Article

When European Policies Meet German Federalism: A Study on the Implementation of the EU Reception Conditions Directive

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Abstract

Article 21 of the recast Reception Conditions Directive 2013/33/EU (RCD) stipulates that member states shall consider the special needs of asylum seekers with, inter alia, mental illnesses. Similar to other member states, Germany failed to transpose the RCD into national law within the two years prescribed. Due to the inactivity of the federal legislator, the Directive became directly applicable. In the German system of cooperative federalism, this means that the application of the RCD moved downstream to the responsibility of the German *Länder* (states), which have since found themselves with vague responsibilities, lacking a clear regulation cascade from the federal level. How do *Länder* implement the RCD and how is its implementation in Germany affected by the federal institutional setting? The objective of this article is to analyse and systematise the patterns of the RCD's implementation on the subnational level in Germany. On the one hand, the findings suggest that the open formulation of the RCD and the federal government's inactivity allow for a higher degree of liberty in applying the Directive on the subnational level. On the other hand, most measures taken hitherto have been rather small and ad-hoc and some *Länder* have even failed to adopt any significant changes at all. The RCD's implementation in Germany has consisted of a "tinkering" process, generating an incoherent patchwork of policy outputs. The resulting unequal standards in the reception of asylum seekers displaying mental illnesses present far-reaching consequences for the people affected.

1. Introduction

Poor implementation constitutes an important issue in EU policy-making as it indicates non-compliance with EU law and potential reservations of member states against European integration. A particularly interesting case for scholars of the implementation of EU law and public policies is Germany. In Germany, implementation might not only be hampered by a lack of political will of the federal decision-makers to comply with European regulations but also due to the federally fragmented state structure (Börzel, 2001; Treib, 2003).

In the German model of federalism, referred to as "cooperative federalism" (Gunlicks, 2003; Lanceiro, 2018), the competency of law-making is distributed in different ways between the federal level and the state level, depending on the issue at stake. In asylum law, concurrent legislation applies, meaning that the *Länder* (states) can only legislate if and insofar that the federal level has not adopted legislation. Since the federal legislator has made extensive use of its rights in asylum law, there is very little left for the *Länder* to legislate (Federal Republic of Germany, 1949, paras. 72 and 74). However, whereas the asylum procedures are executed by the rare

case of a federal agency with offices in all *Länder* (Riedel & Schneider, 2017), all other elements of federal asylum law are implemented by the *Länder* (Reiter & Töller, 2019). In the EU context, this distribution of competencies goes hand in hand with the federal level, fulfilling a coordinative and harmonising function by framing the *Länder*'s implementing action with a federal transposition law.

Asylum seekers with mental illnesses are particularly vulnerable as their right to adequate psychiatric-psychological healthcare has constantly been neglected in Germany as well as in other EU member states (BAfF, 2020; Norredam et al., 2006). For this group, correct/full implementation of the Reception Conditions Directive 2013/33/EU (RCD) would mean an effective increase in their rights. On the contrary, poor implementation can have major consequences, particularly for the persons affected. Vulnerability among asylum seekers is particularly high, as their capacities to fight for their rights e.g., by taking their case to the court, are structurally limited due to lack of resources and information, insecure residence status, etc. (Baumgärtel, 2020). In the case of EU asylum policy, this seems even more dramatic given the fact that the EU asylum system—as bundled in the Common European Asylum System (CEAS)—has defined relatively high standards, e.g., concerning the asylum procedure or the conditions of reception of asylum seekers in the member countries (Kaunert & Léonard, 2012; Trauner, 2016). Against this background, this article takes an interest in the implementation of EU asylum policy in the German federal system. We focus on the particular case of the recast RCD and its stipulations on the rights of asylum seekers with mental illnesses to get access to adequate psychiatric-psychotherapeutic healthcare (Directive of the European Parliament and of the Council of 26 June 2013, 2013, Arts. 21, 22, 25). Issued in 2013 as the successor regulation to the European Council Directive 2003/9/EC, the purpose of the RCD is to "lay down standards for the reception of applicants for international protection in member states" (Directive of the European Parliament and of the Council of 26 June 2013, 2013, Art. 1). More precisely, the RCD stipulates that member states should consider the specific situation of "persons with mental disorders and persons who have been subjected to torture, rape or other serious forms of psychological, physical or sexual violence" (Directive of the European Parliament and of the Council of 26 June 2013, 2013, Art. 21).

In principle, the Directive—as opposed to regulations—needs to be transposed into national law to become effective. However, the RCD contains a safeguard measure against inadequate translation into national law. It contains a clause stipulating its direct applicability in the member states after the expiration of its transposition deadline in July 2015 (Directive of the European Parliament and of the Council of 26 June 2013, 2013, Art. 32). Similar to other member states, Germany failed to transpose the RCD into federal law in due time

with the consequence—in the particular German case— that the federal legal framing of the *Länder*'s implementation action is now missing.

This article analyses how the *Länder* deal with this regulatory vacuum. It compares the application of the RCD's stipulations on the rights of asylum seekers with mental illnesses in five German *Länder* and asks what— in terms of the protection of asylum seekers with mental illnesses or disorders—is the result of the lack of federal legislation transposing the Directive in federal law. We will show that the different *Länder* have oriented implementation to the focal interests of their own asylum political agendas, which, in some cases, meant that the RCD's stipulations were taken quite seriously leading to a more "permissive" implementation strategy, whereas, in other cases, they were not taken seriously, leading to a more "restrictive" course of implementation action. The federal institutional structure thus worked as an intensifier of subnational asylum policies and their diversity, sometimes with serious consequences for both the affected asylum seekers and the unity of law in the European Union.

This article draws on the results of a multi-annual research project on the access of refugees to psychiatric-psychotherapeutic care in Germany. It is subdivided as followed: The following section deals with the state of the art of implementation research and elaborates on the role of institutional settings in the transposition of European law into national law. The methodology applied is introduced in the subsequent section, which is then followed by the presentation of the empirical findings on the RCD implementation in Germany, as well as the outline of the case study of the selected five states. Findings are discussed and then concluded in the conclusion.

2. State of the Art and Conceptual Framework

The role of the subnational level in the implementation of EU directives in Germany and the variance in implementation performance across the *Länder* have been the subject of scientific research in federalism scholarship, migration studies, political and administration studies, comparative policy analysis, and EU implementation studies (Bogumil et al., 2018; Münch, 2017; Reiter & Töller, 2019; Thomann & Sager, 2017; Treib, 2014). Especially comparative policy analysis has conducted research on the variance of policies in the *Länder* since the 1980s (Heinelt, 1996; Sack & Töller, 2018). Research in migration studies has highlighted the ambiguous relationship between the development of common EU migration law targeting a European harmonisation of asylum and migration policy on the one side and highly divergent asylum and migration policies of the EU member states on the other (Reiter & Töller, 2019; van Riemsdijk, 2012). Typically, divergent migration policies at the level of the EU member states have been predominantly explained by theories of institutionalism

(Broschek, 2011; Lehmbruch, 2012), partisan politics, misfit (Treib, 2003), or a lack of effective monitoring and control institutions at the EU level of governance (Scipioni, 2018; Trauner, 2016). Yet, only a few studies have examined the implementation of EU asylum and migration policies and specifically, the implementation of the RCD (Bianchini, 2013) with its particular stipulations regarding the special needs and rights of particularly vulnerable asylum seekers with special needs (e.g., due to mental illnesses).

When it comes to the implementation of European legislation into national law, the institutional setting in the EU member states plays an important role. Although implementation in Unitarian EU member states with a hierarchical administrative system does not necessarily lead to more effective outcomes, when compared with federal institutional settings, implementation in Unitarian states occurs more uniformly. In the particular case of Germany, the specific model of "cooperative federalism" is assumed to have a harmonising effect. This harmonising effect is also valid in such cases where federal level institutions fail to take action or give formal requirements, since the principle of "federal fidelity" to cooperation and common interests applies (Halberstam, 2001, pp. 36–37; Lanceiro, 2018, pp. 90–91). On the other hand, the institutional theory presumes that institutional structure does have an impact but does not fully determine what actors do (Scharpf, 1998) and therefore suggests that the impact of institutions must be empirically identified in each case.

In the case of RCD implementation in Germany, the harmonising framework of federal law to transpose the Directive into national law is absent. The non-transposition by the federal government has led instead to the direct applicability of the Directive by the *Länder*. The European asylum policy and the standards, e.g., for the reception of asylum seekers present a particularly conflicted policy field. The contents of asylum policy, as well as the overarching question of the conception of protection and care standards for asylum seekers, are not only disputed between the member states (Kaunert & Léonard, 2012; Scipioni, 2018; Trauner, 2016) but also within the member states—e.g., in Germany, the *Länder* pursue different asylum policy strategies (Münch, 2017; Reiter & Töller, 2019; Thränhardt, 2001). Experts agree that in this conflict especially, the special protection obligations for particularly vulnerable groups have not been guaranteed in many cases so far (BAfF, 2016, 2020; Norredam et al., 2006). It, therefore, makes sense to deviate from the dominant focus of multilevel implementation research on compliance (Thomann & Sager, 2017) and to directly investigate and compare implementation activities at the subnational level in different countries.

The implementation of the RCD pertains to European, national, regional, and local scales (Dörrenbächer, 2017). Such multilevel contexts add complexity to interactions between different governance levels when studying prac-

tical implementation (Knill & Tosun, 2010; Thomann & Sager, 2017). Multilevel implementation research, with its strong top-down focus on compliance, emphasises conformance and regards the EU as the main driver when it comes to domestic change (Thomann & Sager, 2017, p. 3). Because this approach falls short in capturing actual performance, as well as possible implications in the member countries, it is important to go beyond legal compliance and top-down approaches. Therefore, this comparative public policy case study employs a combined approach focusing on actors and actions from the middle level of implementation, the German *Länder*. By linking a top-down and a bottom-up approach, the article aims to accurately and empirically grasp the interactions within a multilevel implementation of the RCD.

3. Methodology

The research for the present case study was conducted within the framework of a multi-annual (2018–2022) research project funded by the Federal Ministry of Education and Research investigating the access of refugees to psychiatric-psychotherapeutic care in Germany. Focusing on five selected *Länder*, we resorted to qualitative research methods and content analysis of primary and secondary data and conducted an extensive qualitative case study on the implementation of the requirements formulated in Articles 21, 22, and 25 of the RDC in Germany between 2015 and 2020. In a first step, official governmental documents were collected such as coalition contracts, parliamentary enquiries, and ministerial and other official proclamations from the German federal government and all sixteen *Länder*. Other relevant official documents of non-governmental organisations, foundations, and scientific institutes (such as reports and position papers) were compiled. These documents also served in preparation for the interviews.

Based on the information gathered in the first step, we identified distinguishing features related to the implementation of the Directive and assigned the 16 *Länder* to four implementation types on this basis: (a) full implementing *Länder*; (b) partly implementing *Länder*, showing openness to address and take future actions to take care of special needs of asylum seekers; (c) non-implementing *Länder* with a positive evaluation of the RCD (in official states documents); and (d) non-implementing *Länder* without an evaluation of the Directive, including *Länder* which did not communicate any public information as to the implementation degree of the RCD.

This categorisation considers the degree of action each *Land* had undertaken up until the starting point of our research on the implementation of the RCD in the German *Länder* in the summer of 2020. To examine the implementation structures in each of the four implementation types in greater detail, we decided to conduct interviews, selecting one *Land* within each group (see Table 1). For better representation, due to the large

Table 1. Categorisation prior to selection of five *Länder*, based on official data.

Implementing *Länder*	Partially implementing *Länder* (and openness to further implementation)	Non-implementing *Länder* with positive evaluation of the RCD	Non-implementing *Länder*/Scarce available information
Berlin	Baden-Württemberg	**Mecklenburg-Western Pomerania**	**Bavaria**
Brandenburg	Bremen	Saarland	Saxony
Lower Saxony	Hamburg	Saxony-Anhalt	Schleswig Holstein
	Hesse	Thuringia	
	North Rhine-Westphalia		
	Rhineland Palatina		

Note: Selected *Länder* for the case study are highlighted in bold.

conglomeration of *Länder* in the second category (b), we decided to pick a second *Land* from this group. In total, our case study consisted of five *Länder* cases: Bavaria, Brandenburg, North Rhine-Westphalia, Mecklenburg-West Pomerania, and Rhineland-Palatinate. For an adequate representation of Germany in general, the five *Länder* were selected across axes of the population (densely populated vs. sparsely populated), region (East vs. West), and partisanship (left-wing vs. right-wing parties in government). This selection was furthermore based on the availability of official data on the Directive's application provided by each *Land* since data availability differed significantly between the *Länder*. Finally, we opted for expert interviews because they are the most suitable for policy research and especially implementation analysis (Bogner et al., 2014).

During autumn 2020, we conducted twelve expert interviews with government representatives of the respective *Länder* and representatives of non-governmental organisations, either involved in the Directive implementation or acting as advocators for migration rights. Regarding the former, as ministries represent the highest state authority involved in the execution of laws and policy implementation (Bogumil & Jann, 2009), we conducted interviews with representatives of the respective ministry responsible for the Directive implementation (in German states, asylum affairs and thus the implementation of the Directive is the task of the Ministry of Interior, in most cases, or the Ministry of Integration/Ministry of Social Affairs. Another option is the combined task of the two ministries.). Regarding NGOs, we talked with experts active in the Refugee Councils of the respective *Länder*, as well as associates of welfare organisations and other NGOs working in initial reception facilities (where the vulnerability assessment will usually/is supposed to take place). The interviews were semi-structured and left room for our respondents to give personal evaluations and perspectives (Flick, 2014). The complete material was analysed based on a five-stage evaluation concept as elaborated by Gläser and Laudel (2010) and Mayring (2010). This concept comprises the selection of interview material according to the respective research question, the development of

a categories system, the systematic information extraction, and data preparation for the final evaluation.

4. Procedures for the Assessment of Special Needs of Asylum Seekers With Mental Disorders in Germany

In the most general sense, procedures for the assessment of special needs of protection of asylum seekers are similar in the different German *Länder*. The federal legislator has established uniform regulations in the Asylum Act that provide the framework for the initial reception and thus the space where the assessment of the special needs of protection will usually/is supposed to take place. Accordingly, the assessment of such needs, including the needs of traumatised persons and persons with mental illnesses, is often defined as part of the initial reception of asylum seekers in the course of the opening of their asylum procedure. During this phase, asylum seekers are accommodated in initial reception facilities in the different *Länder*.

As per 1992 German Asylum Law, in the initial reception facility, asylum seekers are registered, have to undergo a compulsory medical examination, start the application proceedings, and complete further reception activities. The medical examination primarily aims to assess infectious diseases. It is not conceptualized to detect possible mental illnesses and traumas requiring adequate psychotherapeutic healthcare and will do so only marginally. Upon the start of their asylum procedure, asylum seekers are questioned in detail about their asylum application by the staff of the Federal Office for Migration and Refugees (BAMF) responsible for conducting the procedure; according to the BAMF (2021), in cases of special protection needs the staff conducting the interviews is additionally trained or has special knowledge for the matter. However, even if asylum seekers do not (or cannot) formulate special needs during their initial reception interview, the determination of such needs should be possible during their living in the initial reception facility. This is because in most cases the diverse staff working in the facilities is expected by the *Länder* to observe whether such needs exist. In addition to administrative staff, personnel for the basic care of people and

security personnel, social workers, and medical staff are employed in the facilities, as well as volunteers from civil society organisations in some cases. This administrative and care structure which is present in each initial reception facility irrespective of the *Land* where it is located is expected to form a basis for identifying the vulnerability and special needs of asylum seekers.

Based on this general structure, according to our viewed material and interviews, the specific procedure to assess special needs is generally expected by the *Länder* to run as follows: At least one aforementioned facility staff is meant to be qualified, trained, or (at least) instructed to identify and initiate necessary proceedings. The personnel (with or without specific qualification, training, or instruction to identify special needs) is in most cases expected to observe indications of mental disorders and inform a commissioned psychologist or general practitioner inside the initial reception facility, or, if applicable, communicate this observation to contacts outside the facility, such as psychosocial centres (PSCs) or other medical supply centres. Regarding potential ties to medical care institutions, our findings show that psychiatric clinics or PSCs are sometimes engaged in the local assessment procedure, depending on the commitment (or network legacies) of involved actors (according to our interviews 2 and 7, NGOs, in 2020). However, the regular involvement of medical institutions is rather seldom, since, among other reasons, initial reception facilities are often built-in remote places, lacking infrastructural connections to hospitals or other clinics (interview 2). As their services are in high demand, usually PSCs are rarely capable of participating in the assessment of vulnerability.

Even before the 2013 Directive recast and the subsequent rising numbers of asylum applications throughout Europe in 2015, some projects for the assessment of mental disorders or trauma during the asylum procedure were developed in some of the *Länder*. Among others, projects such as the Friedländer Model (developed in 2012 together with the Lower Saxony Network for Refugees to assess the need for treatment of asylum seekers in the initial reception facility at an early stage; see BAfF, 2016, pp. 5–6) or the psychiatric diagnostic/psychotherapeutic project by Refugio and Doctors of the World in Bavaria (BAfF, 2016, pp. 11–12) introduced systematic screening among asylum seekers accommodated in the initial reception facilities (between 2018 and 2019, a pilot project for psychiatric-psychotherapeutic primary care offering psychiatric consultations twice a month at selected locations in the *Land* of Bavaria was run by Refugio and Doctors of the World; however, as per our interviews 2 and 3, 2020, both actors withdrew due to the difficult conditions and in protest of not wanting to become "system stabilizers" and do the government's job).

Most of the projects were initiated by non-governmental welfare organisations and were marked by coordinating efforts to connect with medical care institutions. Despite positive responses and measurable success in assessing special protection needs, most of the projects were terminated after asylum applications decreased, but also due to shortages of resources, work overload, interest conflicts, or other reasons (interviews 2, 3, and 7, 2020). Therefore, these models cannot be considered as part of an institutionalised vulnerability assessment, but rather as ad-hoc solutions to fulfil the tasks of the RCD (Töller et al., 2020).

In summary, the analysis of primary and secondary data revealed that all German *Länder* had docked the assessment procedures to the existing structures of initial reception facilities. It is precisely this approach that opens up the scope for procedural arrangements: In some *Länder* a screening questionnaire is used in the initial reception facilities, in others, special accommodation for vulnerable groups is offered. Some *Länder* provide temporarily or permanently employed psychological-/psychiatric personnel in the initial reception facilities (full-time or part-time employment, different numbers and patient ratios), others have established additional supporting structures outside the initial reception facility, such as cooperation with PSCs or with regular medical care suppliers. Some *Länder* provide adequate training for staff members, others do not. All these measures are optionally applied and/or partly combined with other measures. A study of BAfF (2020) found that only three out of sixteen German *Länder* apply a structured special needs assessment procedure, while five had no method at all to assess vulnerability and special needs, and the remaining *Länder* apply single measures which are not part of a structured assessment procedure.

5. Concepts to Assess Special Needs in Five German *Länder*

This section focuses on actions undertaken and concepts to assess special needs in five selected *Länder*: Bavaria, Brandenburg, North Rhine-Westphalia, Mecklenburg-West Pomerania, and Rhineland-Palatinate. The findings discern a clear delineation between the *Länder*, in agreement with the findings from the previous section on implementation throughout Germany.

Bavaria, Mecklenburg-Western Pomerania, and North Rhine-Westphalia lack a concept for the assessment of special needs of asylum seekers and only provide informal assessment procedures (NGO interviews 2, 3, 5, and 7, and state institution interviews 1, 4, and 6, 2020). In these *Länder*, the responsibility to implement this formal requirement of the RCD concerning the special needs of asylum seekers with mental illnesses lies either with the management of the initial reception facilities or with the facilities' violence protection coordinator. Concerning the latter, upon a nationwide initiative in 2016 offering guidelines for minimum standards for the protection of asylum seekers, with the central involvement of NGOs most *Länder* have since developed

accommodation-specific concepts to protect lesbian, gay, bisexual, transsexual, transgender, and intersexual refugees, refugees with disabilities, and refugees with trauma disorders (Federal Ministry of Family Affairs, Senior Citizens, Women and Youth, 2021). Both the manager of the initial reception facility and the violence protection coordinator are usually employed by and directly subordinated to the responsible ministry of the *Land* (in Bavaria this is the Ministry of internal affairs; in Mecklenburg-Western-Pomerania, the Ministry of internal affairs; in North-Rhine-Westphalia, the Ministry of Integration).

Common to all three *Länder* is the absence of psychological services in the initial reception facilities. Here, the determination of vulnerability and special needs of different groups of persons, including persons with mental illnesses or traumatised persons, lies in the hands of the facilities' staff. Should the need for particular protection be identified, the affected person is referred to PSCs or other care providers outside the facilities by facility workers. Depending on the location of the facility, ties to regular care facilities or PSCs might exist. In most cases, however, these health services are difficult to find or reach due to bad infrastructural connectivity (in comparison to the Bavaria and Mecklenburg-Western-Pomerania *Länder*, in North Rhine-Westphalia there is a relatively expanded network of PSCs; interview 7, 2020; see also BAfF, 2020). Despite the informal nature of the process, the transfer of a person with a special need to a suitable accommodation is usually formally recorded and regulated once such a need has been identified. Both Bavaria and North Rhine-Westphalia have adopted violence protection concepts laid down according to regulations. The *Land* of Mecklenburg-Western Pomerania, in turn, does not have a territory-wide violence protection concept. Instead, the Land expects the management of the respective initial reception facility to come up with a facility-specific concept. Yet, none of the reception facilities in Mecklenburg-Western Pomerania had formalised a violence protection concept up until that point in time (interviews 4 and 5, 2020).

More specifically, in Bavaria, no official government or administration document stipulated the necessity to identify special needs until September 2020. Initiated by the opposition (Green Party) in the *Land*'s parliament, the Bavarian council of refugees and advocators of immigrant and refugee health held a parliamentary expert hearing in 2019. After the hearing, Bavaria recognised for the first time the need to identify mental diseases in their violence protection concept (interviews 2 and 3, 2020). In the case of North Rhine-Westphalia, a concept for special needs assessment was developed and completed during the parliamentary term of 2012–2017 (interview 7, 2020). In addition, a model project for initial psychosocial care in the initial reception facilities was designed and tested. According to our interview 7 (2020), after the change in government in 2017 to a centre-right-wing coalition government, however, both the concept and the model project were no longer followed up.

In contrast, Brandenburg and Rhineland-Palatinate have both established formalised procedures for the assessment of vulnerability and special needs (state institution interviews 8 and 12, and NGO interview 11, 2020). The initially informal procedure has been formalised in Rhineland-Palatinate through several steps based on the *Land*'s violence protection concept drawn up in 2017. Although there is no systematic screening procedure for identifying special protection needs, the binding guidelines of the violence protection concept have improved the processes. According to our interviews, the guidelines have improved communication between the actors working in the initial reception facilities as well as the documentation of the assessment findings. In addition to the formalisation of communication and documentation, a psychosocial service has been set up in each initial reception centre to provide advice as well as to carry out the assessment procedure. After the identification of special needs, the respective person is transferred to housing suited for people with special protection needs.

In 2016 and after the decision not to transpose the Directive into national law, Brandenburg, as one of few *Länder*, passed its own *Land* Reception Act (§1LAufnG). This stipulates that it is the task of the regional authorities (equivalent to municipalities) to take into account the special needs of asylum seekers, thus declining any legal requirements from part of the *Land* to fulfil this task. Since then, specialised counselling services have been set up in the municipalities, based on this Act (according to our interviews 11 and 12, the newfound counselling services specialise in different domains, with the majority of them offering social counselling and not including a psychological or psychiatric specialist).

The number of facilities offering such counselling services has risen sharply from five to fifty-three. According to our interviews, this development became possible due to the initiative of the Left Party, the governing party in Brandenburg and also the party of the ministry responsible (Ministry of Social Affairs) for the implementation of the RCD (interviews 11 and 12, 2020). Regarding the assessment procedure in the initial reception facilities, a concept has been developed and applied by the subordinated authority (the Central Immigration Office) of the responsible ministry, although it has not been officially published. Particularly, the assessment procedure stipulates a screening procedure with the help of a questionnaire starting on the second day of reception. If an asylum seeker marks in this initial questionnaire that they have a "mental disorder," a 20-minute interview with the psychosocial service takes place 1–4 weeks later. In case special needs are identified, the psychologists prepare a medical statement based on which the affected person is referred to psychiatric consultation in the central reception facility of the state as well as to housing suited for special needs (interviews 11 and 12, 2020).

6. Discussion

Even though there is a lack of a federal transposition law as a formal basis for the harmonisation of these European directives' stipulations, the federal regulation of the asylum procedure and the initial accommodation of asylum seekers provide the German *Länder* with a uniform institutional basis for the implementation of RCD's special needs assessment requirement. In all *Länder*, the assessment procedures take primarily place within the framework of the initial reception of asylum seekers residing in initial reception facilities during the first months of their stay in Germany. This allows for few institutional adjustments and can minimise adaptation costs. However, without further measures, such as material and administrative changes, an effective implementation was not possible. Our data show that the amount and type of measures taken and the timing of the measures vary significantly from *Land* to *Land*. While some *Länder* have hitherto failed in taking any regulatory measures, others have advanced rather small and ad-hoc solutions and only a few *Länder* have enabled conditions for a systematic assessment of special needs. During this process, some *Länder* have made progress while others have even had backslides in their procedure's development (e.g., in the case of North Rhine-Westphalia). Yet, besides the similar framework of regulatory structures of the initial reception, every state runs a distinctive special needs assessment procedure, with different types and numbers of measures and in particular with different results as to the protection of refugees with special protection needs.

Vague policy formulations usually result from the need to facilitate agreement among heterogeneous interests and high consensus requirements (Knill & Tosun, 2010, pp. 121–122; Treib, 2014, p. 23). In this light, the European governance emphasises general frameworks instead of authorising detailed regulations (Knill & Tosun, 2010), a tendency that produces fuzzy legal concepts that can lead to national legislators failing to transpose EU law, either in regard to substantial compliance or deadlines (Dörrenbächer, 2017, p. 1329; Treib, 2014, p. 31). In our case study, the national legislator failed to fulfil the task of transposing the RCD in German national law. Notwithstanding, the particular German model of cooperative federalism should, in principle, unfold a harmonising effect on the implementation of European law on the level of the *Länder* even in the absence of a formal transposition with potentially harmonising effects—because European law applies to all territorial levels. However, cooperative federalism does not in any case facilitate a coherent implementation of European law ideally coherent to the stipulations of this law. As our comparative case study of the implementation of the RCD's clauses on the specific rights of asylum seekers with mental disorders has shown, the German *Länder* acted quite differently. In this, the five *Länder* under examination here followed their political agendas,

path dependencies, and partisan preferences as already known from the implementation of national asylum law beforehand; some of the *Länder*, like Bavaria, followed a more "restrictive" orientation, whereas others, like Brandenburg or Rhineland-Palatinate, followed a more "permissive" path. These are patterns which have been identified before in other fields of the application of the federal asylum act (Reiter & Töller, 2019).

What is more, in a broader perspective on the CEAS of which the RCD is part, scholarship has recognised that the CEAS has rendered asylum policy increasingly liberal when it comes to implementation in the member states (Ripoll Servant & Trauner, 2014; Zaun, 2016). Putting this conclusion into a wider context, it shows that the above-mentioned limitations could allow for a higher degree of autonomy, favouring ad-hoc innovative solutions and leaving room for individual approaches of the implementing units. Whereas this tends to lead to a patchwork of implementation modes, this does not necessarily foster a uniform race to the bottom, as empirically demonstrated by the cases above. Both Rhineland-Palatinate and Brandenburg seized the opportunity to formalise the assessment procedure by taking specific individual measures. Especially the latter, based on the *Land* Reception Act, transferred the task to implement the RCD to the municipalities, which, in turn, established a plethora of specialised counselling services, offering alternative supporting structures for asylum seekers with special needs. This measure goes thus beyond the infrastructural setting of the initial reception and the uniform regulations of refugee accommodation and asylum procedure of the Asylum Act and even has the potential to bring forward innovation in overall asylum policy.

What is more, further negative impacts on the mental health care of refugees can occur in connection with the status of "direct applicability" of the RCD. Provided that member states would set higher standards for asylum seekers through the application of European law, when the specific status of the RCD is not transposed in due time, this results in a delay of implementation and consequently in a bar of actions/positive impacts on the mental health care of the people affected. The negative consequences associated with the delay of acting can happen regardless of the institutional system of the member state—whether federal or Unitarian.

7. Conclusion

The European governance's tendency to emphasise procedural regulation instead of policy specifications (Knill & Tosun, 2010, p. 121) leads to fuzzy legal concepts. National governments transpose directives only with long delays or substantive flaws and frequently fail to transpose them (Börzel, 2001). A case in point is the RCD, which shall ensure that asylum seekers are equally offered medical and psychological care in all member states. The objective of this article was to analyse and systematise the patterns of implementation of the RCD in

the German *Länder* amid a lack of federal transposition. The empirical findings show that the federal institutional setting leads to significant variance between the *Länder* regarding the amount and type of measures taken, and the timing of the measures. Despite a uniform institutional framework, every *Land* runs a distinctive special needs assessment procedure with different types and numbers of measures. This, however, does not lead to a uniform race to the bottom. Yet, the implementation process in the RCD generates an incoherent patchwork of policy outputs with significant flaws—most measures taken hitherto by the states have been rather small and ad-hoc and some *Länder* have even failed to take up any regulatory tasks at all whereas some others try new and innovative approaches. Since asylum seekers cannot choose the *Land* where they reside but are assigned to a *Land* according to the federal distribution system—the so-called *Königsteiner Schlüssel*—the provision of mental health care to vulnerable groups becomes a matter of luck. The arbitrariness of the place of residence underlines the negative consequences of a deficient directive's implementation and the overall inequality in the asylum reception process. The resulting unequal standards in the asylum procedures present thus far-reaching consequences for the asylum seekers as well as implications on their long-term integration. Our results furthermore demonstrate that the direct effect of directives (if they entail individual rights but have not been transposed on the national level) is a blunt instrument if those entitled to these rights live in conditions in which taking legal action is the least likely thing to do.

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Conflict of Interests

The authors declare no conflict of interests.

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