive, the GERB expressly declared its intention to actively participate in the application of the EU level migration-related schemes: 'Participation in the development of the new 5-year Stockholm Migration Program, to be a follow-up to the 2004 Hague Program, and relevant initiatives.' (Участие в разработването на новата 5-годишна Стокхолмска програма в областта на миграцията, която да е в продължение на Харгската програма от 2004 г., и съответните инициативи.) ¹⁷⁹
3.3 Partisan effect – coalition partners	1	While the GERB party – at least on paper – presented itself as a party supporting labour immigration from third countries, its ability to push forward commensurate laws was inhibited by the circumstances in which the government was situated. Although there was technically no government coalition in place and GERB was able to compose a cabinet only with politicians from its own ranks (with a few independents nominated by GERB), it was a minority government that had to rely on support of three other parliamentary groups. Among those were also political forces that did not share the express pro-European orientation of GERB and whose expectations differed vastly from the ones of the ministerial office holders. For instance, one of the groups that provided support to the GERB-led minority government was the nationalist 'Ataka' party, who had not profiled itself as a pro-immigrationist political force. ¹⁸⁰

B/ Variances of transposition (open x restrictive transposition in regard to discretionary clauses)

B1 – Policy-specific variables		
4.1 Government position towards migration	2	Government had been initially willing to deliver more favourable immigration policies to attract third country labour migrants and provide for their successful inclusion in the Bulgarian labour market. However, in consequence of the need to rely on support of the parliamentary opposition groups that were ideologically remote to the values and goals of the ruling party, many of the minority government's proposals were watered down and the government was compelled to substantial concessions. In the second half of its mandate, the action capacity of the Bulgarian government was further hindered by the internal political turmoil, which led to the nation-wide protests and eventually resulted in the resignation of the GERB government in 2013. ¹⁸¹ These factors were conducive to the diminished priority and attention attributed to third-country labour immigration agenda by the government politicians.
4.2 Public position towards migration	3	In the Eurobarometer survey, 1 % of the Bulgarian respondents considered immigration to be one of the two most pressing issues that Bulgaria had been facing. ¹⁸²
4.3 Level of unemployment	2	The level of unemployment in highly educated professions was 16,8 % (2010). ¹⁸³
4.4 GINI index	1	GINI index of Bulgaria was 35,7 (2010). ¹⁸⁴
4.5 R&D expenses relative to GDP	1	The ratio of research and development expenses on GDP in Bulgaria was 0,564 (2010). ¹⁸⁵

¹⁷⁹ Ibid.

¹⁸⁰ KEUDEL-KAISER, D. Government Formation in Central and Eastern Europe. The Case of Minority Governments. Opladen-Berlin-Toronto: Budrich UniPress Ltd., 2014.

¹⁸¹ WASHINGTON POST. Coalition confusion after Bulgaria election. [online] [visited 26.4.2020] Available at: <<https://www.washingtonpost.com/news/monkey-cage/wp/2014/10/21/coalition-confusion-after-bulgarias-election/>>

¹⁸² EUROPEAN COMMISSION. Standard Eurobarometer 74. Public Opinion in the European Union. Report. Autumn 2010.

¹⁸³ EUROSTAT. Unemployment Statistics. [online] [visited 19.4.2020] Available at: <https://ec.europa.eu/eurostat/statistics-explained/index.php/Unemployment_statistics>

¹⁸⁴ WORLD BANK GROUP. Data. GINI index (World Bank estimate). [online] [visited 15.4.2020] Available at: <<https://data.worldbank.org/indicator/SI.POV.GINI>>

¹⁸⁵ WORLD BANK GROUP. Data. Research and development expenditure (% of GDP). [online] [visited 16.4.2020] Available at: <https://data.worldbank.org/indicator/GB.XPD.RSDV.GD.ZS?name_desc=false>

III. CZECH REPUBLIC

A/ Timeliness & correctness of transposition

1 – Misfit and policy preferences		
1.1 Legislative tradition in this area	3	Before the adoption of the Blue Card directive, the Czech Republic had in place the national HSI immigration policy that set forth specific rules for entry and residence of highly qualified immigrants and was in the process of preparations for its revision. ¹⁸⁶
1.2 Uploading national interest to EU level	2	The Czech Republic contributed to enshrine the Community preference principle into the Blue Card and also the limitation that 'the access to the labour market is restricted to the exercise of the employment for which the Blue Card has been issued'. ¹⁸⁷ Moreover, together with the other countries, the Czech Republic pointed on the fact that the previously proposed Art. 6 designed to create a more lenient application criteria for young professionals contradicted the principle of non-discrimination. ¹⁸⁸ On the other hand, the Czech delegation in the Council working group resisted the idea to provide more favourable rules for the Blue Card holders who obtain long-term residence permit compared to persons who get long-term residence under the Long-term residence directive. ¹⁸⁹ Additionally, the Czech Republic argued that the initial length of the Blue Card should be identical with the work contract and in case of temporary unemployment, the 'period of grace' should have been only two months instead of three. ¹⁹⁰
1.3 Policy misfit between EU measure and domestic measures in this area	2	In the period before the emergence of the Blue Card, the Czech authorities attempted to come up with an innovative HSI scheme, inspiring from the point-based immigration systems known from the Commonwealth countries. This effort resulted in differences between the Czech system and the proposed EU-level directive, for instance in additional criteria to be fulfilled by the highly-skilled immigrants on the top of necessary qualifications and professional experience. Furthermore, the Czech system also distinguished between procedures for granting right to residence and right to work instead of a single permit. Its HSI scheme also did not count on acceptance of in-country requests or internal mobility options. On the contrary, its drafters intended to provide certain time period for highly skilled immigrants in case of sudden temporary unemployment, paved privileged pathways to permanent residence acquisition and endowed family members of highly skilled workers with special entitlements. Thus, the level of policy misfit in the case of the Czech Republic can be assessed as moderate. ¹⁹¹
2 – National implementing instrument		
2.1 Type of implementing	1	In order to transpose the Blue Card directive, the Czech Republic adopted dozens of laws, in majority of cases amending the earlier legislation (in some cases dating

¹⁸⁶ EUROPEAN COMMISSION. Commission staff working document. Accompanying document to the Proposal for a Council Directive on the conditions of entry and residence of third country nationals for the purpose of highly qualified employment. Impact Assessment. SEC(2007) 1403, Brussels, 23.10.2007.

¹⁸⁷ COUNCIL OF THE EUROPEAN UNION. Working Party on Migration and Expulsion – Outcome of Proceedings, 4 April 2008. Brussels, 8 May 2008.

¹⁸⁸ COUNCIL OF THE EUROPEAN UNION. Working Party on Migration and Expulsion – Outcome of Proceedings, 13-14 May 2008. Brussels, 19 June 2008.

¹⁸⁹ COUNCIL OF THE EUROPEAN UNION. Working Party on Migration and Expulsion – Outcome of Proceedings, 4 April 2008. Brussels, 8 May 2008.

¹⁹⁰ Ibid.

¹⁹¹ EUROPEAN COMMISSION. Commission staff working document. Accompanying document to the Proposal for a Council Directive on the conditions of entry and residence of third country nationals for the purpose of highly qualified employment. Impact Assessment. SEC(2007) 1403, Brussels, 23.10.2007.

instrument (if more: the highest used)		back to 1990s). Overall, the official list of transposition measures entails 41 legislative documents, out of whom 40 were laws. ¹⁹²
2.2 Number of implementing measures	1	The Czech Republic reported 41 implementation measures enacted to transpose the Blue Card directive into its legal order. ¹⁹³
2.3 Government effectiveness	2	The Czech Republic reached percentile 77,73 on Worldwide Governance Indicators. ¹⁹⁴
2.4 Regulatory Quality	2	The Czech Republic reached percentile 85,31 on Worldwide Governance Indicators. ¹⁹⁵
3 – Veto players		
3.1 Federalism / unitarism	3	The political system of the Czech Republic is unitary and centralized. ¹⁹⁶
3.2 Partisan effect – responsible ministry	2	Martin Pecina (minister of interior) as an unaffiliated non-partisan member of the caretaker government followed a general policy line of the Fischer’s caretaker cabinet – to follow up with the most pressing agenda, pursue a pragmatic approach and not drive through any overambitious new policies. This was reflected even in the explanatory memorandum for one of the transposition measures. ¹⁹⁷ Since June 2010, the immigration portfolio became a domain of the next, this time again political minister – Radek John, who served as a Minister of Interior. John had been a leader of the Public Affairs (Věci veřejné, abbr. VV) political movement, whose electoral manifesto regarding the labour migration stated the following: ‘Only a working, blameless foreigner who pays taxes can become a welcome guest in the Czech Republic. (...) Věci veřejné support more stringent regulation and selection of foreign workforce – the extension of the Green card system at the expense of the currently often misused entrepreneurs’ visa’. ¹⁹⁸ Therefore, while being circumspect regarding migration in general, towards labour migration VV adopted a more favourable attitude. Nevertheless, they favoured the Czech scheme, implementation of what had been considered at that time – the so-called ‘Green card’. ¹⁹⁹
3.3 Partisan effect – coalition partners	2	Civic Democratic Party (Občanská demokratická strana, abbr. ODS), the strongest party in the Nečas cabinet, who hold the premiership and embodied the most important coalition partner of VV, in its electoral programme raised similar issues and rhetorics: ‘Immigration must be under control. We support integration of foreigners who are coming to work legally, not only to enjoy social benefits. Those that are working illegally and do not obey the laws will be expelled.’ ²⁰⁰ Generally, all of the coalition partners (but first and foremost ODS) reiterated the risk of misuse of the immigrant labour and also the potential tensions that may emerge in case of influx of immigrants from culturally remote regions. In the Czech Senate (the Upper Chamber of the Czech Parliament), that could potentially serve as another veto point, the Blue Card proposal was generally supported. ²⁰¹

¹⁹² EUR-Lex. National transposition measures communicated by the Member States concerning: Council Directive 2009/50/EC of 25 May 2009 on the conditions of entry and residence of third-country nationals for the purposes of highly qualified employment. [online] [visited 18.5.2020] Available at: <<https://eur-lex.europa.eu/legal-content/EN/NIM/?uri=CELEX:32009L0050>>

¹⁹³ Ibid.

¹⁹⁴ Worldwide Governance Indicators. [online] [visited 22.5.2020] Available at: <<https://info.worldbank.org/governance/wgi/Home/Reports>>

¹⁹⁵ Ibid.

¹⁹⁶ LIJPHART, A. Patterns of Democracy. Government Forms and Performance in Thirty-Six Countries. Second edition. Yale University Press, 2012.

¹⁹⁷ MINISTERSTVO VNITRA ČR. Důvodová zpráva. Návrh zákona, kterým se mění zákon č. 326/1999 Sb., o pobytu cizinců na území České republiky a o změně některých zákonů, ve znění pozdějších předpisů, zákon č. 325/1999 Sb., o azylu a o změně zákona č. 283/1991 Sb., o Policii České republiky, ve znění pozdějších předpisů, (zákon o azylu), ve znění pozdějších předpisů, a další související zákony.

¹⁹⁸ VĚCI VEŘEJNÉ. Politický program. 2010.

¹⁹⁹ Ibid.

²⁰⁰ ODS. Řešení, která pomáhají. Podrobný volební program. 2010.

²⁰¹ SENÁT ČR. Zpráva o činnosti Senátu a jeho orgánů v roce 2008.

B/ Variances of transposition (open x restrictive transposition in regard to discretionary clauses)

B1 – Policy-specific variables		
4.1 Government position towards migration	2	The transposition period of the Blue Card overlapped with the two governments – the caretaker cabinet of Jan Fischer (in office May 2009-July 2010), followed by the cabinet of Petr Nečas (term July 2010-July 2013). The coalition agreement of the Fischer cabinet stated the following: ‘The government will continuously monitor the impacts of the economic crisis on the situation in the migration area and will adopt adequate measures. It will finalize the preparation of the Citizenship Act that will reflect the EU membership.’ ²⁰² While it was clearly visible that the non-partisan caretaker government prioritized completion of administrative tasks and doing only ‘business as usual’, the political declaration of the upcoming Nečas cabinet revealed more political considerations of the actors: ‘The government will pursue a responsible migration policy based on a balance between successful integration and necessary immigration.’ This shows that the Czech government’s attitude towards migration can be classified as moderate, neither strongly in favour, nor strongly against. ²⁰³
4.2 Public position towards migration	3	In the Eurobarometer survey, 3 % of the Czech respondents considered immigration to be one of the two most pressing issues that the Czech Republic had been facing. ²⁰⁴
4.3 Level of unemployment	2	The level of unemployment in highly educated professions was 16,7 % (2010). ²⁰⁵
4.4 GINI index	3	GINI index of the Czech Republic was 26,6 (2010). ²⁰⁶
4.5 R&D expenses relative to GDP	2	The ratio of research and development expenses on GDP in the Czech Republic was 1,337 (2010). ²⁰⁷

IV. ESTONIA

A/ Timeliness & correctness of transposition

1 – Misfit and policy preferences		
1.1 Legislative tradition in this area	2	Although Estonia did not have any scheme regulating entry and residence of highly skilled immigrants in place by the time the Blue Card was adopted, it had been in the process of preparations and drafting of such rules. ²⁰⁸

²⁰² HOSPODÁŘSKÉ NOVINY. Komplettní text programového prohlášení vlády Jana Fischera. [online] [visited 5.4.2020] Available at: <<https://domaci.ihned.cz/c1-37283070-kompletni-text-programoveho-prohlaseni-vlady-jana-fischera>>

²⁰³ Programové prohlášení Vlády České republiky. 4. srpna 2010.

²⁰⁴ EUROPEAN COMMISSION. Standard Eurobarometer 74. Public Opinion in the European Union. Report. Autumn 2010.

²⁰⁵ EUROSTAT. Unemployment Statistics. [online] [visited 19.4.2020] Available at: <https://ec.europa.eu/eurostat/statistics-explained/index.php/Unemployment_statistics>

²⁰⁶ WORLD BANK GROUP. Data. GINI index (World Bank estimate). [online] [visited 15.4.2020] Available at: <<https://data.worldbank.org/indicator/SI.POV.GINI>>

²⁰⁷ WORLD BANK GROUP. Data. Research and development expenditure (% of GDP). [online] [visited 16.4.2020] Available at: <https://data.worldbank.org/indicator/GB.XPD.RSDV.GD.ZS?name_desc=false>

²⁰⁸ EUROPEAN COMMISSION. Commission staff working document. Accompanying document to the Proposal for a Council Directive on the conditions of entry and residence of third country nationals for the purpose of highly qualified employment. Impact Assessment. SEC(2007) 1403, Brussels, 23.10.2007.

1.2 Uploading national interest to EU level	3	Estonian delegation in the Council working group was successful in elevating its preferences to the EU level. Estonia claimed that educational qualifications should be the default feature to classify a person as a highly skilled immigrant eligible to obtaining the Blue Card. ²⁰⁹ In a response to the Estonian delegation, the proponents noted that in case of sudden temporary loss of job/unemployment, the Blue Card holder should be entitled to a certain 'period of grace', giving him an opportunity to seek another employment. ²¹⁰ Estonian delegation also successfully argued for inclusion of a provision that conviction of an employed should be among the reasons for withdrawal or non-renewal of the Blue Card. ²¹¹
1.3 Policy misfit between EU measure and domestic measures in this area	3	Estonian legislation provided for an open definition of highly skilled immigrants, which sidelined potential emergence of friction surfaces with the Blue Card directive. Criteria to be fulfilled by candidates from the highly skilled migrants' ranks were also largely overlapping with the EU scheme (relevant educational qualifications and professional experience). The Estonian system provided for a single permit to enable obtaining both a right to residence and a work permit simultaneously and required immigrants to present proof of qualifications during the application process. Despite the rejection of in-country requests, policy misfit of Estonia can be classified as relatively low. ²¹²
2 – National implementing instrument		
2.1 Type of implementing instrument (if more: the highest used)	1	In order to transpose the Blue Card directive, Estonia adopted a law (Aliens Act), a procedural ordinance to implement the Aliens Act, procedural rules for the maintenance of the register of the Blue Card holders and two other procedural documents to regulate the technical aspects of the Blue Card. ²¹³
2.2 Number of implementing measures	2	Estonia reported 5 implementation measures enacted to transpose the Blue Card directive into its legal order. ²¹⁴
2.3 Government effectiveness	2	Estonia reached percentile 82,46 on Worldwide Governance Indicators. ²¹⁵
2.4 Regulatory Quality	3	Estonia reached percentile 91,00 on Worldwide Governance Indicators. ²¹⁶
3 – Veto players		
3.1 Federalism / unitarism	3	The political system of Estonia is unitary and centralized. ²¹⁷
3.2 Partisan effect – responsible ministry	3	Almost the entire transposition period of the Blue Card directive ran in parallel with a ministerial term of Marko Pomerants, who served as a minister of interior from June 2009 till April 2011. Pomerants represented the Christian-democratic conservatist union ISAMAA (Pro Patria Union / Res Publica Party). Pomerants advocated regularization and stronger governmental oversight of the general labour immigration policy, that until then had often been criticized for being exploited by local employers to hire undocumented labour immigrants for wages below the standard in mostly the low-paid occupational branches. Pomerants expressly endorsed introducing a salary threshold not only in case of highly skilled

²⁰⁹ COUNCIL OF THE EUROPEAN UNION. Working Party on Migration and Expulsion – Outcome of Proceedings, 4 April 2008. Brussels, 8 May 2008.

²¹⁰ Ibid.

²¹¹ Ibid.

²¹² EUROPEAN COMMISSION. Commission staff working document. Accompanying document to the Proposal for a Council Directive on the conditions of entry and residence of third country nationals for the purpose of highly qualified employment. Impact Assessment. SEC(2007) 1403, Brussels, 23.10.2007.

²¹³ EUR-Lex. National transposition measures communicated by the Member States concerning: Council Directive 2009/50/EC of 25 May 2009 on the conditions of entry and residence of third-country nationals for the purposes of highly qualified employment. [online] [visited 18.5.2020] Available at: <<https://eur-lex.europa.eu/legal-content/EN/NIM/?uri=CELEX:32009L0050>>

²¹⁴ Ibid.

²¹⁵ Worldwide Governance Indicators. [online] [visited 22.5.2020] Available at: <<https://info.worldbank.org/governance/wgi/Home/Reports>>

²¹⁶ Ibid.

²¹⁷ LIJPHART, A. Patterns of Democracy. Government Forms and Performance in Thirty-Six Countries. Second edition. Yale University Press, 2012.

		immigration policy, but for all segments of labour immigration, in order to eradicate the exploitation on the labour market. Therefore, we can observe that both the goals and the means of the ISAMAA party were in tune with the drafters of the Blue Card. ²¹⁸
3.3 Partisan effect – coalition partners	3	ISAMAA composed the government coalition alongside two other political parties – the Estonian Reform Party and the Social Democratic Party. The former was led by Andrus Ansip (who also held the premiership and later served as the EU Commissioner) and maintained mostly liberal standpoints that were affirmative of labour immigration. The latter party was more cautious regarding the issues such as security in the context of immigration and protection of Estonian domestic workforce, but even Jüri Pihl, the predecessor of Pomerants in the position of the Minister of Interior, was supportive of opening up towards the highly skilled immigration from third countries. ²¹⁹

B/ Variances of transposition (open x restrictive transposition in regard to discretionary clauses)

B1 – Policy-specific variables		
4.1 Government position towards migration	3	The government under the leadership of Andrus Ansip encompassed three parties that had had either openly supportive or at least not critical attitudes towards the highly skilled immigration from third countries. ²²⁰ All of the three coalition partners – the liberals from the Estonian Reform Party, the Christian-democratic conservatives from ISAMAA and the Social democratic party subscribed to a view that attracting ‘the best and the brightest’ from non-EU countries may be positive for Estonian economy that had been hit hard by the dropping demographic curve and large outflows of young Estonians to the Western European EU Member States. ²²¹
4.2 Public position towards migration	3	In the Eurobarometer survey, 1 % of the Estonian respondents considered immigration to be one of the two most pressing issues that Estonia had been facing. ²²²
4.3 Level of unemployment	1	The level of unemployment in highly educated professions was 20,3 % (2010). ²²³
4.4 GINI index	2	GINI index of Estonia was 32 (2010). ²²⁴
4.5 R&D expenses relative to GDP	2	The ratio of research and development expenses on GDP in Estonia was 1,582 (2010). ²²⁵

²¹⁸ SISEKAITSEAKADEEMIA – EUROOPA RÄNDEVÕRGUSTIK. Tööjõupuuduse leevendamine migratsiooni kaudu. Tallinn, July 2010.

²¹⁹ POSTIMEES ARVAMUS. Jüri Pihl: migratsioonipoliitika innovatsiooni heaks. [online] [visited 10.5.2020] Available at: <<https://arvamus.postimees.ee/1776213/juri-pihl-migratsioonipoliitika-innovatsiooni-heaks>>

²²⁰ SISEKAITSEAKADEEMIA – EUROOPA RÄNDEVÕRGUSTIK. Tööjõupuuduse leevendamine migratsiooni kaudu. Tallinn, July 2010.

²²¹ Ibid.

²²² EUROPEAN COMMISSION. Standard Eurobarometer 74. Public Opinion in the European Union. Report. Autumn 2010.

²²³ EUROSTAT. Unemployment Statistics. [online] [visited 19.4.2020] Available at: <https://ec.europa.eu/eurostat/statistics-explained/index.php/Unemployment_statistics>

²²⁴ WORLD BANK GROUP. Data. GINI index (World Bank estimate). [online] [visited 15.4.2020] Available at: <<https://data.worldbank.org/indicator/SI.POV.GINI>>

²²⁵ WORLD BANK GROUP. Data. Research and development expenditure (% of GDP). [online] [visited 16.4.2020] Available at: <https://data.worldbank.org/indicator/GB.XPD.RSDV.GD.ZS?name_desc=false>

V. FINLAND

A/ Timeliness & correctness of transposition

1 – Misfit and policy preferences		
1.1 Legislative tradition in this area	2	In the period before the adoption of the Blue Card directive, Finland had in place special rules only for certain categories of highly skilled immigrants. However, it was in the process of preparations for revision of their national legislation, having drafted precise amendments to cover highly skilled immigrants. ²²⁶
1.2 Uploading national interest to EU level	3	Finnish delegation in the Council working group did not propose as many alterations as some of the other countries' representatives, however, vast majority of the Finnish preferences were included into the final proposal of the Blue Card. Thus, the working party agreed to allow for a co-existence of parallel national schemes for highly skilled third-country nationals. ²²⁷ The article initially included into one of the first draft versions, that intended to provide more favourable conditions and in particular lower salary threshold to young professionals, was finally deleted in consequence of criticism by Finland and several other delegations with reference to age discrimination. ²²⁸ The list of benefits to which Blue Card holders shall be entitled under the umbrella of the 'Equal Treatment' clause was adjusted according to the Finnish proposal that the sub-point about provision of pensions when a person is moving to a third country should clearly indicate that these pensions are income-related. ²²⁹
1.3 Policy misfit between EU measure and domestic measures in this area	3	Finnish HSI scheme entailed features that later simplified implementation of the Blue Card. The definition of highly skilled immigrants was open, leaving sufficient room for manoeuvre for the EU-level initiated legislative actions. Criteria to be fulfilled by immigrants included educational qualifications and professional experience. Finnish system was based on single-permit procedure and provided simplified pathway for highly skilled immigrants to obtain permanent residence. In terms of the main differences and obstacles, the Finnish national HSI scheme had not provided for internal mobility and family reunification support. However, from the relative inter-country comparison, its policy misfit can be generally deemed low. ²³⁰
2 – National implementing instrument		
2.1 Type of implementing instrument (if more: the highest used)	1	In order to transpose the Blue Card directive, Finland adopted 24 transposition measures, out of that 23 were laws (laki) in most of the cases amending earlier legislation and one was an ordinance (asetus). ²³¹

²²⁶ EUROPEAN COMMISSION. Commission staff working document. Accompanying document to the Proposal for a Council Directive on the conditions of entry and residence of third country nationals for the purpose of highly qualified employment. Impact Assessment. SEC(2007) 1403, Brussels, 23.10.2007.

²²⁷ COUNCIL OF THE EUROPEAN UNION. Working Party on Migration and Expulsion – Outcome of Proceedings, 4 April 2008. Brussels, 8 May 2008.

²²⁸ Ibid.

²²⁹ Ibid.

²³⁰ EUROPEAN COMMISSION. Commission staff working document. Accompanying document to the Proposal for a Council Directive on the conditions of entry and residence of third country nationals for the purpose of highly qualified employment. Impact Assessment. SEC(2007) 1403, Brussels, 23.10.2007.

²³¹ EUR-Lex. National transposition measures communicated by the Member States concerning: Council Directive 2009/50/EC of 25 May 2009 on the conditions of entry and residence of third-country nationals for the purposes of highly qualified employment. [online] [visited 18.5.2020] Available at: <<https://eur-lex.europa.eu/legal-content/EN/NIM/?uri=CELEX:32009L0050>>

2.2 Number of implementing measures	1	Finland reported 24 implementation measures enacted to transpose the Blue Card directive into its legal order. ²³²
2.3 Government effectiveness	3	Finland reached percentile 100,00 on Worldwide Governance Indicators. ²³³
2.4 Regulatory Quality	3	Finland reached percentile 97,63 on Worldwide Governance Indicators. ²³⁴
3 – Veto players		
3.1 Federalism / unitarism	2	Finland represents a hybrid model – unitary state with high level of decentralization. ²³⁵
3.2 Partisan effect – responsible ministry	3	During both of the terms of the two cabinets that were supposed to ensure proper transposition of the Blue Card directive, the position of the Minister for Europe and Immigration was held by Astrid Thors from the Swedish People’s Party. She had been perceived as pro-immigrants and therefore encountered expressions of anti-immigrant sentiment from the protagonists of the extremist political parties. ²³⁶ The backlash that she faced was of such a scale and nature that the subsequent government led by Jyrki Katainen resorted to abolish this ministerial portfolio. ²³⁷
3.3 Partisan effect – coalition partners	3	The coalition partners included the liberal Centre Party, the liberal-conservative National Coalition and the environmentalist Green League. All of these parties stood for liberal, progressivist approach based on human rights, equality and solidarity. There was no major disagreement among the coalition partners concerning the labour immigration policies. ²³⁸

B/ Variances of transposition (open x restrictive transposition in regard to discretionary clauses)

B1 – Policy-specific variables		
4.1 Government position towards migration	3	Although there were two cabinets in place in Finland during the transposition period of the Blue Card - Matti Vanhanen II Cabinet (in office April 2007-June 2010) and Kiviniemi Cabinet (in office June 2010-June 2011), the composition of coalition partners and the main policy lines remained mostly intact for the duration of both of the terms, which is further exemplified by the fact that several ministers (including Astrid Thors) who stepped in the ministerial functions during the Vanhanen II cabinet retained their powers even for the ensuing Kiviniemi cabinet’s term. The mere fact that the coalition partners decided to assign a Europe and immigration agenda to a member of a political party that represents different nationality serves as an expression of the symbolic value and commitment to internationalism and openness to cross-border exchanges that the two Finnish cabinets heralded. Vanhanen II Cabinet declared that „work-related immigration will be promoted“ ²³⁹ and work-based immigration was also stated

²³² Ibid.

²³³ Worldwide Governance Indicators. [online] [visited 22.5.2020] Available at: <<https://info.worldbank.org/governance/wgi/Home/Reports>>

²³⁴ Ibid.

²³⁵ LIJPHART, A. Patterns of Democracy. Government Forms and Performance in Thirty-Six Countries. Second edition. Yale University Press, 2012.

²³⁶ TURUN SAROMAT. Kunnallispoliitikon Thors-tappoukkaus syyttäjälle. [online] [visited 10.5.2020] Available at: <<https://www.ts.fi/uutiset/kotimaa/138601/Kunnallispoliitikon+Thorstappoukkaus+syyttajalle>>; UUSI SUOMI. Facebook-tappoukkaus: Thors tekeerikosilmoituksen. [online] [visited 10.5.2020] Available at: <<https://www.uusuomi.fi/uutiset/facebook-tappoukkaus-thors-tekee-rikosilmoituksen/75038b4f-a0d7-32e0-b2c3-47fcad2c58eb>>

²³⁷ Programme of Prime Minister Jyrki Katainen’s Government. Helsinki, 22 June 2011.

²³⁸ ŁOBODZIŃSKA, A. Immigrants and Immigration Policy in Ageing Finland. Bulletin of Geography, May 2011.

²³⁹ PRIME MINISTER’S OFFICE FINLAND. Government Programme of Prime Minister Matti Vanhanen’s second Cabinet. Helsinki, 19 April 2007.

		among the ways how to increase supply of skilled labour in the programme of the Kiviniemi Cabinet. ²⁴⁰
4.2 Public position towards migration	2	In the Eurobarometer survey, 11 % of the Finnish respondents considered immigration to be one of the two most pressing issues that Finland had been facing. ²⁴¹
4.3 Level of unemployment	2	The level of unemployment in highly educated professions was 15,9 % (2010). ²⁴²
4.4 GINI index	3	GINI index of Finland was 27,7 (2010). ²⁴³
4.5 R&D expenses relative to GDP	3	The ratio of research and development expenses on GDP in Finland was 3,726 (2010). ²⁴⁴

VI. FRANCE

A/ Timeliness & correctness of transposition

1 – Misfit and policy preferences		
1.1 Legislative tradition in this area	3	Before the adoption of the Blue Card directive, France had in place the national HSI immigration policy that set forth specific rules for entry and residence of highly qualified immigrants. ²⁴⁵
1.2 Uploading national interest to EU level	2	France was moderately successful in exerting its influence on the Council working group negotiations. It managed to convince the other delegations that the initially proposed Art. 6, that stipulated more advantageous application criteria for young professionals, was in contravention of the non-discrimination principle. ²⁴⁶ Also, French representatives persuaded their colleagues that failure to fulfil the notification duty in case of the change in job should not automatically result in a withdrawal or a non-renewal of the Blue Card. ²⁴⁷
1.3 Policy misfit between EU measure and domestic measures in this area	2	French HSI system was quite complex, setting different rules for different segments of highly skilled workers. Thus, the level of misfit depends on the group that is selected as a frame of reference. The similarities with the Blue Card entailed the character of the admission criteria of the HSMs, the complexity of documents to be presented by them, positive attitude towards in-country requests and in specific cases also period to look for new job during unemployment and intensified support for family reunification of highly skilled immigrants. Among the most manifest differences might be observed an absence of a single-permit procedure, dismissal of internal mobility and impossibility to obtain permanent residence. The excessive complexity of various HSI groups and their definitions

²⁴⁰ “Finland towards a Consistent Path to Growth, Employment and Stability.” Government statement to Parliament on the Government Programme of Prime Minister Mari Kiviniemi’s Government appointed on 22 June 2010. Helsinki, 2010.

²⁴¹ EUROPEAN COMMISSION. Standard Eurobarometer 74. Public Opinion in the European Union. Report. Autumn 2010.

²⁴² EUROSTAT. Unemployment Statistics. [online] [visited 19.4.2020] Available at: <https://ec.europa.eu/eurostat/statistics-explained/index.php/Unemployment_statistics>

²⁴³ WORLD BANK GROUP. Data. GINI index (World Bank estimate). [online] [visited 15.4.2020] Available at: <<https://data.worldbank.org/indicator/SI.POV.GINI>>

²⁴⁴ WORLD BANK GROUP. Data. Research and development expenditure (% of GDP). [online] [visited 16.4.2020] Available at: <https://data.worldbank.org/indicator/GB.XPD.RSDV.GD.ZS?name_desc=false>

²⁴⁵ EUROPEAN COMMISSION. Commission staff working document. Accompanying document to the Proposal for a Council Directive on the conditions of entry and residence of third country nationals for the purpose of highly qualified employment. Impact Assessment. SEC(2007) 1403, Brussels, 23.10.2007.

²⁴⁶ COUNCIL OF THE EUROPEAN UNION. Working Party on Migration and Expulsion – Outcome of Proceedings, 4 April 2008. Brussels, 8 May 2008.

²⁴⁷ Ibid.

		also added to the possible obstacles to be faced by the Blue Card implementers. Eventually, French level of policy misfit should be acknowledged as moderate. ²⁴⁸
2 – National implementing instrument		
2.1 Type of implementing instrument (if more: the highest used)	1	In order to transpose the Blue Card directive, France adopted one law (loi) and one procedural decree (décret) to ensure proper application of the law. ²⁴⁹
2.2 Number of implementing measures	3	France reported 2 implementation measures enacted to transpose the Blue Card directive into its legal order. ²⁵⁰
2.3 Government effectiveness	3	France reached percentile 87,68 on Worldwide Governance Indicators. ²⁵¹
2.4 Regulatory Quality	2	France reached percentile 84,83 on Worldwide Governance Indicators. ²⁵²
3 – Veto players		
3.1 Federalism / unitarism	3	The political system of France is unitary and centralized. ²⁵³
3.2 Partisan effect – responsible ministry	1	During both of the Fillon cabinets in the time period explored, the post of the Minister of Interior was held by Brice Hortefeux. Hortefeux had been known for his critical statements about immigrants and was repeatedly accused of xenophobia. ²⁵⁴ He always stood for tough migratory policies and wide discretion of state authorities when it comes to the right to expel immigrants. ²⁵⁵
3.3 Partisan effect – coalition partners	2	Although the coalition partners of the UMP (Union for a Popular Movement), ²⁵⁶ the political party that Hortefeux represented, the position of the socialists and centrists with regard to labour immigration had also been rather vigilant, with all the coalition partners warying about the challenges of immigrant integration and the need to prevent radicalisation of immigrant communities. Thus, it can be concluded that the immigration discourse in France had been largely securitized. ²⁵⁷

B/ Variances of transposition (open x restrictive transposition in regard to discretionary clauses)

B1 – Policy-specific variables

²⁴⁸ EUROPEAN COMMISSION. Commission staff working document. Accompanying document to the Proposal for a Council Directive on the conditions of entry and residence of third country nationals for the purpose of highly qualified employment. Impact Assessment. SEC(2007) 1403, Brussels, 23.10.2007.

²⁴⁹ EUR-Lex. National transposition measures communicated by the Member States concerning: Council Directive 2009/50/EC of 25 May 2009 on the conditions of entry and residence of third-country nationals for the purposes of highly qualified employment. [online] [visited 18.5.2020] Available at: <<https://eur-lex.europa.eu/legal-content/EN/NIM/?uri=CELEX:32009L0050>>

²⁵⁰ Ibid.

²⁵¹ Worldwide Governance Indicators. [online] [visited 22.5.2020] Available at: <<https://info.worldbank.org/governance/wgi/Home/Reports>>

²⁵² Ibid.

²⁵³ LIJPHART, A. Patterns of Democracy. Government Forms and Performance in Thirty-Six Countries. Second edition. Yale University Press, 2012.

²⁵⁴ BBC NEWS. French minister Hortefeux fined for racism. [online] [visited 8.5.2020] Available at: <<https://www.bbc.com/news/10242356>>

²⁵⁵ SPIEGEL INTERNATIONAL. France to Pay Immigrants to Return Home. [online] [visited 6.5.2020] Available at: <<https://www.spiegel.de/international/europe/a-new-broom-in-paris-france-to-pay-immigrants-to-return-home-a-484716.html>>

²⁵⁶ LÉGIFRANCE. Décret du 19 juin 2007 relatif à la composition du Gouvernement. [online] [visited 8.5.2020] Available at: <<https://www.legifrance.gouv.fr/affichTexte.do?cidTexte=JORFTEXT000000274401&dateTexte=&categorieLien=id>>

²⁵⁷ BERTOSSI, C. France: the State strives to shape “chosen” immigration. Centro Studi di Politica Internazionale, Working Paper, June 2008.

4.1 Government position towards migration	2	Despite the securitization of the discourse and frequent framing of immigration as a potential security challenge and a destabilizing factor, politicians across the political spectrum resorted to a more lenient rhetoric in case of legal labour migration. Even Hortefeux himself stated that 'France in several sectors of activity, such as construction, hotels, catering, seasonal agricultural work, personal services but also scientific activity need a workforce – work and talents of foreign origin.' ²⁵⁸
4.2 Public position towards migration	2	In the Eurobarometer survey, 8 % of the French respondents considered immigration to be one of the two most pressing issues that France had been facing. ²⁵⁹
4.3 Level of unemployment	2	The level of unemployment in highly educated professions was 16,4 % (2010). ²⁶⁰
4.4 GINI index	1	GINI index of France was 33,7 (2010). ²⁶¹
4.5 R&D expenses relative to GDP	3	The ratio of research and development expenses on GDP in France was 2,179 (2010). ²⁶²

VII. GERMANY

A/ Timeliness & correctness of transposition

1 – Misfit and policy preferences		
1.1 Legislative tradition in this area	3	Before the adoption of the Blue Card directive, Germany had in place the national HSI policy that set specific rules for entry and residence of highly qualified immigrants. ²⁶³
1.2 Uploading national interest to EU level	3	Germany was one of the countries that were the most successful in uploading its interest onto the EU level. It pushed through the provision that expressly allows Member States to maintain an existence of the parallel national HSI schemes. ²⁶⁴ Also the details of the entitlements listed in the 'Equal treatment' provisions were adjusted according to the German suggestions – for instance Member States were given an option to limit access to education. ²⁶⁵ In result of the German initiative, the first Member States have the obligation to readmit the Blue Card holder and his family members in the case that his application is declined by the second Member State. ²⁶⁶ Finally, the provision enabling Member State to reject a Blue Card application for the reason of the so-called ethical recruitment was also

²⁵⁸ FIGAROVOX. Immigration: Brice Hortefeux s'explique. [online] [visited 8.5.2020] Available at:

<https://www.lefigaro.fr/debats/2007/06/01/01005-20070601ARTFIG90026-immigration_identite_developpement_trois_missions_etroitement_liees.php>

²⁵⁹ EUROPEAN COMMISSION. Standard Eurobarometer 74. Public Opinion in the European Union. Report. Autumn 2010.

²⁶⁰ EUROSTAT. Unemployment Statistics. [online] [visited 19.4.2020] Available at: <https://ec.europa.eu/eurostat/statistics-explained/index.php/Unemployment_statistics>

²⁶¹ WORLD BANK GROUP. Data. GINI index (World Bank estimate). [online] [visited 15.4.2020] Available at: <<https://data.worldbank.org/indicator/SI.POV.GINI>>

²⁶² WORLD BANK GROUP. Data. Research and development expenditure (% of GDP). [online] [visited 16.4.2020] Available at: <https://data.worldbank.org/indicator/GB.XPD.RSDV.GD.ZS?name_desc=false>

²⁶³ EUROPEAN COMMISSION. Commission staff working document. Accompanying document to the Proposal for a Council Directive on the conditions of entry and residence of third country nationals for the purpose of highly qualified employment. Impact Assessment. SEC(2007) 1403, Brussels, 23.10.2007.

²⁶⁴ COUNCIL OF THE EUROPEAN UNION. Working Party on Migration and Expulsion – Outcome of Proceedings, 4 April 2008. Brussels, 8 May 2008.

²⁶⁵ Ibid.

²⁶⁶ COUNCIL OF THE EUROPEAN UNION. Working Party on Migration and Expulsion – Outcome of Proceedings, 13-14 May 2008. Brussels, 19 June 2008.

		included into the final proposal thanks to the emphasis put on it by the German delegation in the Council working group. ²⁶⁷
1.3 Policy misfit between EU measure and domestic measures in this area	3	Germany demonstrated low level of policy misfit between the provisions of the Blue Card and the national HSI scheme. Already before the adoption of the Blue Card, the German national system established a single-permit procedure, while the applicants had to satisfy foremost the criteria of educational qualification and professional experience. Highly skilled immigrants coming to Germany were also allowed to file their applications while already staying on the German territory and once their application was successful, they could take use of the internal mobility, simplified rules for qualifying for permanent residence or more favourable provisions regarding family reunification. ²⁶⁸
2 – National implementing instrument		
2.1 Type of implementing instrument (if more: the highest used)	1	In order to transpose the Blue Card directive, Germany adopted a law (Gesetz zur Umsetzung der Hochqualifizierten-Richtlinie der Europäischen Union). ²⁶⁹
2.2 Number of implementing measures	1	Germany reported 1 implementation measure enacted to transpose the Blue Card directive into its legal order. ²⁷⁰
2.3 Government effectiveness	3	Germany reached percentile 91,47 on Worldwide Governance Indicators. ²⁷¹
2.4 Regulatory Quality	3	Germany reached percentile 92,89 on Worldwide Governance Indicators. ²⁷²
3 – Veto players		
3.1 Federalism / unitarism	1	Germany has a federal and highly decentralized political system. The sixteen federal states (Bundesländer) are endowed with a high degree of legislative powers. ²⁷³
3.2 Partisan effect – responsible ministry	2	The Federal Ministry of Interior was under control of the main government party – CDU – represented by minister Thomas de Maiziere. Although generally the Christian democrats were in favour of strengthening the legal channels of labour immigration, in this particular case – according to the available documents of the party – CDU preferred to focus primarily on increasing the employability skills of the domestic workforce in order to extend the pool of the German professionals that can be considered ‘highly qualified’. ²⁷⁴
3.3 Partisan effect – coalition partners	1	As far as the position towards the Blue Card was concerned, there emerged a major disagreement between the two major political parties that together composed the government coalition – CDU (Christian democrats) and FDP (liberals). While CDU intended to transpose the Blue Card directive in such a way that would not put the domestic workforce at a disadvantage, ²⁷⁵ FDP wanted

²⁶⁷ COUNCIL OF THE EUROPEAN UNION. Working Party on Migration and Expulsion – Outcome of Proceedings, 3-4 July 2008. Brussels, 24 July 2008.

²⁶⁸ EUROPEAN COMMISSION. Commission staff working document. Accompanying document to the Proposal for a Council Directive on the conditions of entry and residence of third country nationals for the purpose of highly qualified employment. Impact Assessment. SEC(2007) 1403, Brussels, 23.10.2007.

²⁶⁹ EUR-Lex. National transposition measures communicated by the Member States concerning: Council Directive 2009/50/EC of 25 May 2009 on the conditions of entry and residence of third-country nationals for the purposes of highly qualified employment. [online] [visited 18.5.2020] Available at: <<https://eur-lex.europa.eu/legal-content/EN/NIM/?uri=CELEX:32009L0050>>

²⁷⁰ Ibid.

²⁷¹ Worldwide Governance Indicators. [online] [visited 22.5.2020] Available at: <<https://info.worldbank.org/governance/wgi/Home/Reports>>

²⁷² Ibid.

²⁷³ LIJPHART, A. Patterns of Democracy. Government Forms and Performance in Thirty-Six Countries. Second edition. Yale University Press, 2012.

²⁷⁴ CDU-CSU. “Wir haben die Kraft – Gemeinsam für unser Land.“ Regierungsprogramm 2009-2013.

²⁷⁵ Ibid.

		to implement the Blue Card in a way that could maximize its attractiveness to the highly qualified professionals from third countries. ²⁷⁶
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B/ Variances of transposition (open x restrictive transposition in regard to discretionary clauses)

B1 – Policy-specific variables		
4.1 Government position towards migration	3	Second cabinet of the Chancellor Angela Merkel generally pursued a positive approach towards welcoming immigrants from third countries that could also be exemplified by the amount and extent of favourable conditions provided to various categories of migrants and their family members. ²⁷⁷
4.2 Public position towards migration	2	In the Eurobarometer survey, 12 % of the German respondents considered immigration to be one of the two most pressing issues that Germany had been facing. ²⁷⁸
4.3 Level of unemployment	3	The level of unemployment in highly educated professions was 13 % (2010). ²⁷⁹
4.4 GINI index	2	GINI index of Germany was 30,2 (2010). ²⁸⁰
4.5 R&D expenses relative to GDP	3	The ratio of research and development expenses on GDP in Germany was 2,714 (2010). ²⁸¹

VIII. ITALY

A/ Timeliness & correctness of transposition

1 – Misfit and policy preferences		
1.1 Legislative tradition in this area	2	Although Italy did not have any national scheme for entry and residence in place in the period before the adoption of the Blue Card directive, its legislation provided for exceptions for certain categories of professionals. Moreover, the reform proposals aimed at introducing specific legal provisions to attract highly skilled workers from third countries had been in place. ²⁸²
1.2 Uploading national interest to EU level	1	During the negotiations in the Council working groups, Italy was unable to push through majority of its initiatives. In particular, it objected towards several Blue Card provisions that in its view could be misused – e.g. the option to file an application for a Blue Card when the person concerned is already legally present

²⁷⁶ FDP. “Die Mitte stärken. Deutschlandprogramm 2009.“ Programm der Freien Demokratischen Partei zur Bundestagswahl 2009.

²⁷⁷ CONSTANT, A., TIEN, B. Germany’s Immigration Policy and Labour Shortages. IZA Research Report No. 41, October 2011; FEDERAL OFFICE FOR MIGRATION AND REFUGEES. Attracting highly qualified and qualified third-country nationals. Focused Study of the German National Contact Point for the European Migration Network (EMN). Working Paper 53, 2013.

²⁷⁸ EUROPEAN COMMISSION. Standard Eurobarometer 74. Public Opinion in the European Union. Report. Autumn 2010.

²⁷⁹ EUROSTAT. Unemployment Statistics. [online] [visited 19.4.2020] Available at: <https://ec.europa.eu/eurostat/statistics-explained/index.php/Unemployment_statistics>

²⁸⁰ WORLD BANK GROUP. Data. GINI index (World Bank estimate). [online] [visited 15.4.2020] Available at: <<https://data.worldbank.org/indicator/SI.POV.GINI>>

²⁸¹ WORLD BANK GROUP. Data. Research and development expenditure (% of GDP). [online] [visited 16.4.2020] Available at: <https://data.worldbank.org/indicator/GB.XPD.RSDV.GD.ZS?name_desc=false>

²⁸² EUROPEAN COMMISSION. Commission staff working document. Accompanying document to the Proposal for a Council Directive on the conditions of entry and residence of third country nationals for the purpose of highly qualified employment. Impact Assessment. SEC(2007) 1403, Brussels, 23.10.2007.

		on the territory of the Member State in question, that could be – from the point of view of the Italian representatives misused to regularize stays of illegal immigrants. ²⁸³ Moreover, Italy was unable to convince the other delegations to relieve the requirement of the so-called internal mobility, according to what a Blue Card holder should not change a job for a period of two years after he is granted the Blue Card. Majority of the other representatives however did not share the view that this provision violates the principle of free choice of job as Italy claimed. ²⁸⁴ Lastly, Italians also did not carry through the possibility to extend the scope of the Blue Card holder definitions to include other kinds of contractual relationships beyond employed work. ²⁸⁵
1.3 Policy misfit between EU measure and domestic measures in this area	1	Italian labour immigration scheme was quite specific in the cross-European comparison. Italian government annually set a quota of places available to migrants from third countries. Special decrees determined number of spots for highly skilled immigrants within those quotas. The requests were carried out by Italian employers, who were also free to apply labour market tests to verify whether the place in question could have been filled by the Italian or other EU Member States' nationals. Certain categories of immigrants were exempted from this general scheme, and by virtue of that, quotas and economic needs' tests were inapplicable to those. These privileged groups of immigrants included e.g. managers, university lecturers, posted workers, artists or foreign correspondents. ²⁸⁶
2 – National implementing instrument		
2.1 Type of implementing instrument (if more: the highest used)	2	In order to transpose the Blue Card directive, Italy adopted two transposition measures of lower legal force. ²⁸⁷
2.2 Number of implementing measures	3	Italy reported 2 implementation measures enacted to transpose the Blue Card directive into its legal order. ²⁸⁸
2.3 Government effectiveness	1	Italy reached percentile 65,88 on Worldwide Governance Indicators. ²⁸⁹
2.4 Regulatory Quality	1	Italy reached percentile 75,36 on Worldwide Governance Indicators. ²⁹⁰
3 – Veto players		
3.1 Federalism / unitarism	3	The political system of Italy is unitary and centralized. ²⁹¹
3.2 Partisan effect – responsible ministry	1	The post of the minister of interior was occupied by Roberto Maroni of the Northern League (Lega Nord, nowadays known under the name 'Lega Salvini' with reference to its current leader). LN has been renowned for its stringent attitude towards (especially illegal) immigration and Maroni himself was personally responsible for a highly medialized decision to turn back to the Libyan

²⁸³ COUNCIL OF THE EUROPEAN UNION. Working Party on Migration and Expulsion – Outcome of Proceedings, 4 April 2008. Brussels, 8 May 2008.

²⁸⁴ COUNCIL OF THE EUROPEAN UNION. Working Party on Migration and Expulsion – Outcome of Proceedings, 3-4 July 2008. Brussels, 24 July 2008.

²⁸⁵ Ibid.

²⁸⁶ EUROPEAN COMMISSION. Commission staff working document. Accompanying document to the Proposal for a Council Directive on the conditions of entry and residence of third country nationals for the purpose of highly qualified employment. Impact Assessment. SEC(2007) 1403, Brussels, 23.10.2007.

²⁸⁷ EUR-Lex. National transposition measures communicated by the Member States concerning: Council Directive 2009/50/EC of 25 May 2009 on the conditions of entry and residence of third-country nationals for the purposes of highly qualified employment. [online] [visited 18.5.2020] Available at: <<https://eur-lex.europa.eu/legal-content/EN/NIM/?uri=CELEX:32009L0050>>

²⁸⁸ Ibid.

²⁸⁹ Worldwide Governance Indicators. [online] [visited 22.5.2020] Available at: <<https://info.worldbank.org/governance/wgi/Home/Reports>>

²⁹⁰ Ibid.

²⁹¹ LIJPHART, A. Patterns of Democracy. Government Forms and Performance in Thirty-Six Countries. Second edition. Yale University Press, 2012.

		coast the boats with allegedly illegal immigrants on board ²⁹² – a decision that was praised by vast majority of the Italian public, but also criticized by several international organizations, such as the UNHCR.
3.3 Partisan effect – coalition partners	1	The main party of the ruling government coalition was the movement ‘People of Freedom’ (Il Popolo della Libertà, abbr. PdL) of Silvio Berlusconi. This centre-right populist movement in its political manifesto declared to undertake steps against illegal immigration. In terms of the attitude towards labour immigration, PdL intended to prioritize immigration of workers from countries that were willing to ensure reciprocity of rights and were capable of preventing illegal immigrants from their entry to Italy. Thus, fear of illegal immigration (and the corresponding significance attributed to the necessity to avoid it) mainstreamed in the approach of PdL to all categories of immigrants. Even in case of legal labour immigrants from countries obeying these standards, PdL underscored a need that immigrants have to internalize the knowledge of the Italian laws, language and culture. ²⁹³

B/ Variances of transposition (open x restrictive transposition in regard to discretionary clauses)

B1 – Policy-specific variables		
4.1 Government position towards migration	1	Berlusconi IV cabinet, being in control since May 2008 till November 2011, occupied the executive power for the entire duration of the Blue Card directive transposition period. ²⁹⁴ Its two (and only ones, until the late entry of the People and Territory party into the coalition in March 2011) coalition partners were both oriented prevalently against large volumes of immigration and although not expressly denying possible positive outcomes of labour immigration, because of their populist rhetoric the dividing lines between the various categories of migrants in the Italian political discourse became heavily blurred, with the topic being frequently and significantly viewed in securitized terms. ²⁹⁵
4.2 Public position towards migration	2	In the Eurobarometer survey, 10 % of the Italian respondents considered immigration to be one of the two most pressing issues that Italy had been facing. ²⁹⁶
4.3 Level of unemployment	1	The level of unemployment in highly educated professions was 21,6 % (2010). ²⁹⁷
4.4 GINI index	1	GINI index of Italy was 34,7 (2010). ²⁹⁸
4.5 R&D expenses relative to GDP	2	The ratio of research and development expenses on GDP in Italy was 1,223 (2010). ²⁹⁹

²⁹² STRANIERI IN ITALIA. Maroni: “Non è una sanatoria ma emersione del lavoro nero.“ . [online] [visited 6.5.2020] Available at: <<https://stranieriinitalia.it/attualita/maroni-qnon-na-sanatoria-ma-emersione-del-lavoro-neroq/>>

²⁹³ INTERLEX. 2008: il programma del Popolo della libertà. [online] [visited 6.5.2020] Available at: <http://www.interlex.it/testi/progr_pdl08.htm>

²⁹⁴ GOVERNO ITALIANO. PRESIDENZA DEL CONSIGLIO DEI MINISTRI. Governo Berlusconi IV. [online] [visited 6.5.2020] Available at: <<http://www.governo.it/it/i-governi-dal-1943-ad-oggi/xvi-legislatura-dal-29-aprile-2008-al-23-dicembre-2012/governo-berlusconi>>

²⁹⁵ OPEN SOCIETY JUSTICE INITIATIVE. Italian Migrant Policy. Timeline. February 2012.

²⁹⁶ EUROPEAN COMMISSION. Standard Eurobarometer 74. Public Opinion in the European Union. Report. Autumn 2010.

²⁹⁷ EUROSTAT. Unemployment Statistics. [online] [visited 19.4.2020] Available at: <https://ec.europa.eu/eurostat/statistics-explained/index.php/Unemployment_statistics>

²⁹⁸ WORLD BANK GROUP. Data. GINI index (World Bank estimate). [online] [visited 15.4.2020] Available at: <<https://data.worldbank.org/indicator/SI.POV.GINI>>

²⁹⁹ WORLD BANK GROUP. Data. Research and development expenditure (% of GDP). [online] [visited 16.4.2020] Available at: <https://data.worldbank.org/indicator/GB.XPD.RSDV.GD.ZS?name_desc=false>

IX. MALTA

A/ Timeliness & correctness of transposition

1 – Misfit and policy preferences		
1.1 Legislative tradition in this area	1	Before the adoption of the Blue Card, Malta neither had any rules regulating conditions of entry and residence of highly skilled immigrants in place nor was in the process of drafting any legislative proposals in that direction. ³⁰⁰
1.2 Uploading national interest to EU level	2	Maltese representatives in the Council working group raised several recommendations to amend the proposal for the Blue Card. They pointed out that in some sectors relevant to the Blue Card persons usually do not possess higher education qualifications. ³⁰¹ This remark was conducive to include the option of equivalent professional experience that can be activated by the Member States as an alternative. On the contrary, the suggestion to recognize 3 years of relevant equivalent professional experience was not deemed worth adopting by most of the other fellow country delegations in the Council working group. ³⁰²
1.3 Policy misfit between EU measure and domestic measures in this area	2	Resulting from the above mentioned fact that Malta had not had any HSI scheme in place before the adoption of the Blue Card, there had not been significant volumes of provisions that the Blue Card could contradict with. Advocating an open definition of highly skilled workers, highly skilled immigration was treated indistinctly from other (general) immigration and the general position of the Maltese system towards immigration from third countries had been rather restrictive. Generally, Maltese immigration system did not allow for a single-permit procedure (applications for residence and work permits had to be filed separately). All in all, the Maltese policy misfit shall be recognized as moderate. ³⁰³
2 – National implementing instrument		
2.1 Type of implementing instrument (if more: the highest used)	1	In order to transpose the Blue Card directive, Malta adopted a law (revised Immigration Act). ³⁰⁴
2.2 Number of implementing measures	3	Malta reported 1 implementation measure enacted to transpose the Blue Card directive into its legal order. ³⁰⁵
2.3 Government effectiveness	2	Malta reached percentile 83,89 on Worldwide Governance Indicators. ³⁰⁶

³⁰⁰ EUROPEAN COMMISSION. Commission staff working document. Accompanying document to the Proposal for a Council Directive on the conditions of entry and residence of third country nationals for the purpose of highly qualified employment. Impact Assessment. SEC(2007) 1403, Brussels, 23.10.2007.

³⁰¹ COUNCIL OF THE EUROPEAN UNION. Working Party on Migration and Expulsion – Outcome of Proceedings, 13-14 May 2008. Brussels, 19 June 2008.

³⁰² COUNCIL OF THE EUROPEAN UNION. Working Party on Migration and Expulsion – Outcome of Proceedings, 4 April 2008. Brussels, 8 May 2008.

³⁰³ EUROPEAN COMMISSION. Commission staff working document. Accompanying document to the Proposal for a Council Directive on the conditions of entry and residence of third country nationals for the purpose of highly qualified employment. Impact Assessment. SEC(2007) 1403, Brussels, 23.10.2007.

³⁰⁴ EUR-Lex. National transposition measures communicated by the Member States concerning: Council Directive 2009/50/EC of 25 May 2009 on the conditions of entry and residence of third-country nationals for the purposes of highly qualified employment. [online] [visited 18.5.2020] Available at: <<https://eur-lex.europa.eu/legal-content/EN/NIM/?uri=CELEX:32009L0050>>

³⁰⁵ Ibid.

³⁰⁶ Worldwide Governance Indicators. [online] [visited 22.5.2020] Available at: <<https://info.worldbank.org/governance/wgi/Home/Reports>>

2.4 Regulatory Quality	2	Malta reached percentile 89,10 on Worldwide Governance Indicators. ³⁰⁷
3 – Veto players		
3.1 Federalism / unitarism	3	The political system of Malta is unitary and centralized. ³⁰⁸
3.2 Partisan effect – responsible ministry	3	From March 2008 to March 2013, the Mediterranean archipelago was ruled by the centre-right Christian democratic party called the Nationalist Party of Malta (Partit Nazzjonalista in Maltese). The government was presided by the prime minister Lawrence Gonzi and the minister for justice and home affairs was Carmelo Mifsud Bonnici (from March 2008 to May 2012). For the rest of the Gonzi cabinet’s term, the home affairs area that encompasses labour immigration was overseen by the prime minister Gonzi himself. Gonzi is known for his humanitarian efforts to solve migration issues in the Mediterranean sea around Malta, ³⁰⁹ he was one of the politicians who initiated voluntary migrant burden sharing agreement. ³¹⁰
3.3 Partisan effect – coalition partners	3	Malta has a bipartisan political system with the two dominant parties (Nationalist Party and Labour Party). Between 2008 and 2013, the Maltese Nationalist Party was the only party whose members composed the government. ³¹¹ Therefore, the Nationalists did not need to form any government coalition with another coalition partner whose different views could have potentially inhibited the transposition of the Blue Card directive.

B/ Variances of transposition (open x restrictive transposition in regard to discretionary clauses)

B1 – Policy-specific variables		
4.1 Government position towards migration	2	Although the Maltese prime minister Gonzi was praised for his humanitarian reaction to the migration problems and the Nationalist Party stands for human rights, immigration had been for long considered a sensitive political challenge for Malta – which is also a reason why Malta had entered into a couple of agreements with Italy to stipulate that the Italian authorities will receive migrants that end up helpless in the formally Maltese territorial waters. ³¹² Due to the limited administrative capacities, Malta was afraid of migratory influx of a large scale. ³¹³ Although such concerns were unfounded in case of highly skilled immigration, still the Maltese authorities were afraid that the legal labour migrants could be accompanied by illegal ones and exert an excessive burden on Malta. ³¹⁴ Thus, the position of Malta towards migration can be considered as rather reluctant.

³⁰⁷ Ibid.

³⁰⁸ LIJPHART, A. Patterns of Democracy. Government Forms and Performance in Thirty-Six Countries. Second edition. Yale University Press, 2012.

³⁰⁹ MALTA INDEPENDENT. Lawrence Gonzi an exemplary EU leader, Greek PM says. . [online] [visited 20.5.2020] Available at: <<https://www.independent.com.mt/articles/2012-11-15/news/lawrence-gonzi-an-exemplary-eu-leader-greek-pm-says-392527874/>>

³¹⁰ MALTA INDEPENDENT. Irregular Migration: Interior ministers approve burden sharing pact. [online] [visited 20.5.2020] Available at: <<https://www.independent.com.mt/articles/2008-09-26/news/irregular-migration-interior-ministers-approve-burden-sharing-pact-213693/>>

³¹¹ SLOMP, H. Europe, A Political Profile. An American Companion to European Politics. Volume 1. Santa Barbara-Denver-Oxford: ABC-CLIO, 2012.

³¹² MALTA TODAY. Gonzi to discuss illegal immigration with Berlusconi. [online] [visited 20.5.2020] Available at: <<https://www.maltatoday.com.mt/news/national/2317/gonzi-to-discuss-illegal-immigration-with-berlusconi#.XunyTUUzZPY>>

³¹³ TIMES OF MALTA. Malta facing ‘enormous’ immigration crisis. [online] [visited 20.5.2020] Available at: <<https://timesofmalta.com/articles/view/malta-facing-enormous-immigration-crisis-gonzi.358135>>

³¹⁴ FINANCIAL TIMES. Malta pleads for help with illegal migrants. [online] [visited 20.5.2020] Available at: <<https://www.ft.com/content/bff35d4a-2a24-11dc-9208-000b5df10621>>

4.2 Public position towards migration	1	In the Eurobarometer survey, 16 % of the Maltese respondents considered immigration to be one of the two most pressing issues that Malta had been facing. ³¹⁵
4.3 Level of unemployment	3	The level of unemployment in highly educated professions was 13,5 % (2010). ³¹⁶
4.4 GINI index	3	GINI index of Malta was 29 (2010). ³¹⁷
4.5 R&D expenses relative to GDP	1	The ratio of research and development expenses on GDP in Malta was 0,607 (2010). ³¹⁸

X. NETHERLANDS

A/ Timeliness & correctness of transposition

1 – Misfit and policy preferences		
1.1 Legislative tradition in this area	3	Before the adoption of the Blue Card directive, the Netherlands had in place the national HSI immigration policy that set specific rules for entry and residence of highly qualified immigrants and had prepared specific drafts for its revision. ³¹⁹
1.2 Uploading national interest to EU level	2	The Netherlands was also among the countries with moderate level of success in terms of uploading the national preferences on the EU level during the Council working party negotiations. Dutch representatives managed to ensure co-existence of national HSI schemes. ³²⁰ The Netherlands also drove through the clarification that none of the equal treatment rights can lead to an extension of a right of residence for the Blue Card holder. ³²¹ On the other hand, the Dutch experts disagreed with the length of the internal mobility limitation of 2 years and neither did they support the increase to 5 years of professional experience as an alternative to educational qualifications. ³²² Dutch representatives also suggested a concept of EU Blue Card Commuter to cover the cases when a person, while living in a border area of a country A, commutes on a daily basis to exercise his/her job in a country B. This proposal, however, did not meet sufficient support to be included into the final version of the Blue Card directive. ³²³
1.3 Policy misfit between EU measure and domestic measures in this area	3	The Netherlands had developed a sophisticated and successful HSI scheme even before the adoption of the Blue Card. Despite the differences caused by the resulting competition of the Dutch national HSI system and the EU Blue Card, one could observe a significant overlap between the two. Dutch lawmakers resorted to a single-permit system and in terms of the application criteria, educational qualifications and professional experience played a decisive role.

³¹⁵ EUROPEAN COMMISSION. Standard Eurobarometer 74. Public Opinion in the European Union. Report. Autumn 2010.

³¹⁶ EUROSTAT. Unemployment Statistics. [online] [visited 19.4.2020] Available at: <https://ec.europa.eu/eurostat/statistics-explained/index.php/Unemployment_statistics>

³¹⁷ WORLD BANK GROUP. Data. GINI index (World Bank estimate). [online] [visited 15.4.2020] Available at: <<https://data.worldbank.org/indicator/SI.POV.GINI>>

³¹⁸ WORLD BANK GROUP. Data. Research and development expenditure (% of GDP). [online] [visited 16.4.2020] Available at: <https://data.worldbank.org/indicator/GB.XPD.RSDV.GD.ZS?name_desc=false>

³¹⁹ EUROPEAN COMMISSION. Commission staff working document. Accompanying document to the Proposal for a Council Directive on the conditions of entry and residence of third country nationals for the purpose of highly qualified employment. Impact Assessment. SEC(2007) 1403, Brussels, 23.10.2007.

³²⁰ COUNCIL OF THE EUROPEAN UNION. Working Party on Migration and Expulsion – Outcome of Proceedings, 4 April 2008. Brussels, 8 May 2008.

³²¹ Ibid.

³²² COUNCIL OF THE EUROPEAN UNION. Working Party on Migration and Expulsion – Outcome of Proceedings, 13-14 May 2008. Brussels, 19 June 2008.

³²³ COUNCIL OF THE EUROPEAN UNION. Working Party on Migration and Expulsion – Outcome of Proceedings, 28-29 July 2008. Brussels, 1 August 2008.

		Similarities could be found also in the Dutch willingness to process in-country requests and provisions enabling internal mobility of HSMs, granting them period of protection in case of temporary loss of job or unemployment and entitling their family members to more favourable family reunification provisions. Thus, the Netherlands encountered a relatively low level of policy misfit. ³²⁴
2 – National implementing instrument		
2.1 Type of implementing instrument (if more: the highest used)	2	In order to transpose the Blue Card, the Netherlands adopted 2 transposition measures of lower legal force – decisions (besluit) amending the Aliens Decree and the Civic Integration Decree. ³²⁵
2.2 Number of implementing measures	3	The Netherlands reported 2 implementation measures enacted to transpose the Blue Card directive into its legal order. ³²⁶
2.3 Government effectiveness	3	The Netherlands reached percentile 96,68 on Worldwide Governance Indicators. ³²⁷
2.4 Regulatory Quality	3	The Netherlands reached percentile 97,16 on Worldwide Governance Indicators. ³²⁸
3 – Veto players		
3.1 Federalism / unitarism	2	The Netherlands has a semi-federal political system. ³²⁹
3.2 Partisan effect – responsible ministry	3	During the office term of the Balkenende IV cabinet (February 2007-October 2010), the post of a state secretary for immigration and asylum agenda was held by Nebahat Albayrak of the Labour Party (Partij van de Arbeid). After her appointment, she became the first Muslim to hold an office in a Dutch cabinet, for what she was criticized mostly by the representative of the right-wing Party for Freedom. They accused her of arbitrarily misusing her powers to reverse decisions of the Dutch immigration authorities. ³³⁰ Despite these accusations (that had not been proven), she had a positive attitude towards labour immigrants from the third countries. ³³¹
3.3 Partisan effect – coalition partners	3	During both of the cabinets' terms, the coalition partners represented rather affirmative voices in the political discourse on labour immigration. Both the Christian Democratic Appeal and the Christian Union, parties that alongside the Labour Party together composed the Balkenende IV cabinet ³³² were endorsing policies with many favourable provisions to attract third-country labour immigrants. ³³³ This remained true also for the subsequent centre-right Rutte I cabinet (in office October 2010-November 2012), entailing the Party for Freedom and Democracy and again the Christian Democratic Appeal. ³³⁴

³²⁴ EUROPEAN COMMISSION. Commission staff working document. Accompanying document to the Proposal for a Council Directive on the conditions of entry and residence of third country nationals for the purpose of highly qualified employment. Impact Assessment. SEC(2007) 1403, Brussels, 23.10.2007.

³²⁵ EUR-Lex. National transposition measures communicated by the Member States concerning: Council Directive 2009/50/EC of 25 May 2009 on the conditions of entry and residence of third-country nationals for the purposes of highly qualified employment. [online] [visited 18.5.2020] Available at: <<https://eur-lex.europa.eu/legal-content/EN/NIM/?uri=CELEX:32009L0050>>

³²⁶ Ibid.

³²⁷ Worldwide Governance Indicators. [online] [visited 22.5.2020] Available at: <<https://info.worldbank.org/governance/wgi/Home/Reports>>

³²⁸ Ibid.

³²⁹ LIJPHART, A. Patterns of Democracy. Government Forms and Performance in Thirty-Six Countries. Second edition. Yale University Press, 2012.

³³⁰ RELIGIONS NEWS BLOG. New Dutch Muslim Cabinet minister accuses lawmaker of racially motivated political attacks. [online] [visited 29.4.2020] Available at: <<https://www.religionnewsblog.com/17666/new-dutch-muslim-cabinet-minister-accuses-lawmaker-of-rationally-motivated-political-attacks>>

³³¹ TWEDE KAMER. Europadebat. 6 November 2008.

³³² Coalitieakkoord tussen de Tweede Kamerfracties van CDA, PvdA en ChristenUnie. 7 February 2007.

³³³ TWEDE KAMER. Tweede Kamer der Staten-Generaal. Vergaderjaar 2008-2009, 23 490, nr. 557.

³³⁴ Vrijheid en verantwoordelijkheid. Regeerakkoord VVD-CDA.

B/ Variances of transposition (open x restrictive transposition in regard to discretionary clauses)

B1 – Policy-specific variables		
4.1 Government position towards migration	2	The coalition agreement of the Balkenende IV cabinet declared the will of the coalition partners to involve in 'more European cooperation in (...) asylum and migration policy'. ³³⁵ Although this might sound as a satisfactory starting point for a smooth implementation of the Blue Card, on a different place of the text the Dutch policymakers indicated their concerns regarding the possible unwelcome interference of the EU-level legislation with the affairs that the Netherlands would have preferred to solve on a domestic level: 'The position of the national parliaments with regard to the subsidiarity test must be determined (for example with a 'red card procedure'). ³³⁶ This hints at what later proved to be the case – while the Dutch are among the greatest supporters of labour immigration per se, when it comes to its realisation they prefer to prioritize their own national HSI scheme. ³³⁷
4.2 Public position towards migration	2	In the Eurobarometer survey, 12 % of the Dutch respondents considered immigration to be one of the two most pressing issues that the Netherlands had been facing. ³³⁸
4.3 Level of unemployment	3	The level of unemployment in highly educated professions was 13,2 % (2010). ³³⁹
4.4 GINI index	3	GINI index of the Netherlands was 27,8 (2010). ³⁴⁰
4.5 R&D expenses relative to GDP	2	The ratio of research and development expenses on GDP in the Netherlands was 1,704 (2010). ³⁴¹

XI. POLAND

A/ Timeliness & correctness of transposition

1 – Misfit and policy preferences		
1.1 Legislative tradition in this area	1	Before the adoption of the Blue Card, Poland neither had any rules regulating conditions of entry and residence of highly skilled immigrants in place nor was in the process of drafting any legislative proposals in that direction. ³⁴²
1.2 Uploading national interest to EU level	2	Poland achieved a partial success in the Council working group negotiations. Its opinion that the duration of the equivalent professional experience should be at least five years was followed in the final version of the proposal. Also the Community preference principle – and the corresponding option of the Member States to prioritize workforce from the other EU Member States – was included

³³⁵ Coalitieakkoord tussen de Tweede Kamerfracties van CDA, PvdA en ChristenUnie. 7 February 2007.

³³⁶ Ibid.

³³⁷ TWEDE KAMER. Tweede Kamer der Staten-Generaal. Vergaderjaar 2006-2007, 19 637 en 23 490, nr. 1170.

³³⁸ EUROPEAN COMMISSION. Standard Eurobarometer 74. Public Opinion in the European Union. Report. Autumn 2010.

³³⁹ EUROSTAT. Unemployment Statistics. [online] [visited 19.4.2020] Available at: <https://ec.europa.eu/eurostat/statistics-explained/index.php/Unemployment_statistics>

³⁴⁰ WORLD BANK GROUP. Data. GINI index (World Bank estimate). [online] [visited 15.4.2020] Available at: <<https://data.worldbank.org/indicator/SI.POV.GINI>>

³⁴¹ WORLD BANK GROUP. Data. Research and development expenditure (% of GDP). [online] [visited 16.4.2020] Available at: <https://data.worldbank.org/indicator/GB.XPD.RSDV.GD.ZS?name_desc=false>

³⁴² EUROPEAN COMMISSION. Commission staff working document. Accompanying document to the Proposal for a Council Directive on the conditions of entry and residence of third country nationals for the purpose of highly qualified employment. Impact Assessment. SEC(2007) 1403, Brussels, 23.10.2007.

		in the final version of the directive. ³⁴³ Furthermore, the drafters also agreed with another Polish preference – that in case the Blue Card holder seeks social assistance during the period of unemployment, that should serve as a reason for withdrawing the Blue Card. ³⁴⁴ On the other hand, majority of the other delegations disagreed with the Polish conviction that the possibility to file an application for a Blue Card while already being legally present on the territory could be misused to regularize stay of illegal immigrants. ³⁴⁵ Similarly, the Polish suggestion to set the maximal length of the Blue Card validity at 5 years was not followed. ³⁴⁶
1.3 Policy misfit between EU measure and domestic measures in this area	2	Exposing only a limited interest in highly skilled immigration policies, Poland had treated this segment of migrants within the general immigration schemes in the period before the adoption of the Blue Card. Among aspects conducive to seamless transposition were the open definition of highly skilled immigrants and the reliance on educational qualifications and professional experience as criteria to be taken into account when deciding on the application for a residence permit and/or work permit. The fact that the Polish legislation had not provided basis for a single-permit was an inhibiting factor, contributing to the overall moderate policy misfit. ³⁴⁷
2 – National implementing instrument		
2.1 Type of implementing instrument (if more: the highest used)	1	In order to transpose the Blue Card directive, Poland adopted a law (the law amending the law on foreigners). ³⁴⁸
2.2 Number of implementing measures	3	Poland reported 1 implementation measure enacted to transpose the Blue Card directive into its legal order. ³⁴⁹
2.3 Government effectiveness	1	Poland reached percentile 71,09 on Worldwide Governance Indicators. ³⁵⁰
2.4 Regulatory Quality	1	Poland reached percentile 78,20 on Worldwide Governance Indicators. ³⁵¹
3 – Veto players		
3.1 Federalism / unitarism	3	The political system of Poland is unitary and centralized. ³⁵²
3.2 Partisan effect – responsible ministry	2	Immigration dossier formed a part of the Ministry of Interior and Administration agenda. The post of this minister was held by Grzegorz Schetyna (November 2011-October 2009). In the subsequent period (October 2009-November 2011), Schetyna was replaced by an independent politician Jerzy Miller. Labour immigration from third countries maintained a rather low profile in the Polish

³⁴³ COUNCIL OF THE EUROPEAN UNION. Working Party on Migration and Expulsion – Outcome of Proceedings, 4 April 2008. Brussels, 8 May 2008.

³⁴⁴ COUNCIL OF THE EUROPEAN UNION. Working Party on Migration and Expulsion – Outcome of Proceedings, 13-14 May 2008. Brussels, 19 June 2008.

³⁴⁵ COUNCIL OF THE EUROPEAN UNION. Working Party on Migration and Expulsion – Outcome of Proceedings, 4 April 2008. Brussels, 8 May 2008.

³⁴⁶ COUNCIL OF THE EUROPEAN UNION. Working Party on Migration and Expulsion – Outcome of Proceedings, 3-4 July 2008. Brussels, 24 July 2008.

³⁴⁷ EUROPEAN COMMISSION. Commission staff working document. Accompanying document to the Proposal for a Council Directive on the conditions of entry and residence of third country nationals for the purpose of highly qualified employment. Impact Assessment. SEC(2007) 1403, Brussels, 23.10.2007.

³⁴⁸ EUR-Lex. National transposition measures communicated by the Member States concerning: Council Directive 2009/50/EC of 25 May 2009 on the conditions of entry and residence of third-country nationals for the purposes of highly qualified employment. [online] [visited 18.5.2020] Available at: <<https://eur-lex.europa.eu/legal-content/EN/NIM/?uri=CELEX:32009L0050>>

³⁴⁹ Ibid.

³⁵⁰ Worldwide Governance Indicators. [online] [visited 22.5.2020] Available at: <<https://info.worldbank.org/governance/wgi/Home/Reports>>

³⁵¹ Ibid.

³⁵² LIJPHART, A. Patterns of Democracy. Government Forms and Performance in Thirty-Six Countries. Second edition. Yale University Press, 2012.

		political discourse and did not belong among issues that would extremely polarize the cabinet. ³⁵³
3.3 Partisan effect – coalition partners	2	During the first cabinet of Donald Tusk (November 2007-November 2011), the coalition government encompassed only two parties: the liberal-conservative Civic Platform and the agrarian Polish People’s Party. The Civic Platform owned vast majority of seats in Sejm and outnumbered its coalition counterpart significantly. The Polish People’s Party did not have any significant stake in immigration policy from third countries and supported its coalition partner – the Civic Platform – regarding this agenda. ³⁵⁴

B/ Variances of transposition (open x restrictive transposition in regard to discretionary clauses)

B1 – Policy-specific variables		
4.1 Government position towards migration	2	Labour immigration of third-country nationals had not represented a significant dividing issue for the Polish public, the migration policy of the first Tusk cabinet mostly dealt with labour emigration of the Polish nationals to the Western European EU Member States. The government strived for creation of attractive schemes that would incentivize its fellow nationals in diasporas abroad to return back to Poland (such as the Powroty programme). As far as labour immigration from non-EU countries was concerned, Poland had had a rather satisfactory experience with Ukrainian seasonal workers who crossed the Polish border to carry out low-paid manual labour in the countryside. In other words, external labour immigration in Polish case helped to fill the gap caused by young Poles who emigrated westwards. This positive economic experience helped to partially overcome the concerns spread among Polish Catholic public that had feared potential cultural tensions in case of immigration from third countries. In sum, Polish governmental stance towards labour immigration was neither clearly supportive, nor clearly dismissive. ³⁵⁵
4.2 Public position towards migration	3	In the Eurobarometer survey, 1 % of the Polish respondents considered immigration to be one of the two most pressing issues that Poland had been facing. ³⁵⁶
4.3 Level of unemployment	2	The level of unemployment in highly educated professions was 15,4 % (2010). ³⁵⁷
4.4 GINI index	1	GINI index of Poland was 33,2 (2010). ³⁵⁸
4.5 R&D expenses relative to GDP	1	The ratio of research and development expenses on GDP in Poland was 0,721 (2010). ³⁵⁹

³⁵³ PLATFORMA OBYWATELSKA. “By żyło się lepiej. Wszystkim!” Program wyborczy Platformy obywatelskiej. Warszawa 2007.

³⁵⁴ Opinia do ustawy o zmianie ustawy o cudzoziemcach oraz ustawy o promocji zatrudnienia i instytucjach rynku pracy. Warszawa, 27.3.2012.

³⁵⁵ EUROPEJSKA SIEĆ MIGRACYJNA (EMN). Raport polityczny. 2011.

³⁵⁶ EUROPEAN COMMISSION. Standard Eurobarometer 74. Public Opinion in the European Union. Report. Autumn 2010.

³⁵⁷ EUROSTAT. Unemployment Statistics. [online] [visited 19.4.2020] Available at: <https://ec.europa.eu/eurostat/statistics-explained/index.php/Unemployment_statistics>

³⁵⁸ WORLD BANK GROUP. Data. GINI index (World Bank estimate). [online] [visited 15.4.2020] Available at: <<https://data.worldbank.org/indicator/SI.POV.GINI>>

³⁵⁹ WORLD BANK GROUP. Data. Research and development expenditure (% of GDP). [online] [visited 16.4.2020] Available at: <https://data.worldbank.org/indicator/GB.XPD.RSDV.GD.ZS?name_desc=false>

XII. SLOVAKIA

A/ Timeliness & correctness of transposition

1 – Misfit and policy preferences		
1.1 Legislative tradition in this area	1	Before the adoption of the Blue Card, Slovakia neither had any rules regulating conditions of entry and residence of highly skilled immigrants in place nor was in the process of drafting any legislative proposals in that direction. ³⁶⁰
1.2 Uploading national interest to EU level	1	Slovak delegation in the Council working group delivered several proposals for amending the various Blue Card directive provisions. However, almost all of their points faced prevalent opposition and were not upheld. Slovakia for instance raised a requirement of providing evidence of having an appropriate accommodation and sufficient resources, that was rejected with reference to the argument that the former is unfair because in majority of cases the applicant will be residing outside of the territory of the Member State concerned at the moment of filing an application and the latter is superfluous because fulfilment of this condition is already evidenced by the ability to pass the salary threshold. ³⁶¹ Moreover, Slovakia also unsuccessfully suggested to use the minimal wage instead of the average gross monthly wage for the calculation of the national salary threshold. ³⁶²
1.3 Policy misfit between EU measure and domestic measures in this area	2	Slovakia also followed the pattern of most of the countries in the South-Eastern Europe by not having any specific scheme for highly skilled immigration in place before 2009. Despite this, its general immigration legislation laid a relatively solid foundation on which the Blue Card later could be built. This basis included open definition of highly skilled immigration and a single-permit allowing would-be immigrants to apply both for residence and work permit simultaneously. ³⁶³
2 – National implementing instrument		
2.1 Type of implementing instrument (if more: the highest used)	1	In order to transpose the Blue Card directive, Slovakia adopted 18 laws, in most of the cases amending the earlier legislation. ³⁶⁴

³⁶⁰ EUROPEAN COMMISSION. Commission staff working document. Accompanying document to the Proposal for a Council Directive on the conditions of entry and residence of third country nationals for the purpose of highly qualified employment. Impact Assessment. SEC(2007) 1403, Brussels, 23.10.2007.

³⁶¹ COUNCIL OF THE EUROPEAN UNION. Working Party on Migration and Expulsion – Outcome of Proceedings, 4 April 2008. Brussels, 8 May 2008.

³⁶² COUNCIL OF THE EUROPEAN UNION. Working Party on Migration and Expulsion – Outcome of Proceedings, 3-4 July 2008. Brussels, 24 July 2008.

³⁶³ EUROPEAN COMMISSION. Commission staff working document. Accompanying document to the Proposal for a Council Directive on the conditions of entry and residence of third country nationals for the purpose of highly qualified employment. Impact Assessment. SEC(2007) 1403, Brussels, 23.10.2007.

³⁶⁴ EUR-Lex. National transposition measures communicated by the Member States concerning: Council Directive 2009/50/EC of 25 May 2009 on the conditions of entry and residence of third-country nationals for the purposes of highly qualified employment. [online] [visited 18.5.2020] Available at: <<https://eur-lex.europa.eu/legal-content/EN/NIM/?uri=CELEX:32009L0050>>

2.2 Number of implementing measures	1	Slovakia reported 18 implementation measures enacted to transpose the Blue Card directive into its legal order. ³⁶⁵
2.3 Government effectiveness	2	Slovakia reached percentile 75,83 on Worldwide Governance Indicators. ³⁶⁶
2.4 Regulatory Quality	2	Slovakia reached percentile 80,09 on Worldwide Governance Indicators. ³⁶⁷
3 – Veto players		
3.1 Federalism / unitarism	3	The political system of Slovakia is unitary and centralized. ³⁶⁸
3.2 Partisan effect – responsible ministry	2	Slovak ministry of interior is in charge of the immigration agenda. Between July 2006 and July 2007, the minister of interior was Robert Kaliňák of the SMER-Social Democracy. After his office, in the term lasting from July 2010 to April 2012, the mandate was exercised by Daniel Lipšic of the Christian-democratic movement (KDH). ³⁶⁹ Despite the minor objections concerning responsibility towards the domestic workforce in case of the former and concerning potential cultural sensitiveness in case of the latter, none of them was principally against the highly-skilled immigration from beyond the EU. ³⁷⁰
3.3 Partisan effect – coalition partners	2	Slovak political landscape during the transposition period of the Blue Card had been turbulent. Coalition partners of the Fico I cabinet (the populist party LS-HZDS and the nationalist SNS) demonstrated mostly an anti-immigrationist and in case of SNS even xenophobic tendencies towards foreigners from non-EU countries, which rendered finding agreements among the government coalition in this area more difficult. On the contrary, the coalition partners of the subsequent Radičová cabinet (Christian democratic KDH, conservative-liberal SaA and the Most-Híd group representing interests of the Hungarian minority living in Slovakia) stood for similar attitudes in third-country labour immigration issues and were able to achieve a compromise with the main coalition party with greater smoothness. ³⁷¹

B/ Variances of transposition (open x restrictive transposition in regard to discretionary clauses)

B1 – Policy-specific variables		
4.1 Government position towards migration	2	In the time period in question, Slovakia had two ideologically quite distant cabinets. Firstly a populist, left-wing government accompanied by the nationalist SNS party that naturally demonstrated anti-immigrationist views. ³⁷² Then, after the elections, this cabinet was substituted by the coalition government of the four parties that mostly stood for liberal-conservative, Christian democratic and culturally tolerant policies. ³⁷³ While the former cabinet's attitude regarding labour immigration can be classified as slightly discouraging and the latter

³⁶⁵ Ibid.

³⁶⁶ Worldwide Governance Indicators. [online] [visited 22.5.2020] Available at: <<https://info.worldbank.org/governance/wgi/Home/Reports>>

³⁶⁷ Ibid.

³⁶⁸ LIJPHART, A. Patterns of Democracy. Government Forms and Performance in Thirty-Six Countries. Second edition. Yale University Press, 2012.

³⁶⁹ KDH. "Cesta pre Slovensko." Volebný program Kresťanskodemokratického hnutia 2010.

³⁷⁰ MINISTERSTVO ZAHRANIČNÝCH VECÍ SLOVENSKEJ REPUBLIKY. Zahraničná politika v roku 2010. Výročná správa 2010.

³⁷¹ SME. Koaličná zmluva, úplne znenie. [online] [visited 18.5.2020] Available at: <<https://domov.sme.sk/c/5454728/koalicna-zmluva-uplne-znenie.html>>

³⁷² TREND. Ficova vláda odkryla svoj program. [online] [visited 18.5.2020] Available at: <<https://www.trend.sk/spravy/ficova-vlada-odkryla-svoj-program>>

³⁷³ VLÁDA SLOVENSKEJ REPUBLIKY. "Občianska zodpovednosť a spolupráca." Programové vyhlásenie vlády Slovenskej republiky na obdobie rokov 2010-2014.

		cabinet's one as slightly encouraging, overall the position of Slovak government towards immigration was moderate.
4.2 Public position towards migration	3	In the Eurobarometer survey, 2 % of the Slovak respondents considered immigration to be one of the two most pressing issues that Slovakia had been facing. ³⁷⁴
4.3 Level of unemployment	1	The level of unemployment in highly educated professions was 17,8 % (2010). ³⁷⁵
4.4 GINI index	3	GINI index of Slovakia was 27,3 (2010). ³⁷⁶
4.5 R&D expenses relative to GDP	1	The ratio of research and development expenses on GDP in Slovakia was 0,616 (2010). ³⁷⁷

XIII. SPAIN

A/ Timeliness & correctness of transposition

1 – Misfit and policy preferences		
1.1 Legislative tradition in this area	2	Before the adoption of the Blue Card directive, Spain had in place schemes to regulate entry and residence only of certain categories of highly skilled immigrants. ³⁷⁸
1.2 Uploading national interest to EU level	1	Spanish preferences revealed during the negotiations of the Council working party differed manifestly from the final version that was adopted by the delegations. Spain disagreed with the concept of national salary threshold and insisted that job-based criteria such as salary earned for specific categories of jobs should replace the universal threshold. ³⁷⁹ Also, Spaniards pointed on a need to include a right to strike among the rights enlisted in the Blue Card equal treatment provisions, that the rest of the delegations disagreed with. ³⁸⁰ It further argued that the temporary limit of an equivalent professional experience should be set at 4 years and that the initial period of BC validity should last only one year, none of that the other delegations in the working group supported. ³⁸¹
1.3 Policy misfit between EU measure and domestic measures in this area	1	The Spanish legislation in the area of highly skilled immigration differed vastly from the requirements of the Blue Card directive. Spain did not have a single-permit procedure in place before 2009, declined the option to file an application while already being present on its territory and disabled internal mobility of highly skilled immigrants. Furthermore, its legislation did not count on any

³⁷⁴ EUROPEAN COMMISSION. Standard Eurobarometer 74. Public Opinion in the European Union. Report. Autumn 2010.

³⁷⁵ EUROSTAT. Unemployment Statistics. [online] [visited 19.4.2020] Available at: <https://ec.europa.eu/eurostat/statistics-explained/index.php/Unemployment_statistics>

³⁷⁶ WORLD BANK GROUP. Data. GINI index (World Bank estimate). [online] [visited 15.4.2020] Available at: <<https://data.worldbank.org/indicator/SI.POV.GINI>>

³⁷⁷ WORLD BANK GROUP. Data. Research and development expenditure (% of GDP). [online] [visited 16.4.2020] Available at: <https://data.worldbank.org/indicator/GB.XPD.RSDV.GD.ZS?name_desc=false>

³⁷⁸ EUROPEAN COMMISSION. Commission staff working document. Accompanying document to the Proposal for a Council Directive on the conditions of entry and residence of third country nationals for the purpose of highly qualified employment. Impact Assessment. SEC(2007) 1403, Brussels, 23.10.2007.

³⁷⁹ COUNCIL OF THE EUROPEAN UNION. Working Party on Migration and Expulsion – Outcome of Proceedings, 4 April 2008. Brussels, 8 May 2008.

³⁸⁰ Ibid.

³⁸¹ COUNCIL OF THE EUROPEAN UNION. Working Party on Migration and Expulsion – Outcome of Proceedings, 13-14 May 2008. Brussels, 19 June 2008.

		protective period in case of temporary loss of employment, neither did it provide any more favourable terms concerning family reunification. ³⁸²
2 – National implementing instrument		
2.1 Type of implementing instrument (if more: the highest used)	1	In order to transpose the Blue Card directive, Spain adopted a law (the law amending the law on foreigners). ³⁸³
2.2 Number of implementing measures	3	Spain reported 1 implementation measure enacted to transpose the Blue Card directive into its legal order. ³⁸⁴
2.3 Government effectiveness	2	Spain reached percentile 81,52 on Worldwide Governance Indicators. ³⁸⁵
2.4 Regulatory Quality	2	Spain reached percentile 81,52 on Worldwide Governance Indicators. ³⁸⁶
3 – Veto players		
3.1 Federalism / unitarism	2	Spain has a semi-federal political system, its autonomous communities can enjoy relatively high degree of legislative powers in certain areas. ³⁸⁷
3.2 Partisan effect – responsible ministry	2	Ministerial post was firstly held by Celestino Corbacho (April 2008-October 2010) of the Catalan socialists, who was later succeeded by Valeriano Gómez of PSOE. The PSOE electoral manifesto regarding highly skilled immigration stated the following objective: 'Integrate into our immigration policy hiring of workers specialized or highly qualified to contribute to improving the competitiveness of Spanish companies; the socialist government will facilitate the hiring of foreigners in whose professional activity there are special reasons of scientific, economic or social interest and will streamline the recognition procedures for their corresponding degree.' ³⁸⁸ The approach of the ministry to the labour immigration was a pragmatic one. ³⁸⁹
3.3 Partisan effect – coalition partners	3	The second Zapatero cabinet, in office from April 2008 to December 2011, included only two parties – moreover the parties that were closely affiliated with one another – namely the Spanish Socialist Workers' Party (Partido Socialista Obrero Español, abbr. PSOE) and the Socialists' Party of Catalonia (Partido de los Socialistas de Cataluña, abbr. PSC), its sister party. Given both the institutional and ideological proximity of the two parties, the potential for emergence of dispute between the coalition partners was rendered low.

B/ Variances of transposition (open x restrictive transposition in regard to discretionary clauses)

B1 – Policy-specific variables

³⁸² EUROPEAN COMMISSION. Commission staff working document. Accompanying document to the Proposal for a Council Directive on the conditions of entry and residence of third country nationals for the purpose of highly qualified employment. Impact Assessment. SEC(2007) 1403, Brussels, 23.10.2007.

³⁸³ EUR-Lex. National transposition measures communicated by the Member States concerning: Council Directive 2009/50/EC of 25 May 2009 on the conditions of entry and residence of third-country nationals for the purposes of highly qualified employment. [online] [visited 18.5.2020] Available at: <<https://eur-lex.europa.eu/legal-content/EN/NIM/?uri=CELEX:32009L0050>>

³⁸⁴ Ibid.

³⁸⁵ Worldwide Governance Indicators. [online] [visited 22.5.2020] Available at: <<https://info.worldbank.org/governance/wgi/Home/Reports>>

³⁸⁶ Ibid.

³⁸⁷ LIJPHART, A. Patterns of Democracy. Government Forms and Performance in Thirty-Six Countries. Second edition. Yale University Press, 2012.

³⁸⁸ PSOE. Motivos para creer. Programa electoral. Elecciones generales 2008.

³⁸⁹ GOBIERNO DE ESPAÑA. MINISTERIO DE TRABAJO E INMIGRACIÓN. Migration Policy in Spain. Madrid, 12.2.2009; GOBIERNO DE ESPAÑA. MINISTERIO DE TRABAJO E INMIGRACIÓN. Managing Labour Migration in Spain. Madrid, 19.11.2010.

4.1 Government position towards migration	1	Generally, Spanish government did not conceal that its attention was not primarily focused on attracting labour immigrants from third countries: 'If the policy of the last legislature has focused on ensuring the forms of regular entry to Spain and access to our society, the policy of the next legislature will be above all that of guaranteeing coexistence and development for all those who live in Spain.' ³⁹⁰
4.2 Public position towards migration	2	In the Eurobarometer survey, 8 % of the Spanish respondents considered immigration to be one of the two most pressing issues that Spain had been facing. ³⁹¹
4.3 Level of unemployment	1	The level of unemployment in highly educated professions was 19,9 % (2010). ³⁹²
4.4 GINI index	1	GINI index of Spain was 35,2 (2010). ³⁹³
4.5 R&D expenses relative to GDP	2	The ratio of research and development expenses on GDP in Spain was 1,35 (2010). ³⁹⁴

XIV. SWEDEN

A/ Timeliness & correctness of transposition

1 – Misfit and policy preferences		
1.1 Legislative tradition in this area	2	Although Sweden did not have any national scheme for entry and residence in place in the period before the adoption of the Blue Card directive, its legislation provided for exceptions for certain categories of professionals. Moreover, the possibility to uphold reform proposals to introduce special legal provisions aimed at attracting highly skilled workers from third countries had been under discussion and a designated parliamentary committee was mandated with a task to examine such option. ³⁹⁵
1.2 Uploading national interest to EU level	1	Sweden did not manage to ensure that majority of its remarks would become upheld by the other delegations during the Council working group negotiations. It suggested, unsuccessfully, to devise two completely different profiles of Blue Card holders – one based on educational qualifications and the other one on professional experience. ³⁹⁶ Swedish delegation also queried why beneficiaries of international protection and seasonal workers were excluded from the scope of the directive, but their objection did not result in any amendment. ³⁹⁷ Furthermore, the Swedish delegation pointed on the length of several time periods, proposing to shorten the period after that the Blue Card holder and his family members can move to a second Member State and kept insisting on having only three years of equivalent professional experience instead of five years as an alternative to the

³⁹⁰ PSOE. Motivos para crear. Programa electoral. Elecciones generales 2008. See also: BALCH, A. Managing labour migration in Europe: ideas knowledge and policy change. Center for Comparative Immigration Studies, Working Paper 184, January 2010.

³⁹¹ EUROPEAN COMMISSION. Standard Eurobarometer 74. Public Opinion in the European Union. Report. Autumn 2010.

³⁹² EUROSTAT. Unemployment Statistics. [online] [visited 19.4.2020] Available at: <https://ec.europa.eu/eurostat/statistics-explained/index.php/Unemployment_statistics>

³⁹³ WORLD BANK GROUP. Data. GINI index (World Bank estimate). [online] [visited 15.4.2020] Available at: <<https://data.worldbank.org/indicator/SI.POV.GINI>>

³⁹⁴ WORLD BANK GROUP. Data. Research and development expenditure (% of GDP). [online] [visited 16.4.2020] Available at: <https://data.worldbank.org/indicator/GB.XPD.RSDV.GD.ZS?name_desc=false>

³⁹⁵ EUROPEAN COMMISSION. Commission staff working document. Accompanying document to the Proposal for a Council Directive on the conditions of entry and residence of third country nationals for the purpose of highly qualified employment. Impact Assessment. SEC(2007) 1403, Brussels, 23.10.2007.

³⁹⁶ COUNCIL OF THE EUROPEAN UNION. Working Party on Migration and Expulsion – Outcome of Proceedings, 4 April 2008. Brussels, 8 May 2008.

³⁹⁷ Ibid.

		educational qualifications. ³⁹⁸ The standard period of validity, in the Swedish delegation's view, should have been 2-5 years instead of 1-4 years. ³⁹⁹ Finally, interestingly, Sweden suggested to introduce transposition period of three years instead of two years. ⁴⁰⁰
1.3 Policy misfit between EU measure and domestic measures in this area	1	Swedish immigration system had an open definition of highly skilled immigrants. The only option for a vast majority of highly skilled immigrants from third countries was to come via the general immigration schemes that had linked labour immigration with job offers particularly in areas of temporary shortages. The temporary nature of the Swedish immigration scheme was further emphasized by the fact that the length of work permit was limited to 18 months. Certain categories were exempted from this general regime (such as lecturing researchers). In a same vein, prospects of permanent work permits were also exclusive only to a limited list of occupations. In-country requests were not permissible under the Swedish labour immigration scheme. ⁴⁰¹
2 – National implementing instrument		
2.1 Type of implementing instrument (if more: the highest used)	1	In order to transpose the Blue Card directive, Sweden adopted 25 transposition measures, out of that 13 were laws (lagen) and 12 ordinances (förordningen). ⁴⁰²
2.2 Number of implementing measures	1	Sweden reported 25 implementation measures enacted to transpose the Blue Card directive into its legal order. ⁴⁰³
2.3 Government effectiveness	3	Sweden reached percentile 98,58 on Worldwide Governance Indicators. ⁴⁰⁴
2.4 Regulatory Quality	3	Sweden reached percentile 99,05 on Worldwide Governance Indicators. ⁴⁰⁵
3 – Veto players		
3.1 Federalism / unitarism	2	Sweden represents a hybrid model – unitary state with high level of decentralization. ⁴⁰⁶
3.2 Partisan effect – responsible ministry	3	In Sweden, the post of a minister for migration and asylum policy was occupied by Tobias Billström, who was a vocal supporter of greater emphasis put on labour immigration. Billström argued that asylum issues had been overemphasized and greater attention should be dedicated to labour immigration area. Moreover, he repeatedly presented his conviction that labour immigration can be also used in a way to support the developing countries (immigrants' countries of origin). ⁴⁰⁷

³⁹⁸ COUNCIL OF THE EUROPEAN UNION. Working Party on Migration and Expulsion – Outcome of Proceedings, 13-14 May 2008. Brussels, 19 June 2008.

³⁹⁹ COUNCIL OF THE EUROPEAN UNION. Working Party on Migration and Expulsion – Outcome of Proceedings, 3-4 July 2008. Brussels, 24 July 2008.

⁴⁰⁰ Ibid.

⁴⁰¹ EUROPEAN COMMISSION. Commission staff working document. Accompanying document to the Proposal for a Council Directive on the conditions of entry and residence of third country nationals for the purpose of highly qualified employment. Impact Assessment. SEC(2007) 1403, Brussels, 23.10.2007.

⁴⁰² EUR-Lex. National transposition measures communicated by the Member States concerning: Council Directive 2009/50/EC of 25 May 2009 on the conditions of entry and residence of third-country nationals for the purposes of highly qualified employment. [online] [visited 18.5.2020] Available at: <<https://eur-lex.europa.eu/legal-content/EN/NIM/?uri=CELEX:32009L0050>>

⁴⁰³ Ibid.

⁴⁰⁴ Worldwide Governance Indicators. [online] [visited 22.5.2020] Available at: <<https://info.worldbank.org/governance/wgi/Home/Reports>>

⁴⁰⁵ Ibid.

⁴⁰⁶ LIJPHART, A. Patterns of Democracy. Government Forms and Performance in Thirty-Six Countries. Second edition. Yale University Press, 2012.

⁴⁰⁷ BBC NEWS. 'Sweden will remain open to migrants' - migration minister Tobias Billstrom. [online] [visited 10.5.2020] Available at: <<https://www.bbc.com/news/av/world-europe-24630951/sweden-will-remain-open-to-migrants-migration-minister-tobias-billstrom>>; LSE EUROPP BLOG. Five minutes with Sweden's Minister for Migration and Asylum Policy, Tobias Billström: "Europe's relationship with North Africa when it comes to migration is something that we will have to continue to discuss." [online] [visited 10.5.2020] Available at: <<https://blogs.lse.ac.uk/europpblog/2012/06/01/five-minutes-with-swedens-minister-for-migration-and-asylum-policy-tobias-billstrom/>>; QANTARA.DE. Interview with Migration

3.3 Partisan effect – coalition partners	3	Cabinet led by the prime minister Fredrik Reinfeldt was composed of four parties that were ideologically very close to one another: a liberal conservative Moderate party (that both Reinfeldt and Billström were members of), a liberal Centre Party, the Liberal People’s Party and the Christian Democrats. The closeness of the parties was conducive to the outcome that the respective coalition partners did not embody a frequent ‘veto players’ in the immigration issues. ⁴⁰⁸
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B/ Variances of transposition (open x restrictive transposition in regard to discretionary clauses)

B1 – Policy-specific variables		
4.1 Government position towards migration	3	The stability of the government, that retained the power even after the Swedish general election in 2010, enabled it to stay in office for 8 years (from 2006 to 2014). The coalition parties, together composing the so-called ruling ‘Alliance for Sweden’, shared liberal attitudes that were anchored in the personalities of Tobias Billström and Fredrik Reinfeldt. ⁴⁰⁹ The Swedish governmental position with respect to the third-country labour immigration was clearly positive. ⁴¹⁰
4.2 Public position towards migration	2	In the Eurobarometer survey, 14 % of the Swedish respondents considered immigration to be one of the two most pressing issues that Sweden had been facing. ⁴¹¹
4.3 Level of unemployment	3	The level of unemployment in highly educated professions was 12,3 % (2010). ⁴¹²
4.4 GINI index	3	GINI index of Sweden was 27,7 (2010). ⁴¹³
4.5 R&D expenses relative to GDP	3	The ratio of research and development expenses on GDP in Sweden was 3,213 (2010). ⁴¹⁴

Minister Tobias Billström: “We Need a Common European Migration Policy.” [online] [visited 10.5.2020] Available at: <<https://en.qantara.de/content/interview-with-migration-minister-tobias-billstrom-we-need-a-common-european-migration>>.

⁴⁰⁸ THE LOCAL. Sweden in ‘historic’ deal on immigration policy. [online] [visited 14.5.2020] Available at:

<<https://www.thelocal.se/20110303/32374>>

⁴⁰⁹ REINFELDT, F., SONNEGÅRD, E.U. The Reinfeldt Initiative. A conceptual framework for a work initiative in Europe. Stockholm, June 2016.

⁴¹⁰ BERG, L., SPEHAR, A. Swimming against the tide: why Sweden supports increased labour mobility within and from outside the EU. Policy Studies, Vol. 34, No. 2, 2013; EUROPEAN MIGRATION NETWORK. EMN Policy Report 2011 – Sweden; CERNA, L. Changes in Swedish Labour Immigration Policy: A Slight Revolution? The Stockholm University Linnaeus Center for Integration Studies (SULCIS). Working Paper 2009:10, October 2010. See also: CERNA, L. Immigration Policies and the Global Competition for Talent. Palgrave Macmillan, 2016.

⁴¹¹ EUROPEAN COMMISSION. Standard Eurobarometer 74. Public Opinion in the European Union. Report. Autumn 2010.

⁴¹² EUROSTAT. Unemployment Statistics. [online] [visited 19.4.2020] Available at: <https://ec.europa.eu/eurostat/statistics-explained/index.php/Unemployment_statistics>

⁴¹³ WORLD BANK GROUP. Data. GINI index (World Bank estimate). [online] [visited 15.4.2020] Available at:

<<https://data.worldbank.org/indicator/SI.POV.GINI>>

⁴¹⁴ WORLD BANK GROUP. Data. Research and development expenditure (% of GDP). [online] [visited 16.4.2020]

Available at: <https://data.worldbank.org/indicator/GB.XPD.RSDV.GD.ZS?name_desc=false>

Appendix 2. Graphics and Figures

(a) **Blue Cards issued in the EU-24 Member States, year-by-year** (source: EUROSTAT. EU Blue Card by type of decision, occupation and citizenship. Last update: 10.9.2019.)

EU Blue Cards by type of decision, occupation and citizenship

Last update: 10.09.19

Source of data: Eurostat

CITIZEN: Total UNIT: Person DECISION: Granted ISCO08: Total

TIME	2012	2013	2014	2015	2016	2017	2018
GEO							
European Union - 28 countries	3,864 ^(d)	12,964 ^(d)	13,869 ^(d)	17,104 ^(d)	20,979 ^(d)	24,310 ^(d)	:
European Union - 27 countries (2007-2013)	3,864 ^(d)	12,954 ^(d)	13,860 ^(d)	17,072 ^(d)	20,947 ^(d)	24,276 ^(d)	:
Belgium	0	5	19	19	31	37	43
Bulgaria	15	14	21	61	115	121	126
Czechia	62	72	104	181	194	204	:
Denmark	-(d)	-(d)	-(d)	-(d)	-(d)	-(d)	:
Germany (until 1990 former territory of the FRG)	2,584	11,580	12,108	14,620	17,630	20,541	26,995
Estonia	16	12	15	19	22	14	:
Ireland	-(d)	-(d)	-(d)	-(d)	-(d)	-(d)	:
Greece	0	0	0	0	0	0	0
Spain	461	313	39	4	21	28	26
France	126	371	604	657	750	1,037	1,523
Croatia	:	10	9	32	32	29	78
Italy	6	87	165	237	254	301	462
Cyprus	0	0	0	0	0	-(d)	:
Latvia	17	10	32	87	112	201	213
Lithuania	:	26	92	128	127	144	158
Luxembourg	183	236	262	336	636	671	:
Hungary	1	4	5	15	5	9	2
Malta	0	4	2	0	12	11	15
Netherlands	1	3	8	20	42	58	119
Austria	124	108	128	140	163	177	280
Poland	2	16	46	369	673	471	1,576
Portugal	2	4	3	0	1	3	:
Romania	46	71	190	140	92	118	98
Slovenia	9	3	8	15	19	22	37
Slovakia	7	8	6	7	4	8	16
Finland	2	5	3	15	33	74	80
Sweden	0	2	0	2	11	31	:
United Kingdom	-(d)	-(d)	-(d)	-(d)	-(d)	-(d)	:
Iceland	-(d)	-(d)	-(d)	-(d)	-(d)	-(d)	:
Liechtenstein	-(d)	-(d)	-(d)	-(d)	-(d)	-(d)	:
Norway	-(d)	-(d)	-(d)	-(d)	-(d)	-(d)	:
Switzerland	-(d)	-(d)	-(d)	-(d)	-(d)	-(d)	:
Other European Free Trade Association countries	:	:	:	:	:	-(d)	:
Total	:	:	:	:	:	:	:

(b) Residence permits issued to TCNs by virtue of the national HSI schemes (source: EUROSTAT. First permits issued for remunerated activities by reason, length of validity and citizenship. Highly skilled workers. Last update: 22.10.2019.)

REASON: Remunerated activities reasons: Highly skilled workers **DURATION:** Total **CITIZEN:** Total **UNIT:** Person

TIME	2009	2010	2011	2012	2013	2014	2015	2016	2017	2018
GEO										
European Union - 28 countries	38,988	39,877	36,927	33,321	32,458	35,536	35,138	35,961	39,700	42,810 ^(b)
Belgium	1,202	101	137	95	73	2,484	2,679	:	22	0
Bulgaria	:	:	:	:	:	:	:	:	:	0
Czechia	18	:	:	69	69	46	45	4	4	1
Denmark	3,594	5,392	4,157	4,088	5,730	5,698	5,457	5,762	5,273	5,782
Germany (until 1990 former territory of the FRG)	119	122	177	210	11	13	11	11	24	25
Estonia	:	:	:	:	:	:	:	:	:	0
Ireland	1,483	992	1,340	1,408	1,707	2,438	2,376	3,508	4,628	4,507
Greece	:	:	:	:	:	:	:	:	:	7
Spain	2,071	1,441	1,690	1,231	1,480	2,137	2,547	3,211	3,662	3,780
France	2,366	2,554	3,148	3,037	2,667	2,567	2,551	2,198	1,382	1
Croatia	:	:	:	:	565	:	:	:	:	0
Italy	:	1,984	1,563	1,695	1,543	1,066	1,006	709	776	856
Cyprus	436	634	551	600	385	469	662	718	1,083	1,717
Latvia	85	114	97	106	82	122	143	144	100	155
Lithuania	:	:	:	:	:	:	:	:	:	0
Luxembourg	96	74	102	21	:	:	:	:	:	0
Hungary	:	:	:	:	:	:	:	:	:	0
Malta	:	:	:	:	:	:	:	:	:	0
Netherlands	4,895	5,531	5,594	5,514	7,046	7,123	7,909	9,084	11,252	13,432
Austria	575	668	868	1,158	1,228	1,083	1,173	1,124	1,119	1,664
Poland	:	12	275	206	387	691	570	1,184	886	696
Portugal	307	342	282	313	767	989	896	814	941	1,067
Romania	:	:	:	:	:	:	:	:	:	0
Slovenia	:	:	:	:	:	:	:	:	:	0
Slovakia	:	:	:	:	:	:	:	:	:	0
Finland	:	:	861	749	971	1,120	959	957	1,327	1,359
Sweden	2,810	3,476	4,406	4,751	4,666	5,012	4,527	5,288	5,954	6,428
United Kingdom	18,931	16,440	11,679	8,070	3,081	2,478	1,627	1,245	1,267	1,333
Iceland	30	47	51	54	49	35	50	117	108	153
Liechtenstein	:	:	:	:	55	55	56	52	53	56
Norway	1,464	1,397	2,194	2,800	2,439	2,227	1,937	1,619	1,926	2,750
Switzerland	:	:	:	:	:	:	:	:	:	0

(c) Variances in the openness and restrictiveness of the transposition of the Blue Card's discretionary clauses according to Kość (KOŚĆ, P. Domestic adaptation and modalities of implementation of the Blue Card directive. 2013, p. 8-9.)

EU State	Required annual salary level (as expressed in the legislation)	Exceptions for shortage occupations	Initial maximal length of permit (in months)	Labour market test	Maximal time of processing (in days)
Austria	1.5	no	24	yes	56
Belgium	1.5	no	13	no	90
Bulgaria	1.5	no	12	yes	7
Cyprus	1.5	yes	12	yes	90
Czech Republic	1.5	no	34	yes	90
Estonia ¹	1.5	yes ²	12	yes	90
Finland	1.5	no	24	no	90
France	1.5	no	36	no	90
Germany	1.14 ³	yes	48	no	14
Greece ⁴	1.5	yes	24	yes	90
Hungary	1.5	yes	48	yes	30
Italy	1.26 ⁵	no	24	no	90
Latvia	1.5	no	12	no	90
Lithuania	2	no	12	yes	60
Luxemburg	1.5	yes	24	no	90
Malta	1.5	yes	48 ⁶	yes	90
Netherlands	1.5	no	48	no	90
Poland	1.5	no	24	yes	90
Portugal	1.5	yes	12	no	60
Romania ⁷	4	no	24	no	15
Slovakia	1.5	yes	36	yes	30
Slovenia	1.5	no	24	yes	30
Spain	1.5	yes	12	yes	90
Sweden	1.5	no	24	no	90

(d) Calculation of the transposition index by Kość (KOŚĆ, P. Domestic adaptation and modalities of implementation of the Blue Card directive. 2013, p. 12-13.)

EU State	salary level	Initial maximal length of permit (in months)	Labour market test	Maximal time of processing	Index
Germany	100	100	100	100	100
Italy	100	50	100	25	69
Slovenia	50	50	100	75	69
Netherlands	50	100	100	25	69
Hungary	75	100	0	75	63
Portugal	75	25	100	50	63
Luxemburg	75	50	100	25	63
France	50	75	100	25	63
Romania	0	50	100	100	63
Slovakia	75	75	0	75	56
Finland	50	50	100	25	56
Sweden	50	50	100	25	56
Malta	75	100	0	25	50
Belgium	50	25	100	25	50
Latvia	50	25	100	25	50
Bulgaria	50	25	0	100	44
Greece	75	50	0	25	38
Austria	50	50	0	50	38
Czech Republic	50	75	0	25	38
Cyprus	75	25	0	25	31
Estonia	75	25	0	25	31
Spain	75	25	0	25	31
Poland	50	50	0	25	31
Lithuania	25	25	0	50	25