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Europe at the frontline: analysing street-level motivations for the use of European Union migration law

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ABSTRACT

This contribution investigates what motivates the use of European Union (EU) law at the street level of migration law implementation. The street level is a crucial venue for EU implementation because lower-level implementers critically influence the level of EU compliance eventually achieved. Employing a bottom-up approach towards implementation, the article combines insights from social psychology and the street-level literature to develop expectations about the relation between individuals' motivations and their use of EU law. The study investigates through qualitative interviews to what extent German migration administrators use EU law in three multilevel decision contexts. The main findings are that uses of EU law vary across contexts and individual implementers. Particularly when national regulatory frameworks are ambiguous, substantive moral norms and instrumental motivations trigger some implementers to rely on EU law. This reliance even has the potential to correct for problematic transposition.

KEYWORDS EU implementation; implementation motivations; migration law; street-level bureaucracy

Introduction

European Union (EU) law increasingly spreads into policy areas which used to be at the core of national law. A topical example is EU migration law which gradually shapes domestic legislation (Boswell and Geddes 2011; Zaun 2016). However, the Union lacks an implementation apparatus and relies on national administrations to apply its laws (Treib 2014: 6). This indirect implementation system leads to the question of whether individual national administrations turn into 'double-hatted' agents, serving a national and a European master (Egeberg and Trondal 2009), and to what extent they become 'guardians of EU law' (Mastenbroek 2017).

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These questions have been analysed mainly for higher-level officials at the ministry level (e.g., Bach *et al.* 2015). Respectively, in EU implementation studies the practices of lower-level implementers remain largely unexplored (but see Gulbrandsen 2011). However, since Lipsky's (1980) seminal work, it is widely acknowledged that street-level implementers at the 'frontline', between the laws in the books and actual practice crucially influence the final outcome of policies.

EU law places street-level implementers at a second frontline, namely between domestic and EU regulatory frameworks. The second frontline can lead to new legal ambiguities because much EU law introduces fuzzy legal concepts (Treib 2014: 6), and national legislators frequently fail to transpose EU law in time, or do so in non-compliant ways (Angelova *et al.* 2012; Treib 2014). This can make EU law directly effective and raises the question: to what extent do street-level implementers use EU law to solve legal ambiguity and what motivates them when doing so?

By investigating this question, this study takes up the call by Woll and Jacquot (2010: 113) to explore variation in individuals' motivations for using EU law. So far, most compliance studies have adopted top-down perspectives that focus on the member state level to explain variation in EU implementation (Thomann and Sager 2017a). These studies have relied on rationalist or constructivist approaches (Dimitrova and Rhinard 2005; Mastenbroek and Kaeding 2006) assuming institutional logics of consequentiality or appropriateness (March and Olsen 1998).

Similarly, behavioural perspectives on frontline implementation (Maynard-Moody and Musheno 2012; Tummers *et al.* 2016) and social psychology studies (Tyler 2006) distinguish between *instrumental* and *normative motivations* to explain behaviour. Whereas actors driven by instrumental motivations evaluate risks connected to different applications of the law, actors driven by normative motivations take guidance from procedural or substantive norms. These conceptualizations overlap with institutional logics of consequentiality and appropriateness. While institutional actor logics are concerned with organizations and individuals, the social psychology literature has been proven to be particularly useful to investigate individual level motivations. Therefore, the latter perspective is used in this study.

Applied to the EU context, it is expected that instrumental motivations discourage use of EU law, but normative motivations can generate uses of EU law. By adding the behavioural perspective to EU implementation, this study contributes to clarify the role of and relationship between the institutional actor logics at the micro level of EU implementation. Additionally, the study adds to the emerging bottom-up approaches in EU implementation studies that go beyond legal compliance (Thomann 2015; Thomann and Zhelezkova 2017; Thomann and Sager 2017a).

Furthermore, this study tackles the policy sector bias of many EU implementation studies (Treib 2014: 17; Gollata and Newig 2017) by exploring the use of EU law and implementation motivations in the topical context of EU migration law. EU migration law received most explicit attention in studies that focused on the Europeanization of the multilevel legal context (Boswell and Geddes 2011; Zaun 2016). The insights of these studies and the more general street-level migration literature, suggest that the field constitutes a crucial case for bottom-up investigations of motivations. First, migration law requires considerable street-level implementation (Ellermann 2006; Eule 2014). Second, the gradual addition of EU law adds a new liberal legal level to domestic regulations (Bonjour and Vink 2013). Member states are reluctant to adjust their regulatory frameworks to new EU pressure, leading to new ambiguity at the street level. Thus, when street-level implementers decide on residence permits, they not only affect the life chances of individual migrants, but they also determine to what extent EU migration laws become practice. Third, the normatively laden field of migration provides good conditions to observe variation in motivations because migration law implementers are often confronted with conflicting positions between their role as loyal implementers and their personal normative considerations (Düvell and Jordan 2003).

The study investigates decision-making of case workers of the foreign registration offices (*Ausländerbehörden*) of the German *Bundesland* of North Rhine-Westphalia. These case workers decide on residence permits while operating at a local level in decentralized administrative structure with much face-to-face interaction with their clients (Ellermann 2006; Eule 2014). Such working contexts are prone for variation in motivations.

Drawing on qualitative interviews with 21 implementers in ten *Ausländerbehörden*, the analysis reveals that street-level implementers use EU law to varying degrees. Generally, implementers do not use EU law by extending their discretion in nationally tightly regulated contexts, or by explicitly contradict national regulatory frameworks. However, when national regulations remain unclear, many implementers use EU law next to national law. In line with the expectations, implementers with pronounced substantive normative motivations use the legal levels creatively. In contrast to the expectations, also instrumental motivations trigger sometimes reliance on EU law. Procedural norms are limited in triggering uses of EU law.

Theorizing motivations for street-level use of EU law

During street-level implementation use of EU law can be conceptualized as reliance on the EU regulatory framework as a frame of reference during decision making. The availability of EU law as legal options depends on the multilevel legal context in which implementers operate. When EU and national laws are detailed and in line with each other, implementers will

draw on the domestic regulatory framework established by the domestic principal to which they are directly accountable.

However, in at least three contexts EU law might play a role for street-level implementers. Firstly, EU law can demand margins of discretion beyond national law. Secondly, national law can provide frameworks that stand plainly in tension with EU law. Finally, when EU legislation is superficially incorporated, the national regulatory frameworks can be less explicit than EU rules. In these situations, implementers are confronted with ambiguity which they may resolve by relying on domestic regulations, EU law or by combining the frameworks.

In order to develop expectations about the use of EU law, a useful starting point is the social psychology literature (Tyler 2006). Combining the perspectives of this literature with insights of the street-level literature allows to group implementation motivations into instrumental and normative implementation motivations.

Instrumental motivations, to begin with, refer to the desire to avoid punishment and to evade risks (Winter and May 2001). In the street-level bureaucracy literature such motivations are prominently assumed by Lipsky (1980). He has argued that implementers are primarily driven by the desire to cope with limited resources, leading to routines, rationing services and other coping strategies. Thus, implementers focus on measurable indicators with low risks to be questioned by the outside world (*ibid.*, Hood 2011). Risks refer to punishments by political principals and courts, or personal consequences such as reputation loss and extra workload.

Applying this instrumental perspective to the multilevel legal context, one can assume that implementers are accountable to national principals. National principals will prefer implementers to rely closely on national goals (Huber and Shipan 2002). Judicial, legislative and executive checks will discourage implementers to bypass national law. Since there might be monetary and political costs if EU law is applied inconsistently, implementers will perceive it to be risky to stretch their competences by interpreting EU law. Moreover, mastering EU law constitutes extra work. Thus, implementers will continue to rely on national law and leave it to courts to challenge the national level for potentially non-compliant transposition.

This effect will be strengthened by the fact that there is no EU principal who directly scrutinizes street-level behaviour. Hence, there are no direct risks for implementers of being punished by EU principals for not relying on EU law. In sum, the instrumental perspective suggests that street-level implementers will consider it to be the safest choice to rely on national law, leading to the first expectation:

Expectation 1: Street-level implementers who are motivated by instrumental considerations do not use EU law to resolve ambiguities of the multi-level legal context.

In addition to instrumental motivations, research has shown that *normative motivations* play a crucial role in how people respond to the law (May 2005; Tyler 2006).

From a *procedural normative perspective*, individuals are loyal to the legal sources they consider legitimate (Tyler 2006). Loyalty as the primary bureaucratic motivation is seated deeply in Weberian views on bureaucracy. In street-level studies, loyalty is highlighted as a professional imperative according to which implementers see themselves as dutiful servants of the legitimated authority (Brodin 1997).

Under multilevel legal ambiguity, implementers evaluate which legal source is most legitimate. If loyalties rest on the national level, implementers will continue to rely on domestic regulatory frameworks (see Mastenbroek 2017). Yet, implementers might have internalized that EU law is superior to national law and consider it as the legitimate legal source above national law. If implementers develop feelings of loyalty towards EU law, they rely on EU law, even if there are no direct benefits in taking it into account.

Higher administrators seem to develop only weak EU loyalties, even if they have direct contact with EU institutions (Egeberg and Trondal 2009; Mastenbroek 2017). At the street level, the distance to EU institutions and national policy making is wide. Thus, street-level implementers might have weaker attachments to national loyalties in the first place, leading to the second expectation:

Expectation 2: Street-level implementers who are motivated by a sense of EU loyalty use EU law to resolve ambiguities of the multi-level legal context.

Finally, *substantive normative motivations*, which Tyler (2006) labels *morality considerations*, are found to be an important motivation for obeying laws. At the street-level, Hertogh (2009) has observed that regardless of whether or not it is the law, implementers are often committed to certain norms owing to personal feelings of justice (see also Tummers 2011). The close contact to real cases, make empathy and justice evaluations particularly likely to materialize (May 2005; Winter and May 2001). This can trigger street-level implementers to rely on moral judgments to make up for alleged limitations of national policies (Keiser and Soss 1998), using formal laws only as formal justification (Maynard-Moody and Musheno 2003).

Arguably, EU law offers implementers a new tool box to pick and choose within the web of national, local and EU laws those arguments that correspond best to their feeling of justice. More concretely, in case national law suggests a negative decision on a case, but an implementer has strong feelings of justice that point at a positive outcome, liberal EU law might provide for new legal arguments which the implementer can use to circumvent restrictive national laws. Vice versa, the domestic regulatory framework will be used if it fits implementers' justice evaluations. Thus, the following can be expected:

Expectation 3: Street-level implementers who are motivated by strong personal perceptions of justice pick and choose between national and EU law to resolve ambiguities of the multi-level legal context.

Method and data

A theory-driven explorative approach is adopted to investigate the expectations. This allows plausible connections of mechanisms that have previously not been explored or understood (Reiter 2013: 7). For explorative research, case selection should focus on cases for which the expected causal mechanism is likely to be most evident (*ibid.*).

Three scope conditions are necessary for the established expectations to apply. First, the policy field needs to have a multilevel legal character and frontline implementers are confronted with ambiguous domestic and EU regulatory frameworks. Second, street-level implementers have to have some discretion. Otherwise, instrumental motivations may dominate decision making. Finally, for normative motivations to play a role, the field needs to be normatively laden to challenge loyalties and to trigger feelings of justice.

Migration law fulfils these scope conditions particularly well and can be considered as a crucial case (Eckstein 1975). First, migration law is conducted at a multitude of levels, including the international, the European, the national, the regional and the local (Lahav and Guiraudon 2006). As a relatively young field of EU harmonization, it is highly dynamic and national implementers are constantly confronted with new multilevel legal frameworks and realities (Zaun 2016). Tension between the different levels are common because member states are reluctant to transpose liberal EU migration laws into their more restrictive national laws (Bonjour and Vink 2013). Additionally, many EU migration laws and the ensuing interpretations by the Court of Justice of the European Union (CJEU) established fuzzy legal concepts that are directly applicable for lower-level implementers.

Second, the policy field provides for considerable street-level discretion because it is very client intensive (Ellermann 2006; Eule 2014). Despite convergence of migration laws across the EU, decision-making in migration agencies has been highlighted as very diverse (Jordan *et al.* 2003). While migration laws appear to be clear on paper, they often lead to variation in practice, when implementers decide on individual migrants (*ibid.*).

Finally, the field is salient and normatively laden. Conflicting norms related to human rights, public welfare and security often clash with each other, and have to be resolved during implementation (Düvell and Jordan 2003; Eule 2014).

Overall, tension between national and EU migration regulations, wide discretion and the normatively laden context offer potential for competing street-level motivations. Thus, if we do not find street-level implementers

who use EU law in this policy field, it is unlikely that implementers in more technical fields use EU law.

The expectations are investigated among German street-level implementers of the *Bundesland* of North Rhine-Westphalia (NRW). This administrative context constitutes again a crucial case. Germany has a decentralized migration implementation system and NRW established a particularly decentralized structure. Street-level implementation is organized and conducted in foreign registration offices (*Ausländerbehörden*) at county and city level. The federal level is the main legislator, and is responsible for transposition of EU norms. The *Länder* issue decrees that detail the federal law. There is no direct national oversight over the *Ausländerbehörden*, and only indirect oversight from five district governments. Thus, there is considerable street-level discretion.

Additionally, while there is a trend towards more e-service provision in many traditional street-level bureaucracies (Bovens and Zouridis 2002), the implementers in this study are typical street-level implementers. They have face-to-face contact with their clients and rely little on computer-assisted case assessment. Overall, the large margins of discretion and the personal contact provide particularly good conditions for normative motivations.

Important to note is that focusing on a single policy sector within a single member state limits the generalizability of the motivations found in this study. Motivations can derive from a variety of sources, such as national culture, organizational context and policy area (Jordan *et al.* 2003). However, the purpose of this study is to investigate how different motivations relate to the use of EU law. Thus, adding cross-country or sectoral variation would pose the danger of influencing both motivations and the use of EU law. This would make it difficult to disentangle the effects.

A qualitative data collection strategy was adopted. Qualitative methods allow uncovering the mechanisms behind decision-making and contributing to theory refinement (George and Bennett 2006). In-depth interviews with 21 implementers in 10 *Ausländerbehörden* were conducted in spring 2015. At each location a senior implementer (department leader) and in most locations one or two regular decision-makers were interviewed (see the Online Appendix). Interviews lasted 40–160 minutes; records were transcribed into English. Half the interviews were conducted individually, the other half in pairs or groups of three, permitting respondents to be interviewed in their daily working environment and to test whether responses differed when being observed by colleagues.

The interviews were semi-structured and left room for examples of difficult cases and personal evaluations of the respondents. This contributed to an in-depth image of the complex interplay between motivations, decision-making and the use of EU law. In order to measure the dependent variable – use of EU law – respondents were asked how they go about decision-making in three multilevel legal scenarios. The scenarios were tackled in open-ended

questions in which the researcher sketched typical decision-making contexts (Table 1). Respondents were asked to specify their decision-making practices and detail their room for manoeuvre. Probing was used to investigate which legal tools respondents would use to take decisions and to what extent EU law would be used.

The first scenario concerned a situation where EU and national law were in line with each other, but EU law demands slightly more administrative discretion. The second scenario constituted a case in which EU law stands in tension with national guidelines. The third scenario captured a context of tension with vague national guidelines. The substances of the scenarios are described below.

Implementation motivations were investigated by encouraging respondents through open-ended questions to elaborate on what drives them when taking decisions, with what they struggle when taking decisions and what constitutes good decision-making. Based on examples and anecdotes told by the respondents, a list of motivational cues was established (see the Online Appendix). Motivational cues are arguments and justifications given explicitly or implicitly by the respondents to explain their practices. The cues were grouped under common themes. Motivations were instrumental, if respondents pointed at workload, risks of overstepping their competences, the importance that decisions have standing in court, or possible punishments. Risks creating precedent cases and risks to harm the national interest and/or the interests of the national legislator were inductively classified as intermediate motivations between instrumental and national loyalty motivations.

Motivations were placed under EU loyalty if respondents mentioned obligations and loyalty related to supremacy of EU law. Finally, motivations were grouped under the heading of substantive normative motivations when respondents invoked emotions or personal feelings of fairness to motivate their implementation practices. Respondents could be guided by complex combinations of motivations.

Analysis

The case studies are structured as follows. The first part outlines the substance of the three legal scenarios. The next part presents decision-making practices of the respondents and their use of EU law. The last part analyses the underlying implementation motivations in light of the established expectations.

Multilevel legal scenarios

Table 1 summarizes the substance of the EU and national legal framework of the three decision-making scenarios discussed with the respondents.

Table 1. Three legal scenarios.

Legal scenario	Main EU law	Main national law	Decision scenario
Scenario 1			
Income requirement for third country family reunification visa			
Discretionary EU law	<p>Member states may demand from sponsor of third country family reunification a minimum income as guiding criterion for granting the visa (Family Reunification Directive 2003/86 EC Art 7.1.)</p> <p>Guiding criterion may not be used as hard benchmark to limit right of family reunification (CJEU ruling <i>Chakroun</i>)</p> <p>Evaluations have to take individual circumstances and needs of family into account (CJEU ruling <i>Chakroun</i>)</p>	<p>Foreign registration offices required to use standard calculation to determine guiding benchmark (German Residence Act. Art. 27, Art. 5.1.1, Administrative Guidelines Art 2.3.4)</p> <p>Administrative decisions should be prognosis decision, evaluating if family can sustain itself in the future (national Administrative Guidelines Art 2.3.3)</p> <p>National interpretation of <i>Chakroun</i>: tax free amounts may no longer be used to the disadvantage of the applicants (BVerwG 1 C 20.09 and 1 C 21.09)</p>	How does the case worker decide on the visa when the income of the sponsor remains 5-10 euro below the calculated monthly national benchmarks?
Scenario 2			
Language requirement for Turkish citizens for family reunification visa			
Tension between EU and national law with explicit instructions	<p>Member states may require third country nationals to comply with integration measures (Family Reunification Directive Art 6.2)</p> <p>German language requirements not compliant with the standstill clause of Turkey Association Agreement (CJEU ruling <i>Dogan</i>)</p>	<p>Language certificate is required for all visa for family reunification including Turkish citizens (Art 30. 1AufthG)</p> <p>National interpretation of <i>Dogan</i>: Implementation instruction from the Ministry of External Affairs: Implementers should not change their practices regarding Turkish citizens. Existing exceptions based on hardship cases are stressed.</p>	How does the case work decide on the visa when the spouse of a Turkish citizen does not provide for the German language requirement?
Scenario 3			
Application of administrative fees for Turkish citizens and examples of transposition gaps			
Tension between EU and national law with inexplicit national regulatory framework	a) Administrative fees for residence permits for Turkish citizens have to be in line with Turkey Association Agreement (see CJEU case <i>Sahin</i>)	a) Several years national legislators declared <i>Sahin</i> ruling not applicable to Germany. National ruling (BVerwG 1 C 12.12) eventually confirmed <i>Sahin</i> but it	a) How did the office handle the intermediate period between a national solution and the EU obligations?

(Continued)

Table 1. Continued.

Legal scenario	Main EU law	Main national law	Decision scenario
		took time until legislator formally clarified appropriate fees	b) How does the case worker handle situations in which EU directives and rulings are not fully transposed?
		b) late transposition and implicit EU principles in transposition laws	

The first scenario was taken from the field of family migration and related to the evaluation of the income requirement for visas for third country family reunification. The *Ausländerbehörden* decide on the visa together with the diplomatic missions abroad. One condition for the visa is a sufficient income of the sponsor. Both EU and national law demand an individual evaluation of the income condition. Yet EU law demands a slightly more discretionary approach to this condition than national law, by emphasizing an evaluation of the needs of each individual applicant (see CJEU ruling in *Chakroun*). Respondents were asked if, and under which conditions, they would agree to a visa application if applicants earn less than required by the national benchmarks.

The second scenario was also taken from the field of family migration and concerns the so-called language requirement for the visa of family reunification. The CJEU in *Dogan* has explicitly challenged the German obligations in light of the Turkey Association Agreement, suggesting that language requirements for Turkish citizens are not in line with EU law. However, the national legislator explicitly instructed its administrations not to change their practices. Respondents were asked if they would agree to a visa application of a Turkish applicant, provided the spouse had no language certificate.

For the third scenario, several situations were discussed. For example, several court rulings found that the administrative fees demanded for Turkish residence permits are too high under the Turkey Association Agreement. However, it took the legislator a considerable period of time to provide instructions of how to handle the fees. Here, the leaderships of the foreign registration offices were asked how they handled the intermediate period. In order to explore practices beyond the office leaders, respondents were asked to elaborate on their practices in the case that EU directives and CJEU rulings are not transposed into national law.

The three scenarios constitute everyday decision-making in a foreign registration office. The focus on family migration law was based on the fact that family migration constitutes a crucial source of migration and EU family migration law is relatively developed (Bonjour and Vink 2013). Moreover, the three scenarios do not directly touch upon aspects related to the current refugee crisis.

Scenario one: use of discretionary EU law

Starting with practices regarding the income requirement, all respondents stressed that they take the individual circumstances of applicants into account. However, respondents differed widely in interpreting their room for manoeuvre. At least seven respondents approached the criteria from a relatively discretionary perspective, while 10 took more restrictive approaches.

Respondents with discretionary approaches indicated that a discrepancy of around 5–8 euros per month below the national income benchmark constitutes no problem. If they believed applicants can otherwise sustain themselves, they would still approve the visa application. With a positive prognosis, three respondents would even accept applicants up to 50–100 euros or 10 per cent below the calculated requirement. As one respondent commented:

These margins are not explicitly codified ... If there are 50 euros missing, we would decide that we take the risk that this family will not draw on social benefits for these 50 euros. We internally decided that you cannot take these requirements as hard benchmarks where one cent or euro less leads automatically to a rejection. (Resp._B1)

The more restrictive respondents would normally not agree to a visa if the sponsor's income was below the calculated benchmark. As one respondent explained:

When someone has 10 euro less, we no longer have the option to decide positively. ... We strictly rely on the legal demands. I cannot paint a nice picture if the requirements are not fulfilled. (Resp._I1)

Coming to the use of EU law, it became clear that even though respondents differed considerably in how lenient they were with the income requirement, discretion was not informed by EU law but by federal court rulings. Even if respondents argued closely in line with the *Chakroun* ruling (Resp._B1), the ruling was mostly not explicitly mentioned.

Two respondents mentioned national rulings that referred to *Chakroun*, but they considered *Chakroun* as a restriction to their scope of action that no longer allowed them to include tax-free amounts in the income benchmark. One respondent claimed that this liberalization would trigger him to consider the calculated benchmark now more restrictively (Resp._E1). Only one respondent referred explicitly to *Chakroun*. However, even he did not use the ruling to extent his room for manoeuvre beyond national law (Resp._C1). Overall, EU law was not used explicitly in case of discretionary EU law.

Scenario two: use of EU law under tension with explicit national instructions

Practices regarding the language requirements differed only slightly among respondents. Whereas some argued that the embassies are responsible for

the language requirement, other respondents saw their role in checking this condition more actively. Overall, respondents referred more often to EU law than in the previous scenario. The *Dogan* ruling was mentioned by most respondents. However, eventually all but one respondent gave priority to the national interpretation of the judgment. Some respondents pointed to the wording of the CJEU ruling to justify the national interpretation (Resp._F1, I1). Other respondents agreed that there is a conflict between the legal levels, but as one respondent explained:

If the national legislator eventually issues instructions for us, I try to orientate myself on that and not explicitly contradict the national interpretation. (Resp._J1)

Thus, while some respondents questioned the national interpretations in light of EU law (Resp._A1), they still pointed at the national regulatory framework as the ultimate decision tool. Only one respondent did not mention the national interpretations and only referred to the CJEU ruling (Resp._C1). Overall, under legal conflict between EU law and explicit national regulatory frameworks, respondents were surprisingly aware of EU law, but eventually they relied on the national regulatory framework or pointed to the diplomatic missions as ultimate decision-makers.

Scenario three: use of EU law with inexplicit national regulatory framework

Concerning situations in which national regulatory frameworks remain inexplicit, respondents indicated highly diverse practices. Regarding the fees for Turkish applicants, the leadership of some of the foreign registration offices decided to waive the fees before there were explicit national instructions (Location_C). Other office leaders decided to keep demanding the fees awaiting an official adjustment of national regulations (Location_I, E). More generally, when EU legislation or CJEU rulings are not explicitly transposed, six respondents indicated that for them EU law is not relevant. As these respondents put it, 'we are mainly implementers of national law' (Resp._A2) or 'CJEU rulings confront us sometimes with the situation that national law is no longer applicable, but for us legally binding are of course only the national laws' (Resp._D1).

However, in situations in which national regulations are missing or not clear, the majority of respondents described that they would use EU law next to national law. As one respondent explained:

The EU has established some general legal principles which somehow are implied in our national law, but you cannot read them anywhere. In these cases we more or less use our discretion to read the national law in light of the principles which derive out of EU law or CJEU rulings. (Resp._F1)

Two respondents even pointed out how they themselves or their colleagues sometimes use EU directives which are not yet transposed (Resp._J1; Resp._A1). As Respondent A1 claimed:

The problem in Germany is that almost all EU requirements are transposed in the last minute or even with delay. I feel this is a mentality issue of the German legislator, to hope that nobody will notice. So, if a new ruling or directive emerges, we try to take this into account even it is not yet part of the German law or administrative guidelines. Even if the EU law conflicts with the national law we take the EU rules into account.

In sum, when national law does not explicitly define implementation guidelines, implementers were surprisingly open to EU law as an additional source of decision-making. Table 2 summarizes the use of EU law across the scenarios.

Implementation motivations and the use of EU law

In the following, the established expectations are explored. Starting with *instrumental motivations*, the interviews showed that the most important guidance for respondents was that their decisions have standing in front of national courts. Regarding the income requirement, several respondents argued that national courts demand a restrictive approach. Therefore, they could not apply the condition in a discretionary way (Resp._D1). Additionally, several respondents argued that they are afraid that it would backfire on them, and that social welfare offices would ask them critical questions if applicants eventually relied on social welfare (Resp._F1; Resp._F2; Resp._E1; Resp._J2). In line with the expectation, these respondents did not see it as an option to extend their room for manoeuvre by using EU law.

Instrumental motivations were articulated even more explicitly when respondents reflected on their practices for the second scenario. Many respondents argued that they consider it risky to apply original EU jurisprudence when the national legislator provided explicit instructions. For example, six respondents highlighted that interpreting EU law goes beyond

Table 2. Use of EU law across scenarios.

Legal context	Legal scenario	Use of EU law
Discretionary EU law	Income criterion for third country family reunification	Little use
Tension between EU and national law with explicit national instructions	Language requirement for Turkish family reunification	Active reference but eventual reliance on national instructions
Tension between EU and national law with inexplicit national regulatory framework	Administrative fees for Turkish citizens and gaps in transposition law	Some very actively use EU law by correcting problematic transposition, most respondents combine national and EU instructions

their competences as implementers (Resp._I1; Resp._I2; Resp._J1; Resp._J2; Resp._H1; Resp._H2). Overall, risk, staying within the assigned competences and securing standing in front of the court were considerations which triggered reluctant approaches towards EU law and were dominant among leading and regular decision-makers.

However, contrary to the first expectation, instrumental motivations were also articulated by respondents in leadership positions who used EU law in the third scenario. As one respondent argued:

In terms of the direct results it can be a safe choice for us to follow the (national and local) rules. However, it does not always go well in the long run. Sometimes it leads eventually to a change in the rules if there are too many (EU) rulings. That leaves us with a mess if we took a lot of decisions based on old rules ... We are always in between and eventually we have to take responsibilities for messy decisions which we did not cause. ... So we evaluate the consequences of the different legal options and then decide. (Resp._C1)

Hence, in contrast to expectation one, in the face of tension between the different levels of law, combined with unclear domestic guidelines, leading implementers consider it to be risky not to rely on EU law. Following the respondents, national courts might eventually rely on EU law even if the national legislator did not adjust the law. Therefore, inconsistent decision-making can harm the reputation of the *Ausländerbehörde* and it constitutes extra workload when decisions need to be corrected. Consequently, the first expectation that instrumental implementation motivations trigger inactive use of EU law only holds in the context of explicit national guidelines. Without clear national guidelines, instrumental motivations exist that can trigger use of EU law.

Coming to normative motivations, the analysis showed that both procedural and substantive norms played a role for respondents. Around half the respondents pointed towards their professional norms as implementers. Often, these norms were connected to instrumental motivations. For example, respondents pointed at their responsibilities as a good implementer to balance the interests of national society and tax payers, to stay within national legal bounds and their assigned national duty (Resp._A1; Resp._B1; Resp._C2; Resp._D1; Resp._F1; Resp._H1). Professional norms were mainly related to national loyalties. Loyalty towards EU law was articulated to a much lesser extent. If it was articulated, it was mentioned implicitly and in combination with other obligations. As one respondent argued:

It is in many ways a balancing act because particularly our local government always says we should only do what is written in the (national) law ... but we observe all the new developments, we also get the relevant journals that include EU judgments. On the working floor, we are confronted with these new developments and we want to take them on board. Yet, when we meet with politicians, they always ask in which national laws we find these things. (Resp._H2)

This respondent finds it challenging not to do justice to EU law and general new rulings, but he also receives steering signals from local policy-makers not to rely on the new developments. Eventually, this motivates reluctant uses of EU law. Similarly, another respondent argued:

Of course we are aware that EU law comes before national law and national law is superior to Länder law ... But I think I would get a punishment if I would start transposing EU law myself ... For such activities my competences are clearly too limited ... However, if CJEU judgments with direct effect challenge national law, than I take it into account and we define a common practice for our office, similar as with the Turkey cases. (Resp._I1)

Overall, EU loyalties are subordinated to instrumental motivations and professional norms of not overstepping one's competences. Thus, expectation two receives no support: because EU loyalties were generally weak.

The last expectation held that personal justice evaluations trigger implementers to pick and choose between national and EU norms. Almost all respondents mentioned their struggle between emotions, morality and legal demands. However, respondents differed on the emphasis they put on such personal considerations. Some implementers explained that they are not first of all implementers of the law, but rather 'client advisors' (Resp._A1). In light of the income requirement these respondents explained how they try to help clients to meet the critical benchmarks (Resp._F2; Resp._G1; Resp._G2; Resp._I2; Resp._J1). Several implementers called this 'an informal practice', because national law does not oblige them to advice clients (Resp._A1). These, respondents relied creatively on different levels of law, but rarely used the EU jurisprudence to justify discretion.

The expectation that substantive morality norms trigger use of EU law is most clearly met in the case of legal conflict and ambiguity of national law. For example, one respondent pointed out that he encourages his colleagues to:

use the law in line with the principle of the IKEA slogan: 'discover the possibilities'. You always have to stay within the law but if the law offers you possibilities no one should hinder us to use them ... European law provides us especially regarding Turkish citizens more possibilities than the German law and it is interesting for us to discover these new opportunities within the law. (Resp._B1)

This respondent referred to EU law as a source that offers new opportunities to become creative. While he stressed that this is only possible within the limits of national law, another respondent explicitly argued that he would even interpret EU law on his own when the national level failed to do so because 'in this way we maybe harm the German state, but at least we do not harm the individual migrant' (Resp._A1).

Overall, few respondents would rely on EU law at the expense of national law this openly. Risk and national loyalty motivations trigger mostly reluctant approaches towards EU law. Respondents are particularly afraid to be

responsible for precedent cases. However, if national law fails to provide clear guidelines, most implementers use EU law parallel to national law. In line with the expectations, a group of respondents uses EU law to bring the law closer to their personal justice evaluations. Contrary to expectation, one also instrumental motivations can trigger use of EU law.

Conclusion

This contribution explored the extent to which street-level implementers use EU law and what motivates them when doing so. Three decision contexts in which EU law might play a role were identified. The scenarios differed in the level of legal ambiguity between national and EU regulatory frameworks.

In order to analyse the use of EU law, the study adopted a bottom-up approach (Thomann and Sager 2017a). By relying on the insights of social psychology (Tyler 2006) and the behavioural street-level bureaucracy literature (Lipsky 1980; Maynard-Moody and Musheno 2012), two perspectives on implementation motivations were identified. First, from an instrumental perspective, one could expect that there are few incentives for street-level implementers to use EU law. Second, procedural and substantive normative motivations were expected to trigger use of EU law. The study explored the expectations empirically in the context of EU migration law implementation in Germany.

Four main insights can be drawn from this analysis. First, the study demonstrated that EU implementation at the micro-level fruitfully complements the rational and constructivist institutional actor logics (March and Olsen 1998) that have been used to explain EU implementation at the member state level.

Second, in line with the street-level literature (Lipsky 1980; Maynard-Moody and Musheno 2012) and studies on migration management (Ellermann 2006; Eule 2014; Jordan *et al.* 2003), the implementers investigated in this study were creative and flexible in their use of legal tools. While the limited literature on practical EU implementation has treated administrations as yet another source for non-compliance (Versluis 2007) or ignored the street-level of EU implementation (Treib 2014), this study has shown that lower level implementers are surprisingly aware of the multilevel legal context in which they operate. Most implementers eventually give priority to national guidance in their decisions (see also Mastenbroek 2017). However, a considerable group of implementers sometimes uses EU law, particularly when the national level provides superficial guidelines. Some implementers even correct for missing EU transposition. Consequently, the study highlighted the importance of adding bottom-up approaches towards EU compliance.

Third, the study showed that implementers draw on EU law for varying purposes, leading to variation in implementation practices. This suggests that Europeanization does not necessarily harmonize domestic decision-making.

Often, active approaches towards EU law are contingent on normative implementation motivations. This is in line with the theoretical expectations. However, contrary to the established expectations, loyalty towards EU law has its limits in promoting uses of EU law. Instead, use of EU law can be motivated by substantive morality norms. In light of Egeberg and Trondal's (2009) 'double-hatted' agents who promote the interests of their national and European master owing to loyalty to the two masters, 'double-hatted' street-level implementers sometime use the different levels of law to bring about policy outcomes they personally consider as just.

Finally, this study showed that instrumental motivations trigger mostly no use of EU law. Particularly when national regulatory frameworks are explicit, implementers consider it risky to draw on EU law and focus, in line with Lipsky's (1980) expectations, on decision-making with low risks of being questioned by the outside world. However, in case of conflict between national and EU norms, combined with lacking national guidance, some implementers considered it risky not to rely on EU law. This indicates that even though there are no direct personal consequences for implementers, there are implicit instrumental motivations for relying on EU law.

Importantly, this study was limited to a very specific administrative context, namely the highly decentralized German administrative setting of North Rhine-Westphalia. As a result, motivational patterns observed in this study might be specific to several scope conditions, such as the presence of a multi-level legal context with ambiguity between national and EU obligations, the high level of discretion in the German administrative setting and the normatively laden policy field that requires considerable client interactions at the frontline. Yet, from the street-level bureaucracy literature, we can expect that other client-intensive and normatively laden fields comparable to migration, such as social policies, might reveal similar motivational mechanisms as found in this study (Maynard-Moody and Musheno 2012). The study might be less representative for more technical fields of EU law which may trigger less normative motivations. Nevertheless, as this study has shown, even instrumental motivations can trigger use of EU law, which suggests that street-level use of EU law might not be limited to normatively laden policy fields.

Follow-up studies should add external validity by bringing in a cross-country or cross-sectoral comparative perspective (Thomann and Sager 2017b). That is to say, what role does EU law play for implementers who operate under less discretion? Additionally, this study with its explorative elements calls for a more generalizable explanatory test of the relationship between motivations and use of EU law. For example, a quantitative survey among implementers across policy sectors that differ in normative sensitivity could provide such a test to further enhance our understating of the role of motivations for EU implementation.

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