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Compliance with EU Directives:
Transposition and Legal Fit in the Netherlands

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*"It's the repetition of affirmations that leads to belief.
And once that believe becomes a deep conviction,
things begin to happen"*
- Muhammad Ali

Preface

Before you lies the thesis ‘Compliance with EU Directives: Transposition and Legal Fit in the Netherlands’. This work has been written to fulfill the graduation requirements of the MA programme European Union Studies at Leiden University, the Netherlands.

Although the writing process was slow and often challenging, I am grateful for the opportunity that it provided to increase my knowledge and research skills. Writing this thesis has instilled in me a profound respect for scholars, my lecturers and those who avidly try their best to transfer their knowledge to the next generation.

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Chapter 1: Introduction

1.1 Background

Because the success of the European integration process depends on Member State compliance with the rules and policies adopted at EU level, unsurprisingly the enlargement of the EU and the expansion of policy areas in which the EU acquired law-making competence has led to increased attention for compliance (Falkner, 2013).

As a result, compliance has been politicized and one of the explanations for this politicization concerns the credibility of the EU as an actor on the European and global stage (Falkner, 2013). The past decade the EU has been dealing with severe crises such as the financial crisis, the migration and refugee crisis but also the upcoming Brexit and the rise of populism. It could be argued that, so far, the EU has not provided an adequate response to these challenges and has severely lost its credibility. Being a credible actor is extremely important for the EU's political legitimacy since this legitimacy so obviously differs from traditional political entities such as nation-states. This is explained by Falkner (2013, p.4) who states that: "The EU's legitimacy is less solidly anchored than most other political systems, both on the level of a constitution that might serve as point of identification and with regard to deeply founded feelings of belonging within "its society". De-legitimization of its basic function (integration through law) will therefore endanger its continued existence more profoundly than would be the case with a typical "nation state". Or, as the European Commission (Commission) stated in its 2016 report on monitoring the application of European law: "If laws are not implemented or correctly applied, the foundations of the EU are weakened" (European Commission, 2016).

Compliance with EU law is thus essential for the EU's survival but before it can be understood properly, it is important to place the concept in the context of the European legal framework. The body of European law is formed by the *acquis communautaire* and consists of the EU's primary legislation, secondary legislation and the decisions of the Court of Justice of the European Union (CJEU). In addition, the *acquis* includes resolutions, international agreements, declarations and all action taken in the Area of Freedom Security and Justice. In the case of secondary legislation, a distinction can be made between hard law (regulations, directives and decisions) and soft law (recommendations and opinions). As Article 288 of the Treaty on the Functioning of the European Union (TFEU) explains, within hard law there are those legislative

acts that become immediately enforceable as national law (regulations), those that address specific governments or individuals (decisions) and those that require transposition and implementation into national law (directives) (European Union, 2012).

Unlike regulations and decisions, directives provide Member States with a transposition period of approximately two years during which the Member States have time to translate the directive into national law, a process that is overseen by the Commission. Making sure that binding legislation is applied by the Member States is entrusted to the Commission. This is stated in Article 17 (1) TEU and Article 258 TFEU in which it is appointed as the guardian of the Treaties and can start an infringement procedure if a directive is not transposed before the deadline or not applied accordingly (European Union, 2012; European Union, 2012b).

In the case of directives, being in compliance entails that Member States must fulfill various duties in the so-called implementation process that consists of transposition, application and enforcement (Prechal, 2005). In order to conduct research on compliance with EU law, most studies have used the number of infringement procedures as an indicator for compliance (Mbaye 2001; Zhelyakova 2013). At first glance, this seems to be a valid approach even if it is taken into consideration that the number of infringement proceedings is based on those cases where the Commission is actually aware of non-compliance and that the actual number might be higher (Tallberg, 2002). Whereas the number of infringement proceedings has been used to indicate general non-compliance in the EU, where directives are concerned most studies focus on the transposition phase of the implementation process and consider transposition delays as a means to indicate non-compliance or a compliance deficit (Mastenbroek 2003; Kaeding 2008).

1.2 Problem Definition

At the beginning of this century, the Commission listed effective transposition as the first goal of its Lisbon action plan (European Commission, 2005). The reason for this is that late transposition results in legal uncertainty and can undermine the legitimacy of the EU and its legislation (Kaeding, 2007). A study recently conducted by the Commission on the transposition of relatively new Single Market directives shows that of the fourteen directives with transposition dates falling within the last six months of 2017, the transposition deficit is 29% (European Commission, 2018). In addition, the study also illustrates the differences between Member States when it comes to timely transposition and the progress that they have

booked regarding this issue (see Figure 1). What can be concluded from these numbers and as further analysis of the report shows is that depending on the policy area and the Member State, there is not only EU wide diversity in correct transposition but also in the application of these legislative acts (European Commission, 2018).

Figure 1



[1]	≤1 %	/	>1 %	→ Target established by the European Council, Brussels 8-9 March 2007
[2]	decrease	no change	increase	
[3]	0	/	>0	→ Target established by the European Council, Barcelona 15-16 March 2002
[4] & [5]	<average	average ±10%	>average	

Source: European Commission (2018)

The importance of compliance with EU directives makes it a relevant and interesting topic of research but in order to explain why Member States do not comply several issues must be taken into account. As explained in section 1.1, compliance with directives consists of various issues. Consequently, how compliance on EU level is measured therefore depends on the scope of the study. The reasons Member States have for not transposing a directive on time and the reasons they have for not being able to apply or execute the provisions of a directive correctly might differ and can rely on different factors. Therefore, despite the fact that transposition, application and enforcement are connected they require different approaches in terms of research methods.

Considering the length constraints placed on this thesis and the fact that transposition is a crucial element for compliance, the scope of this research is translated into the following thematic question: *What influences Member States' transposition behavior?*

Throughout the years, scholars have often attempted to explain Member States behavioral issues concerning transposition. The literature on this topic is vast as are the different theoretical angles that have been used to address the topic (Lampinen & Uusikyla 1998; Börzel, Hoffmann, Panke & Sprungk 2010; Falkner, 2013; Spendzharova & Versluis, 2013). However, analyzing the research that has been conducted on transposition requires taking both the distinction of research approaches into consideration as well as the various theories that have been developed. One of these theories is the misfit or goodness of fit theory, which focuses on the incompatibility between European and domestic politics, policies and polities and is based on a so-called 'misfit' or 'mismatch'. This theory has been the topic of academic debate ever since it was introduced and is derived from the assumption that successful compliance depends on the fit between European policy requirements and existing policies and institutions at the national level (Héritier, 1995). Interestingly, most literature on the misfit theory focuses on institutional and/or policy misfit. While the relevance of these conducted approaches is uncontested, this thesis proposes to take the compatibility of EU law and domestic legal structures in consideration, a so-called legal misfit (Börzel, 1999; Auel, 2005). The motivation for this approach is that it adds another dimension to the debate on the validity of the misfit theory while simultaneously providing insight in transposition behavior of Member States.

An interesting Member State to which this approach can be applied is the Netherlands. In general, the Dutch find that they are loyal to the EU in which the quality of transposition plays a central role (Mastenbroek, 2003). This is in accordance with the general academic opinion on the Netherlands having a culture of compliance with respect for international law (Biering, 2000; Tallberg, 2002). Although perceived as a country that has a culture of compliance it nonetheless seems to have difficulties with its transposition performance. For example, between the 1990s and the beginning of the 2000s the Netherlands failed to transpose almost 60% of directives within the set timeframe. (Mastenbroek, 2003). In addition, the report of the Commission mentioned in section 1.1 found that the Netherlands belongs to the top three countries with the longest transposition delays and performs slightly under average where correct transposition is concerned (European Commission, 2018). Overall, the country's performance shows that the road to good transposition is often paved with many difficulties, which makes it interesting to translate the thematic research into the following research

question: *To what extent does legal misfit influence the transposition performance of the Netherlands?*

1.3 Research Approach

In order to answer the research question, a qualitative analysis is conducted that examines the outcome of a compatibility test between the Dutch legal structure and the transposition of three EU directives. The directives selected for this research are; Directive 2010/64/EU on the right to interpretation and translation in criminal proceedings (hereafter the Right to Interpretation and Translation directive); Directive 2012/13/EU on the right to information in criminal proceedings (hereafter Right to Information directive) and Directive 2013/48/EU on the right of access to a lawyer in criminal proceedings and in European arrest warrant proceedings, and on the right to have a third party informed upon deprivation of liberty and to communicate with third persons and with consular authorities while deprived of liberty (hereafter Right of Access to a Lawyer directive).

These three directives are part of the EU's Roadmap for strengthening procedural rights for suspected or accused persons in criminal proceedings and fall under the Area of Freedom, Security and Justice. All three directives focus on establishing minimum requirements and regulations for the rights of suspects or persons accused of a crime. Historically, Member States have always shown reluctance to transfer decision-making competence to the EU when it comes to these issues related to the Area of Freedom Security and Justice, which is reflected, by the relatively low number of directives that have been adopted in this area, explaining the lack of extensive research on this topic (Hartmann, 2016). However, research of directives that place a strong emphasis on justice and fundamental rights deserves more attention since the EU itself lists respect for human rights as one of its key values (European Union, 2012b). In addition, like all countries of the EU, the Netherlands has signed the Charter of Fundamental Rights of the European Union and it is interesting to study their transposition performance in this area.

The next chapter contains the theoretical framework that provides insight in the development of compliance and transposition studies theories through a literature review. Furthermore, the theoretical framework defines the concepts of transposition, transposition performance and legal misfit narrowing them down to a hypothesis. The third chapter of this thesis describes the methodological approach where the selection of the research method and the validity of this

study are discussed and the variables operationalized. The operationalization of both the independent and dependent variable is done based on the literature review, The independent variable, formed by Steunenberg and Toshkov's (2009) understanding of legal misfit, is translated into a model that can be used to test the hypothesis. In chapter four, this is done through an analysis of the gathered data followed by an overview of the result. The last chapter concludes the findings of the analysis by providing an answer to the research question. In addition, this chapter focuses on the implications of this study and addresses possible recommendations.

Chapter 2: Theoretical Framework

Being able to provide an answer to the research question requires establishing the theoretical framework in which this research takes place. Firstly, the most important theoretical concepts of this study are explained and narrowed down to definitions. Secondly, a literature review is made in which the theoretical approaches to compliance and transposition are described. The end of this chapter combines both findings and translates them into a hypothesis that can be tested to provide the research question with an answer.

2.1 Defining Compliance, Transposition and Transposition Performance

2.1.1 Compliance

Because the definitions of compliance depend on the type of research that is conducted, the diversity in definitions, approaches and research strategies can make the issue of compliance very complex to research. Despite this diversity, there are various explanations for what compliance may mean. (Prechal, 2005; Zhelyavkova, 2013; Thomson, 2010; Zhelyavkova and Torenvlied, 2011). One of the first explanations was given by Prechal (2005), who described compliance as a multi-layered endeavor, which consists of fulfilling various duties in different stages of the implementation process and has three consecutive stages: transposition, application and enforcement. These stages were further described by Mastebroek (2007, p.19) as being the stages that refer to ‘the administration of the national measures transposing a directive in a concrete case’ and ‘the process of compelling observance of the national measures transposing the directive’ respectively. In their work on operationalization and data problems in EU compliance research, Hartlapp & Falkner (2009) thus describe non-compliance as something that can occur during the decision-making process, in the application phase or in the transposition phase. Compliance is achieved when Member States take the required action necessary to complete each of the different implementation process so that all steps of the overall process are fulfilled and result in ‘the conforming outcome’ (Hartlapp & Falkner, 2009). In line with Hartlapp and Falkner’s explanation, a clear definition is provided by Zhelyavkova (2013, p. 702) who states that: “In the EU context, compliance is defined as the extent to which national actors conform to the EU requirements by incorporating and applying EU laws into national context”.

2.1.2 Transposition & Transposition Performance

As the first stage of the implementation process of compliance, Prechal (2005, p. 5-6) defines transposition as: “The process of transforming directives into provisions of national law by the competent national legislative body or bodies”. This definition corresponds with the explanation provided by the Commission who describes transposition as the procedure of giving force and applying implementation measures for the directive to be translated into national law by the Member States (European Commission, 2007). Therefore, researching Member States’ transposition performance involves analyzing this transposition process or procedure. Although extensive, this procedure is narrowed down by Hartlapp & Falkner (2009) to two concepts: timeliness and correctness. As they explain: “During the transposition phase, which is often the focus of political science studies in the realm of EU policy implementation, there are at least two crucial dimensions: timeliness and correctness” (Hartlapp & Falkner, 2009, p. 283). For the purpose of this thesis, transposition performance will thus be defined as the extent to which a directive is timely and correctly transposed.

In their work, Hartlapp & Falkner describe timely transposition stating that: “Timeliness means to meet the transposition deadline of a directive” (Hartlapp & Falkner, 2009, p.283). This means that after the transposition deadline has passed, the provisions of a directive must have been transformed into national law by the Member States’ competent bodies. However, a timely transposed directive is not necessarily a correctly transposed directive. According to Prechal (2005), although not every detailed aspect of the provisions of a directive can be fully incorporated into domestic legal frameworks (as this is often perceived as being disproportionate), one of the ways to determine correct transposition is by analyzing the content of transposition measures. Hartlapp and Falkner (2009) confirm this and explain that in order to determine if correct transposition has occurred, the content of the provisions of the EU requirement and domestic legislation must be compared. Therefore, explain correctness based on the definition provided a few years earlier by Falkner, Hartlapp, Treib & Leiber (2005) that places a lot of emphasis on the correspondence between the directive and the content of domestic acts. These authors define correctness as the moment ‘at which the national rules and regulations satisfied the standards of the Directive almost completely, with only minor details missing or incorrect’ (2005, p. 66).

2.2 Literature Review: Compliance & Theories

2.2.1 Early Theorizing of Compliance

Several distinctions can be made when describing the literature on compliance. One of those distinctions is the emergence of several waves of compliance research and the use of various theories to explain Member States' compliance behavior.

The first wave of compliance research emerged in the late 1980s when scholars started to focus on the growing issue of compliance and other scholars quickly followed (Mastenbroek, 2007). During this time, compliance was perceived as an apolitical process that occasionally stops or slows down due to legal or administrative issues such as administrative capacity or the ambiguity and complexity of directives. Researched by legal scholars and students of public administration, the compliance research of the first wave lacked solid theoretical frameworks and mostly combined aspects and insights of implementation research, legal studies and international relations theory. The realization of the internal market increased academic attention for the subject, which was also the case for IR and European integration theorists. Consequently, neofunctionalists, intergovernmentalists and constructivists all aimed to create a theoretical premise for compliance with EU law. This is affirmed by Conant (2012) who conducted extensive research on the theoretical approaches of scholars on the subject of EU compliance. In her work she describes the first wave of compliance research as: 'Efforts to explain compliance with EU law originated among international relations (IR) theorists of international organization and regional integration, who focused on the puzzle of how a supranational court could impose its authority over states and thereby transcend national sovereignty' (Conant, 2012, p.1).

2.2.2 Europeanization

After this wave of compliance, a new wave emerged in the 1990s that marked an increase of theoretical approaches that go further than IR or European integration theories and focus more on Europeanization. As a result, the scope of this research shifted from bottom-up processes, in which institution building on a domestic level was analyzed, towards top-down processes that show how Europeanization affected domestic policies and polities. This shift reflects the interest of scholars in the deepening of European integration and the emergence of changes on a domestic level (Moumoutzis, 2011). According to Börzel & Risse (2003), two conditions can be identified in order for domestic change to happen because of Europeanization. One of these

conditions focuses on the incompatibility between European and domestic politics, policies and politics, a so-called 'misfit' or 'mismatch' which is used as a factor to determine the extent of adaptational pressure that is experienced at the domestic level (Héritier, Knill and Mingers, 1996). This misfit theory was first introduced by Héritier (1995) who based it on the hypothesis that compliance depends not on Member States' interests but rather on the fit between the proposed European policy and domestic policies and institutions. Directives form an intriguing topic of research for this theory since they often demand a transformation of either domestic policies or legislation and can be intrusive as well as challenging for Member States. According to Duina (1997), directives always affect nation-specific policies, institutions or processes and in the case of a directive requiring major change, compliance suffers. This is because Member States' institutions and policy traditions are the result of deeply rooted domestic traditions or understandings of aspects of life and directives may require a shift of these understandings (Duina, 1997).

Ever since scholars started to focus on the link between misfit this so-called adaptation pressure, several types of misfits have been identified that can exert adaptational pressure on Member States (Héritier, 1995; Duina, 1997; Duina and Blithe, 1999; Héritier et al., 2001; Börzel and Risse, 2003). Knill (1998) was also one of these authors that distinguished types of misfit and first addressed institutional misfit. In his work, he relates institutional misfit to 'the institutional embeddedness of the national policy' or in other words 'the degree of institutionalization or institutional stability of sectoral arrangements'.

Using Duina's premise, Sabatier (1998) further refines this explanation of institutional misfit and relates the depth of institutional embeddedness to domestic ideological paradigms. An example of such an ideological paradigm can be the understanding of the role and influence the government or judicial institutions have in society. Another type of misfit that has been addressed by scholars is the so-called policy misfit between EU policies and domestic policies, which inevitably leads to compliance issues since European policies may affect or challenge domestic techniques used to achieve policy goals, procedural standards and domestic policies (Börzel, 2003). Because of policy misfits Member States would ideally upgrade policies to the level of their European counterparts so that compliance issues can be resolved. Unfortunately this leads to 'regulatory patchwork' in which diverse patterns of policies, standards and styles are applied (Héritier, 1995). The problem with this regulatory patchwork is that those Member States that were not able to adjust their policies might not only need to change policies but also

institutional structures (Börzel, 2001).

2.2.3 Legal Fit

Although institutional and policy misfit cover an extensive amount of the initial literature on the misfit theory, empirical results have not been as convincing as possible and critics see it as a static theory that, when tested, hold less explanatory power than expected (Haverland, 2000; Falkner et al., 2005; Duina, 2007). Therefore, scholars of a new wave of compliance research emerged. This new wave is characterized by a significant increase of quantitative research and focuses more on factors at both the sectoral and domestic level. One of these scholars is Haverland (2000, p.83) who argues that ‘the number of institutional veto points that central governments has to face when imposing European provisions on their constituencies, ultimately tend to shape the pace and quality of implementation, regardless of differential degrees in the goodness of fit’. Authors such as Mbaye (2001), further focused on the role of institutional veto players introduced by Haverland by introducing them in a systematic comparative analysis of EU implementation while Treib (2003) also takes the political preferences of national parties into consideration.

While the emergence of this research as a reaction to the disappointing empirical findings of the misfit studies is logical, it is important to mention that the hypothesis behind the misfit theory was indeed too static in its nature. Taken very literal, the original hypothesis behind the theory would always result in little or no change. If a directive fits in the domestic landscape then change is hardly necessary. If it does not fit then Member States ignore or oppose it. To add another dimension to misfit research, authors such as Börzel (1999) and Auel (2005) aimed to place the concept of misfit by taking the gap between domestic legal architectures and EU legislation into consideration. They explain that in the case of severe discrepancy between these two it is harder for Member States to comply. This legal fit hypothesis was further developed in the work of Falkner, Treib et., al (2005, p.27) in which the authors state that: ‘one can expect a smooth implementation process if a directive requires only small changes to domestic arrangement. Implementation problems, by contrast, are expected if considerable misfit must be rectified by a Member State’. In other words, directives that disrupt the national legal architecture of a Member State are less likely to be transposed on time and correctly than those who do not require substantial changes and fit easily into the existing domestic legal framework. A significant contribution to the research on legal fit comes from Steunenberg and Toshkov (2009) who find that it is a significant factor in explaining Member States’ transposition

performance. Contrary to institutional and policy misfit that are relatively often related to the preferences of domestic actors, legal fit is focused on the discrepancy or friction between EU law and the national legal system (Steunenberg and Toshkov, 2009). Compliance or transposition problems that occur because of legal misfit are thus mostly formal since transposition concerns the practicalities of rule transfers rather than preferences. National actors may approve of the goal and purpose of directives but can still encounter severe difficulties with transposition because the directive does not fit into their domestic legal architecture. This legal architecture is described by Steunenberg & Toshkov (2009, p.965) as ‘the structure of the national legal order in which the requirements of a directive need to be included or elaborated. In case this occurs, failed or late transposition has more to do with the ‘legal mess’ of the directive rather than with the willingness to comply.

A good example of this ‘legal mess’ that can result from new legislation is illustrated through a simple example as changing the law on post-stamps which does not affect the scope of other legislation as intrusively as changing the definition of a term such as ‘domestic economic entity’ (Steunenberg & Toshkov, 2009). If a directive requires change of the construction of terms such as ‘domestic economic entity’, likely there is a significant amount of related legislation that must be reformed as well. This is unsurprising as many of the domestic normative clusters are the result of deeply rooted beliefs and paradigms that have been in place for sometimes centuries and are idiosyncratic. Interestingly, this would mean that directives do not even have to be controversial in order to create difficulties. They must only affect a revision of the construction of specific definitions or require the adaptation of existing legislation to cause problems.

To be able to anticipate this legal mess and determine how well a directive fits in the domestic legal architecture, these authors introduced a new approach. This approach purposely disentangles the preferences of domestic actors from legal misfit and opts to ‘combine into a single measure several indicators that relate to various aspects of the national legal architecture disturbance caused by a directive’ (Steunenberg & Toshkov, 2009, p. 959). This single measure focuses on the scope and novelty of the required legal change which as they state (2009, p.960) ‘‘can be captured by the number of national transposition measures required, and the status of these measures in the national legal order (laws, regulations, ordinances – first, second and third order legislation). Their approach results in a model with four categories explaining the level of adaptational pressure or degree legal misfit Member States experience (see Figure 2).

Figure 2

Category	Adaptational pressure
High misfit	A directive demands the adoption of more than two legislative acts of a higher order (law & regulations). The measures to transpose the directive consist of extensive amendments
Moderate misfit	More than two <i>new</i> higher order legislative acts are adopted which do not require replacing existing legislation
Limited misfit	A maximum of two transposing acts of a lower order (regulations and ordinances) need to be adopted. These acts amend existing norms.
Small misfit	A maximum of two acts need to be transposed. These acts are new and are not primary legislation.

Source: Steunenberg and Toshkov, *Comparing transposition in the 27 member states of the EU: the impact of discretion and legal fit*, 2009.

Based on the four-fold classification from Steunenberg & Toshkov’s model, directives that require the implementation of two new ‘lower order’ acts that do not demand amendments to domestic norms are not likely to result in a legal mess. The impact of transposition is small since the directive does not require extensive revision of other legislative acts or reconstruction of domestic norms. As soon as a directive requires amending existing norms transposition becomes more challenging. Yet, this depends on the fact if these existing norms are anchored in legislation of a lower or higher order and the number of acts that need to be adopted.

Based on this model Member States would be able to predict and prevent transposition difficulties. Nevertheless, it also has some deficits. One of these deficits is that it is very generic in nature. It considers four scenarios and does not allow more nuanced scenarios to be included. Furthermore, the authors do not provide a clear explanation on what they deem to be extensive amendments. Steunenberg and Toshkov themselves explained that the model lacks a specification that addresses the various legal techniques that are domestically used to transpose directives. In future research, specifying domestic legal techniques and architectures is thus essential for its validity and must be taken into account (Steunenberg & Toshkov, 2009). Since

this thesis provides a good opportunity to apply the model to a domestic legal architecture this results in the following hypothesis:

H: The higher the degree of legal misfit the higher the impact on transposition performance.

Chapter 3: Research Design

Now that the theoretical approach of this research is translated into a hypothesis, the next step is determining the research design of this thesis. This chapter provides a motivation for the selected research method, considers its limitations and operationalizes the variables so that the hypothesis can be tested.

3.1 Motivation Research Strategy

3.1.1 Quantitative vs. Qualitative Analysis

Besides being able to make a distinction between the theoretical approaches, there is a distinction between those studies that conduct qualitative research and those that conduct quantitative research. In general, those authors who conduct explanatory research focus on qualitative approaches whereas quantitative studies focus on a larger number of directives, policy areas or Member States (Treib, 2014).

One of the characteristics of quantitative research concerns the large N-size, which accounts for a high external validity. However, the considerable N-size of these studies simultaneously counterbalances the reliability of the research outcomes because of measurement validity (Hartlapp and Falkner, 2009; Treib, 2014). Due to the scope of this type of research, variables are often simple and forced to disregard relevant factors of transposition. As opposed to large N-size research there is also the qualitative approach which consist of a small N-size. Central to most small N-size methodological approaches is the co-variational analysis, which seems an appropriate approach for this study. This is because conducting a co-variational analysis aims to infer causality by presenting empirical evidence of co-variation between an independent and a dependent variable (Blatter & Haverland, 2012).

In the case of this study, the goal is to establish if legal fit has influence on the transposition performance of Member States. While this allows for both qualitative and quantitative approaches to be applied to this research, issues of measurement validity may not be raised. Therefore, the argument in favor of a big N-size does not necessarily hold and conducting a qualitative analysis with a small N-size is more appropriate for this research.

3.1.2 Case Study & Case Selection

According to Yin (2009), those seeking to increase the knowledge of social or political related phenomena often use case studies which seems to be a valid research method for this thesis as well. Firstly because the research question is explanatory: It aims to provide an explanation for a phenomenon and to test an already existing theoretical approach to transposition.

Another reason why conducting a case study is a valid research method is the fact that there is no control or influence over the behavioral events that are central in this work. When studying contemporary issues that cannot be influenced by researchers, the case study is a preferred research method that has the ability to deal with the analysis of several types of data (Yin, 2009). In the case of this study the contemporary issue of compliance and transposition of EU directives is put in a real-life context without the author having had any influence on events related to the transposition of directives. Lastly, there is the focus on a small number of examples to comprehend broader groups of similar issues. Or, as Gerring (2004, p. 341) states: “a case study is best defined as an in-depth study of a single unit (a relatively bounded phenomenon) where the scholar’s aim is to elucidate features of a larger class of similar phenomena”.

Where this work is concerned, the process of selecting directives is influenced by several factors that must be taken into consideration. Evidently, the directives that are used for the purpose of this study must be directives in the Area of Freedom, Security and Justice. Secondly, the qualitative approach of this study demands a small N-size. Therefore, three directives are chosen to test if the hypothesis is valid. Thirdly, the transposition deadline of the directives must have passed. Determining a causal relation between legal misfit and transposition performance becomes complex when the transposition period has not elapsed and conclusive data cannot be gathered. Subsequently, this excludes transposition deadlines that have recently past. Thus, this work only considers directives of which the transposition deadline was at least 12 months ago. In addition, there must be a certain level of data availability in order to conduct research. This means that at least a certain amount of information on the directives and their impact on the Dutch legislation framework must be available and easily accessible.

3.2 Operationalization

Now that the choice for a research approach to test the hypothesis has been motivated, the variables must be operationalized. Operationalization refers to the necessary step of developing the theoretical constructs of the hypothesis or theoretical framework into empirically measurable definitions (Open Universiteit, 2016). Or simply, translating a term or definition into a concept that can actually be measured. This is essential for testing hypotheses and ensuring the validity of any research and thus requires setting indicators that can be identified to establish the presence or absence of a concept. In order to test the hypothesis, transposition performance and legal misfit are operationalized by setting indicators that can be used to measure them.

3.2.1 Legal Misfit

As the independent variable, operationalization of the term legal misfit is essential for this study. Using Steunenberg & Toshkov's suggestion to consider a country specific domestic legal architecture, this research applies the Dutch transposition instruments to the model that is based on the legal misfit theory. As a result, legal misfit becomes a measurable concept. In the case of the Netherlands, there are several types of legal measures or instruments to transpose EU directives. Each of these acts contains amendments to Dutch legislation that address a specific provision of a directive.

These measures can be divided in three main categories that consist of primary instruments, secondary instruments and tertiary instruments (Mastenbroek, 2003; Bovens & Yesilkagit, 2010). The primary measure involves statutory law or, acts of parliament.¹ Their enactment requires approval of the Dutch parliament, the council of ministers and the scrutiny of the Council of State and may involve extra advisory boards other than the Council of State.² After enactment, these parliamentary acts are published in the *Staatsblad*. This is the Netherlands' official journal in which all laws are published. Without publication in the *Staatsblad* laws cannot enter into force.

¹ In Dutch, acts of parliament are referred to as *Wetten*

² In the Netherlands, the parliament consists of the House of Representatives ('Tweede Kamer') and the Senate ('Eerste Kamer'). The council of ministers consists of all the current ministers of the government. The Council of State is the Raad van State, a constitutional advisory body to the Dutch government.

The secondary measures are divided in Royal Decrees and Orders in Council (Algemene Maatregel van Bestuur). Combined these two are referred to as Royal Decrees.³ Adopting Orders in Council involves the council of ministers, a signature of the Crown and requires scrutiny of the Council of State but rarely involves parliament (Bovens & Yesalkagit, 2010). Like acts of parliament, they are published in the *Staatsblad* in which they are then called ‘Besluit’ and not ‘Algemene Maatregel van Bestuur’. Generally, parliamentary acts form the legal basis for Orders in Council.

Contrary to Orders in Council, Royal Decrees do not require scrutiny of the Council of State and are usually signed by the minister responsible for the Royal Decree. This is because they mostly consist of decisions on the entry into force date of laws, award honors and titles to individuals and appoint public officials such as mayors. Unlike Orders in Council, a Royal Decree are only published in the *Staatsblad* if it contains the entry into force date of laws. In all other cases, it is published in the *Staatscourant* or not at all.⁴

The tertiary instrument used for transposition are ministerial decrees. Like Royal Decrees, they involve neither the Council of State nor parliament but are enacted by an individual minister of the cabinet whose ministry is concerned with the ministerial decree.

In addition to these three instruments, there are also alternative transposition measures enacted by lower level administrative decisions (Berghlund, Gange & van Waarden, 2006). Although in some cases they have the authority from the ministry under which they are administrated to issue orders, their weight as legal instruments for transposition is significantly lower and are thus not included in the model.

The model that determines the degree of legal misfit requires that the Dutch legal measures are categorized as acts of a ‘higher’ legal order and acts of a ‘lower’ legal order. In the case of the Netherlands, this distinction results in the following figure:

³ In the Netherlands, the term Royal Decree is used to indicate the category of legal instruments that consists of Orders in Council and Royal Decrees. However, it is also used to describe one of the two forms of Royal Decrees that was called *Kleine Koninklijken Besluiten* prior to 1992. This thesis uses the term Royal Decree only in reference to the latter.

⁴ The *Staatscourant* is a digital publication of the Dutch government and contains ministerial decrees, announcements that are not published in the *Staatsblad*.

Figure 3

Instrument Category	Instrument	Legal Order
Primary	Parliamentary acts or statutory law	High
Secondary	Orders in Council	High
	Royal Decrees	Low
Tertiary	Ministerial Regulations	Low

Evidently, parliamentary acts belong to the first category and ministerial decrees to the last. The secondary measures are a bit more ambiguous in nature. Technically, Orders in Council fall under the category of secondary transposition instruments. However, in this case they are categorized as measures of a higher legal order. This is because they require scrutiny from the Council of State, are legally based on parliamentary acts and can be scrutinized by the Dutch parliament. Furthermore, like parliamentary acts, Orders in Council are perceived as the most time-consuming measures used to transpose directives (Mastenbroek, 2003; Steunenberg and Voermans, 2006).

The Dutch Royal Decrees are categorized as acts of a lower legal order. This is because they require involvement from neither the Council of State nor parliament, are merely signed by the responsible minister and by nature address issues that are not directly related to amendments of statutory law.

In the case of the Netherlands, the categorization of the Dutch transposition instruments results in the following model to determine the degree of legal misfit (see Figure 4).

3.2.2 Transposition Performance

Timeliness

Although the explanations of timely transposition seems straightforward determining the transposition date is not always easy since directives may have different deadlines for the separate provisions (Mastenbroek, 2007). In that case, Member States report various transposition activities, which leaves room for assumptions about the actual date of complete transposition (König and Mäder, 2012).

Figure 4

Category	Adaptational pressure
High misfit	A directive demands the adoption of more than two Dutch parliamentary acts or Orders in Council. The measures to transpose the directive consist of extensive amendments
Moderate misfit	More than two <i>new</i> Dutch parliamentary acts or Orders in Council are adopted, which do not require replacing existing legislation
Limited misfit	A maximum of two Royal or ministerial decrees need to be adopted. These acts amend existing norms.
Small misfit	A maximum of two Royal or ministerial decrees need to be transposed. These acts are new and do not address primary legislation.

Setting an indicator for timeliness includes considering different aspects when it comes to determining the date of transposition. This consists of looking at the date the legislation becomes enforceable; the date it is adopted in a Member State and the date it is published in a Member State's official national journal (Hartlapp and Falkner, 2009). The publication date in the Staatsblad and the date legislation is adopted are both easily accessible and thus not difficult to determine. Although this seems valid, there might be long intervals between the publication or adoption date and the date legislation enters into force, which results in distorted data (Hartlapp and Falkner, 2009). The notification date as stated in EUR-LEX might also serve as a good indicator since the information is easily accessible, is provided by the Member States themselves and complete. However, several issues need to be considered: First, as is the case with the publication date, the notification date might be different from the date of entry into force. Second, in case transposition is done one piece of legislation at a time, it can be unclear which transposition date has been notified by the Member State (Hartlapp & Falkner, 2009).

Therefore, the most straightforward transposition date for operationalization is the date legislation comes into force and becomes applicable to the addressees. Although this date is, in some cases, difficult to determine it marks the point in time where all phases of the transposition phase are complete and is the only date that can provide evidence of a Member States' performance when it comes to timeliness of transposition (Hartlapp and Falkner, 2009).

Correctness

As discussed in the previous chapter, in order to determine if a directive is correctly transposed, the correspondence between the content of transposition measures and the content of the directive must be analyzed,

This is done based on the transposition tables provided by the Dutch government (see Appendix I, II and III). These transposition tables provide an overview of every article of the three directives and indicate whether they required amendments to Dutch legislation or not. If an amendment is deemed necessary, the transposition table mentions the specific article of the legislative act that contains the required amendments. In case a provision does not require amendment, the transposition tables list which existing domestic laws already corresponded with the provisions of the directive.

As explained in section 3.21., in the case of the Netherlands, the content of transposition measures are legislative acts that mostly consist of parliamentary acts, Orders in Councils and Royal or ministerial decrees. These legislative acts contain amendments to existing Dutch legislation and are thus crucial for the transposition of directives. The content of directives consists of provisions that can be divided in three categories. The first category concerns substantive provisions that consist of legal and factual situations, prohibitions and obligations that are directly placed on Member States or its citizens, discretion and derogations and procedural results (Prechal, 2005). The other two categories of provisions concern ancillary provisions that complete the substantive provisions and those provisions addressed to the EU institutions. Due to length constraints, it is impossible to analyze the content of all provisions of the directives or to analyze all transposition acts adopted by the Netherlands. Therefore for correctness, several criteria are introduced that help with making a selection of transposition measures and directive provisions that shall be analyzed.

The first criterion concerns the content of the directive. In the case of this research, only the substantive provisions that place obligations or prohibitions on Member States are analyzed. This is because substantive provisions that place direct obligations on Member States leave little discretion and can be considered as being imperative to achieve a directive's intended result since they form the core of the directive (Prechal,2005). Establishing if they were correctly transposed is therefore a crucial element of Member States' transposition performance. The second criterion is that the provision required amendment to Dutch legislation. Thus, those provisions that did not require amendments to Dutch legislation are not considered. This information is found in the transposition tables that are provided by the Member States after transposition is complete.

The last criterion concerns the domestic transposition instruments and determines which transposition act is analyzed. It can occur that several transposition acts were adopted to transpose a directive. Because a selection must be made, this thesis opts to analyze the highest ranking act that was adopted for the purpose of transposing a directive. In other words, if a ministerial decree and a parliamentary act are adopted to transpose the Right to Information directive, only the amendments proposed in the parliamentary act are analyzed since a parliamentary act is a primary transposition instrument. The motivation for this choice is simple, in case transposition instruments of different categories are used it is fair to assume that the transposition act of the highest category contains those amendments that are essential for correct transposition.

In Appendix V an overview of the transposition acts and directive articles that meet the abovementioned criteria and that are analyzed in the next chapter can be found.

3.3 Data Collection

This thesis consists of desktop research and document analysis. The data that is required to answer the research question and test the hypothesis is easily accessible since this information can be found online. The content of the selected directives is retrieved from databases like EUR-Lex. To indicate transposition performance, documents that provide insight into transposition process in the Netherlands are gathered. These sources include the directives, parliamentary minutes or papers, legislative proposals, explanatory memorandums and other government documents. This information is partially obtained from the EUR-Lex database

and from the websites of the Dutch parliament. The Dutch *Staatsblad* provides information on the entry into force date of the directives. In addition, it also contains information on the legislative acts that are used for transposition and other documents that are provided by the Dutch government to consider the correspondence between the required action of the directive and the action taken by the Netherlands to comply with the directive. In order to indicate the degree of legal misfit, mostly data from the Dutch parliament is used. These documents are mostly parliamentary decisions or consist of government documents on the implementation and transposition of directives that include transposition tables.

3.4 Limitations

Judging the quality of a study's research design means reviewing its limitations. Since case studies belong to the field of empirical social research we must therefore look at the concepts that are used in empirical social research to establish a study's quality (Yin, 2009).

3.4.1 Construct Validity

The concept of construct validity is focused on ensuring if the operational steps are appropriate for the purpose of the study and the research question. It can be explained as "identifying correct operational measures for the concepts being studied" (Yin, 2009, p.40). The construct validity of this research is ensured by the operationalization of the variables and their indicators since these indicators have been carefully chosen and have a strong theoretical basis.

3.4.2 Internal Validity

Internal validity is focused on providing proof of causal relationship between the variables. The variables of this case study are concepts that have been studied and validated in previous compliance or transposition studies. In addition, providing definitions and indicators for the variables increases their validity. As this study aims to answer to what extent the degree of legal misfit influences transposition performance, a relationship between the two variables appears to exist. However, establishing a causal relationship usually means that a third variable is included in the research. This so-called control group or control variable can also account for the causal relation between the two variables and must therefore be considered. However, full internal validity is problematic since it is complex to always include all

possible control groups that may influence the variables in a study. Naturally, this is also the case for this study.

3.4.3 External Validity

External validity concerns determining “the domain to which a study’s findings can be generalized (Yin, 2009, p.40). The directives that have been selected all fall under the Area of Freedom, Security & Justice which so far has been an under analyzed policy area in compliance and transposition studies. This study therefore ensures external validity for transposition research addressing both this policy area and the Netherlands. However, as is the case with all small N-size research, this study allows for a detailed assessment rather than a generalization. In other words, it rather shows trends than definite conclusions. This is simply because not every case of transposition can be predicted based on the scope of one study.

3.4.4 Reliability

Lastly there is reliability, which includes “demonstrating that the operations of a study- such as the data collection procedures- can be repeated with the same result” (Yin, 2009, p.40). Reliability does not mean being able to copy the exact results in another case study but rather that another researcher should be able come to the same conclusion through the same operational steps and using the same sources of a study. Since the sources on which the indicators are based are easily accessible and available, this study has a high level of reliability and the results are likely to be replicated.

Chapter 4: Data Analysis

This chapter analyzes the transposition performance of the Netherlands for the three directives that were selected for the case study. Firstly, the legislative acts that were used during the transposition process are analyzed in order to establish the degree of legal misfit. Secondly, the entry into force date of each directive is established by consulting the legislative acts provide this information. Lastly, the correspondence between the substantive provisions of the directive and the proposed amendments to existing Dutch legislation is analyzed to determine if transposition was correct.

4.1 Legal Misfit

4.1.1. The Right to Interpretation and Translation Directive

The Right to Interpretation and Translation directive is the Roadmap's first directive and grants suspects or accused persons in criminal proceedings the right to an interpreter or translator during criminal proceedings (European Union, 2010). In order to transpose the provisions of the Right to Translation and Interpretation directive, the Netherlands used two legal instruments (Eur-Lex, n.d.). The first instrument was the parliamentary act '*Wet van 28 februari 2013 tot implementatie van richtlijn nr. 2010/64/EU van het Europees Parlement en de Raad van 20 oktober 2010 betreffende het recht op vertolking en vertaling in strafprocedures*' (hereafter the *Wet van 28 februari 2013*). The second legal instrument was the *Besluit van 21 juni 2013 tot vaststelling van het inwerkingtreding van de wet van 28 februari 2013*' (hereafter the *Besluit van 21 juni 2013*). The *Wet van 28 februari 2013* consisted of amendments to Dutch legislative acts in order to comply with the provisions of the directive and the *Besluit van 21 juni 2013* determined the date on which the adopted law would enter into force in the Netherlands. The transposition table in Appendix I provides a full overview of the amending and existing legislation. In order to determine the degree of legal misfit the acts adopted to amend these laws are analyzed.

The *Wet van 28 februari 2013* is the main instrument used for the transposition of the directive and addresses the amendments to the Dutch legislation. These amendments concern the Dutch Criminal Code (Sv); the Overleveringswet (Ow) that deals with extradition procedures between the EU Member States and the *Wet tarieven in strafzaken* (Wtsz) that

stipulates the tariffs of legal costs in criminal proceedings (Tweede Kamer der Staten-Generaal, 2012). In addition, the *Wet van 28 februari 2013* proposed amendments to the Uitleveringswet (UW) which is concerned with extradition procedures between the Netherlands and other countries that are not EU Member States; the Uitvoeringswet Internationaal Strafhof (Uw Is) that lays out rules for the enforcement of verdicts of the International Criminal Court and the Wet overdracht tenuitvoerlegging strafvonnis (WOTS) that lays out the rules for the transfer of criminal verdicts from and to the Netherlands (Tweede Kamer der Staten-Generaal, 2012).

In accordance with Dutch legislation on the adoption of parliamentary acts, the bicameral legislative body of the Netherlands or the Staten-Generaal adopted the *Wet van 28 februari 2013* after scrutiny of the Council of State (Tweede Kamer der Staten-Generaal, 2012). As parliamentary acts are primary instruments this transposition measure is of a high legal order. The second instrument is a Royal Decree, which determined the entry into force date of the *Wet van 28 februari 2013*. It was only signed by the Crown and the Minister of Justice and is thus categorized as a secondary transposition instrument of a lower legal order (Ministerie van Veiligheid en Justitie, 2013a).

Although the categorization of the transposition instruments is straightforward, determining the degree of legal misfit is not. The reason for this is two-fold. Firstly, the model does not consider a scenario in which both instruments of a higher and lower legal order may be adopted for the transposition of the same directive. Secondly, it allows for either more than two higher legal order instruments to be adopted or a maximum of two lower legal order instruments. However, in the case of this directive, two legislative instruments were used of both a high and low legal order.

The nature of the transposition instruments automatically rules out both a high and small degree of legal misfit. This is explained by the fact that Royal Decrees of a high legal order and that the legal order of parliamentary acts is too high for small misfit. As a result, the degree of legal misfit is either moderate or limited. Moderate misfit occurs when more than two parliamentary acts or Orders in Council are adopted that do not replace existing norms. Limited misfit occurs when a maximum of two Royal or ministerial decrees are adopted that amend existing norms.

Between limited and moderate legal misfit, limited misfit is the least suitable option. Although only two measures were adopted, the scope of limited misfit focuses on those acts that are of a considerable lower order than parliamentary acts. One of the adopted acts is a parliamentary act and as this is the most binding instrument that can be used for transposition, a limited degree of legal misfit is not experienced. In addition, although a Royal Decree is of a low legal order it does belong to the category of secondary transposition instruments. Furthermore, the adoption of the *Wet van 28 februari 2013* and the *Besluit van 21 juni 2013* did not amend existing norms, which is a prerequisite for the classification of limited legal misfit. Indeed, in this case Dutch transposition focused on formalizing the EU provisions in Dutch law rather than introducing them as novel legal concepts to Dutch legislation (Tweede Kamer der Staten-Generaal, 2012). Therefore, in the case of this directive, the degree of legal misfit will be classified as moderate.

4.1.2 The Right to Information Directive

The Right to Information directive grants suspects or accused persons the right to information about their rights in criminal proceedings as well as information about the crime of which an individual is being accused and access to the materials of the case (European Union, 2012c). In order to transpose this directive, the Netherlands adopted the '*Wet van 5 november 2014, houdende implementatie van richtlijn 2012/13/EU van het Europees Parlement en de Raad van 22 mei 2012 betreffende het recht in informatieve in strafprocedures*' (hereafter the *Wet van 5 November 2014*) and the '*Besluit van 18 november 2014, houdende regels inzake de schriftelijke mededeling van rechten ten behoeve van aangehouden verdachten*' (hereafter the *Besluit van 18 november 2014*) (Eur-Lex, n.d-a.)

Like the *Wet van 28 februari 2013*, the *Wet van 5 november 2014* also falls under the category of primary transposition instruments since this too concerns a parliamentary act (Tweede Kamer der Staten-Generaal, 2014). The main amendments proposed by this parliamentary act focus on including several aspects regarding informing suspects or accused persons about the particular rights to which they are entitled under Dutch law and resulted in the amendment of the Dutch Criminal Code and the Overleveringswet (Tweede Kamer der Staten-Generaal, 2014). Appendix II shows the Ministry of Justice's transposition table, which provides a clear overview of which articles of the directives were covered by Dutch legislation.

The second instrument concerns an Order in Council that consists of several articles. Article 1 of the *Besluit van 18 november 2014* elaborates on the changes proposed in the Article I section A of the *Wet van 5 november 2014* that address the Dutch Criminal Code (Ministerie van Veiligheid en Justitie, 2014a). Article 2 of the *Besluit van 18 november 2014* states that Article 1 shall henceforth be cited as the *Besluit mededeling van rechten in strafzaken*. Lastly, Article 3 determines the entry into force date of both the *Wet van 5 november 2014* and the Order in Council (Ministerie van Veiligheid en Justitie, 2014a). As a result, the categorization of the second act is that of a high order secondary transposition instrument.

In the case of the Right to Information directive the number of adopted transposition acts is limited to two. Both the *Wet van 5 November 2014* and the *Besluit van 18 november 2014* are both acts of a higher legal order and thus moderate or high misfit must be considered. However, since proposed amendments did not consist of a reconstruction of existing norms but rather completed Dutch legislation and were limited to only two acts the degree of legal misfit is moderate rather than high.

4.1.3 The Right to Access a Lawyer Directive

The Right to Access a Lawyer directive ensures that suspects and accused persons in criminal proceedings have the right to access a lawyer and the right to communicate while deprived of their liberty (European Union, 2013). The transposition of this directive required the amendment of the Dutch Criminal Code and of the *Overleveringswet* (Tweede Kamer der Staten-Generaal, 2015). In order to implement these amendments the Netherlands adopted three legislative acts (Eur-Lex, n.d.-b). The first is a parliamentary act known as the *Wet van 17 November 2016, houdende implementatie van richtlijn nr. 2013/48/EU van het Europees Parlement en de Raad van 22 oktober 2013 betreffende het recht op toegang tot een advocaat in strafprocedures en in procedures ter uitvoering van een Europees aanhoudingsbevel en het recht om een derde persoon op de hoogte te laten brengen vanaf de vrijheidsbeneming en om met derden en consulaire autoriteiten te communiceren tijdens de vrijheidsbeneming* (hereafter the *Wet van 17 november 2016*). The second adopted act was the *Besluit houdende regels voor de inrichting van en de orde tijdens het politieverhoor waaraan de raadsman deelneemt* (hereafter the *Besluit inrichting en orde politieverhoor*) which is an Order in Council. Lastly, the transposition of this directive included the adoption of a Royal Decree

that determined the entry into force date of both the parliamentary act and the Order in Council.

In the case of the Right to Access a Lawyer directive the choice for the degree of legal misfit is either high or moderate. One of the conditions for a high or moderate degree of legal misfit is that the number of adopted acts of a legal order exceeds two. As with the other two directives this is not the case and the choice between moderate and high misfit is therefore dependent on the amendments to the Dutch legislation. As the transposition table in Appendix III shows, the amendments were numerous and involved a great number of Dutch legislation that required amendment. However, the most significant change for the Netherlands concerned granting suspects and accused persons the right to access a lawyer prior to the first police hearing since before the transposition of the directive access to a lawyer occurred after the first hearing (Tweede Kamer der Staten-Generaal, 2015). In the case of this directive, the degree of legal misfit is classified as high. This is explained by the fact that there were three legislative acts adopted to transpose the directive and the fact that the Order in Council consisted of a considerable amount of complementary rules addressing the articles of the *Wet van 17 november 2016*.

4.2 Timeliness

4.2.1 Right to Interpretation and Translation Directive

According to the hypothesis the higher the degree of legal misfit the more timely transposition is influenced. The outcome of the legal misfit analysis suggests that transposition would have occurred after the deadline since the Netherlands experienced a moderate amount of adaptational pressure. However, the Netherlands transposed this directive before the deadline of October 27 2013. The '*Wet van 28 februari 2013*' implementing the amendments to Dutch law entered into force on October 1, 2013 (Ministerie van Veiligheid, 2013). The Netherlands was therefore on time with the transposition of this directive.

4.2.2. Right to Information Directive

In the case of this directive, the degree of legal misfit was moderate. Based on the degree of legal misfit, it is fair to assume that transposition must have created some difficulties in terms of timeliness and correctness.

The Commission set the transposition deadline of the Right to Information directive on June 2 2014 (European Union, 2012c). This means that the Member States had nearly two years to transpose the directive and bring the laws and provisions that were needed for compliance into force. The Netherlands did not make the deadline of the Commission and the directive entered into force on January 1st 2015, nearly six months after the deadline had passed (Ministerie van Veiligheid, 2014a).

4.2.3 Right to Access a Lawyer Directive

The transposition deadline of the Right to Access a Lawyer directive was 27 November 2016 (European Union, 2013). A consequence of the high degree of legal misfit was that timely transposition would probably not occur. Unsurprisingly, the Netherlands did not transpose the directive before the deadline and was several months late. The two legislative acts that needed to be implemented in order for transposition to be complete both entered into force on March 1st 2017, roughly four months after the deadline set by the European Commission (Ministerie van Veiligheid en Justitie, 2017b).

4.3 Correctness

4.3.1 Right to Interpretation and Translation Directive

Directive Article 2(1) & Article I section A, E and L Wet van 28 februari 2013

As the transposition table in Appendix I shows, the proposed amendments in Article I section A, E and L of the *Wet van 28 februari 2013* have to complement existing Dutch legislation in the Criminal Code. These amendments concern the provisions of Article 2.1 of the directive, which stipulate that in case a suspects or accused person does not understand the language of the criminal proceedings they have the right to an interpreter (European Union, 2010). Article I section A of the *Wet van 28 februari 2013* refers to the introduction of Article 23(4) Sv, which ensures access to an interpreter in criminal cases that have no public hearing (Ministerie van Veiligheid en Justitie, 2013b). Under Dutch law, this right was previously guaranteed during investigations and during public hearings (Tweede Kamer der Staten-Generaal, 2012). In conjunction with the introduction of Article 29a Sv by Article I section E of the *Wet van 28 februari* providing suspects with the general right to translation and

interpretation and the amendment proposed in section L to Article 191 Sv that guarantees that witnesses or experts have access to an interpreter police or judicial hearing, the Netherlands even exceeds the requirements laid out in Article 2.1 of the directive.

Directive Article 2(2) and 2(3) & Article I section C, D, K and S Wet van 28 februari 2013

The provisions of this article focus on the availability of an interpreter for communication between suspects and their legal counsel (European Union, 2010). Although in practice suspects or accused persons already had the rights mentioned in Article 2.2 of the directive specification and formalization of Dutch law was required (Tweede Kamer der Staten-Generaal, 2012). Artikel I section C and D of the *Wet van 28 februari 2013* address this issue through the introduction of Article 27(4)Sv and 28(3) Sv which stipulate that a suspect or accused person has the right to an interpreter and that the legal counselor may use an interpreter for the purpose of communication (Ministerie van Veiligheid en Justitie, 2013b). Furthermore, Article I section K and S of the *Wet van 28 februari 2013* specifies that the rights under Article 2.2 and 2.3 of the directive are also granted to those with a speech or hearing impediment thus correctly translating the provisions of Article 2.3 of the directive into national law and that an interpreter must be summoned during a court hearing in case it becomes apparent that this is required to guarantee the fairness of the proceeding (Ministerie van Veiligheid en Justitie (2013b).

Directive Article 3(1), 3(2) and 3(4) & Article I section F, H, J, P, U, V, W and Wet van 28 februari 2013

Article F, H, J, P, U, V, W and X of the *Wet van 28 februari 2013* address the amendments to the Dutch Criminal Code as required by the provisions of Article 3(1), 3(2) and 3(3) of the directive (see Appendix I). These sections of the *Wet van 28 februari 2013* ensure that those who fall under the scope of this directive have the right to receive written translations of essential documents. Analysis of the amendments proposed in the *Wet van 28 februari 2013* shows that the provisions of articles of the directive were only partially transposed correctly. Although the *Wet van 28 februari 2013*, sufficiently transposed Article 3(1) and 3(2) and addressed which documents require translation, it lacks the specification that those documents that are not relevant for the case do not require translation which was never formalized in Dutch law (Ministerie van Veiligheid en Justitie, 2013b).

Directive Article 3(3) & Article I section F Wet van 28 februari 2013

Article F of the *Wet van 28 februari 2013* addresses the provisions laid out in Article 3(3) of the directive by introducing Article 32a Sv (see Appendix I). In this case, relevant for correct transposition is the guarantee that suspects or accused person may issue a request to have documents submitted as essential. As Article 32a(1) Sv now states that every suspect or accused person has the right to request that documents may be submitted as essential this is correctly transposed (Ministerie van Veiligheid en Justitie, 2013b).

Directive Article 3(6) & Article II section A Wet van 28 februari 2013

In accordance with Article 3(6) of the directive, persons arrested under a European Arrest Warrant receive a written translation of the European Arrest Warrant or parts thereof including which Member State issued the Arrest Warrant and a description of the criminal charge (European Union, 2010). The additions suggested in Article II section A of the *Wet van 28 februari 2013* concern Article 23 (3) Sv (Ministerie van Veiligheid en Justitie, 2013b). This guarantees that those who fall under the scope of this directive and are subject to a European Arrest Warrant have to receive a written translation of the criminal charge, which Member State is issuing the warrant and the time that must be served in prison. Considering the requirements of the provisions of Article 3(6) of the directive, the additions to Article 23(3) Ow are sufficient to ensure correct transposition

Directive Article 3(7) & Article I J and U Wet van 28 februari 2013

The provisions of Article 3(7) of the directive allow Member States to replace written translations with oral translations as long as the fairness of the criminal proceeding is not jeopardized (European Union, 2010). The amendments to Dutch law include the amendment to Article 78 and 365(6)c Sv and are laid out in section J and U of the *Wet van 28 februari 2013*. Article 365(6)c correctly addresses the provisions of Article 3(7) of the directive as it stipulates that the imposed sentence does not have to be provided in writing in case the suspect was present during the court ruling (Ministerie van Veiligheid & Justitie, 2013b). However, the proposed amendments to this article do not address the possibility of oral translation. In addition, it is not specified in which cases the fairness of the proceedings suffer from oral translation. Transposition of these provisions is thus insufficient and incomplete.

4.3.2 Right to Information Directive

Directive Article 3 and 4 & Article I section A Wet van 5 november 2014

Article 3 and 4 of this directive grant suspects or accused persons the right to be informed of their rights in criminal proceedings and in case of arrest, the right to receive a written Letter of Rights (European Union, 2012c). Prior to transposition, the Dutch Criminal Code lacked the provisions stated in Article 3 and 4 of the directive (Tweede Kamer der Staten-Generaal, 2014). Article I of The *Wet van 5 november 2014* therefore introduced changes to Article 27c Sv that sets out the rights of suspects and the framework and conditions for arresting an individual (Ministerie van Veiligheid en Justitie, 2014b). Upon analysis of Article 27c Sv In Article I section A of the *Wet van 5 november 2014* it is clear that the Netherlands correctly transposed the provisions of Articles 3 and 4 as these articles address in detail the rights of which suspects or accused persons must be informed. This includes the exact rights that are laid out in Article 3 and 4 of the directive (Ministerie van Veiligheid en Justitie, 2014b).

Directive Article 5(1) & Article II Wet section A van 5 november 2014.

Article 5 of the directive stipulates that individuals subject to a European Arrest Warrant also receive a Letter of Right upon their arrest (European Union, 2012c). Although this article does not clearly stipulate of which rights these persons should be informed, it does require Member States to provide them with a written Letter of Rights containing information on their rights in European Arrest Warrant procedures. The Dutch government felt that this was insufficiently addressed in the existing legislation and therefore amended Article 17(3) Ow (Tweede Kamer der Staten-Generaal, 2014). As Article I section A of the *Wet van 5 november 2014* shows, this article stipulates the procedural conditions under which these persons may be arrested and now includes that these persons receive in writing the rights that are granted to them (Ministerie van Veiligheid en Justitie, 2014b). This provision is correctly transposed since it meets the requirements of Article 5 of the directive.

Directive Article 6 & Article I section A Wet van 5 november 2014

The amendments proposed in Article I section A that concern Article 27c Sv address the requirement of Articles 6 (1) and 6(2) of the directive (Ministerie van Veiligheid en Justitie, 2014b). These articles oblige Member States to promptly inform suspect or accused persons of the crime they are accused of or, in case of persons are arrested, to inform them of the reason for their arrest (European Union, 2012c). Although common in practice, this was not

formalized in Dutch law (Tweede Kamer der Staten-Generaal, 2014). The text of Article 27c(1) Sv sufficiently addresses the requirements of directive Article 6(1) and 6(2) formally requiring the investigative authorities to promptly notify a suspect or accused person of the crime they are accused of having committed (Ministerie van Veiligheid en Justitie, 2014b).

Directive Article 8.1 and Article I section A Wet van 5 november 2014

Article 8(1) of the Right to Information directive requires Member States to ensure that when (arrested) suspects or accused persons are informed of the rights granted to them under Article 3 and 6 of the directive, this is registered according to the domestic recording procedure of each Member States (European Union, 2012c). In the case of the Netherlands, the police report only indicated whether a suspect or accused person was informed of the right to access a lawyer or not (Tweede Kamer der Staten-Generaal, 2014). Analysis of the content of Article 27c(5) Sv shows that through transposition of this article this will be remedied since it stipulates that the police report must include a notification that suspects or accused persons have received information about their rights (Ministerie van Veiligheid en Justitie, 2014b).

4.3.3 Directive 2013/48/EU

Directive Article 3 & Article I section C, D and G Wet van 17 november 2016

As the transposition table in Appendix III shows, Article I section C, D and G of the *Wet van 17 november 2016* address transposition of the provisions of Article 3(2) and Article 3(3) of the Right to Access a Lawyer directive by introducing amendments to Articles 28-28d and 488 Sv. In this case, correct transposition focused on ensuring that suspect or accused persons have access to a lawyer prior to the first hearing by the investigative authorities, as this was not formalized under Dutch law (Tweede Kamer der Staten-Generaal, 2015). Correct transposition occurred through the introduction of section C, D and G of Article I *Wet van 17 november 2016* that consisted of amendments to Article 28c Sv and 488c Sv (Ministerie van Veiligheid en Justitie, 2017c). Section D refers to Article 28c Sv which stipulates that suspects have the right to access a lawyer prior to their first hearing and lays down the rules in case a suspect wishes to waive this right (Ministerie van Veiligheid en Justitie, 2017c). These provisions are further specified for those suspects that are minors under Dutch law in Article 488c Sv (Ministerie van Veiligheid en Justitie, 2017c).

Directive Article 5 & Article I section B and F 5 Wet van 17 november 2016

The provisions of Article 5 of the directive guarantee that those that fall under the scope of this directive have the right to inform a third person of their deprivation of liberty and also stipulates the circumstances under which countries may derogate from the application of Article 5 (European Union, 2013). As a result, the Dutch government proposed changes to Article 27e Sv, which include the introduction of Article 27e (1) Sv (Ministerie van Veiligheid en Justitie, 2017c). This article provides those who fall under the scope of this directive the right to inform a person of their choice of their deprivation of liberty. This indicates that correct transposition occurred since under this article the rights provided by directive Article 5(1) are sufficiently guaranteed. This also applies for minors of whom the parents or legal guardians need to be immediately informed in case of arrest under 488b Sv Furthermore, Article 27e (3) and (4) Sv address in which cases derogation of the rights under Article 27e (1) Sv are permitted. Since it addresses the same situations as Article 5(3) of the directive this is also done correctly (Ministerie van Veiligheid en Justitie, 2017c).

Directive Article 9 & Article I section D and Article II section F Wet van 17 november 2016

This article of the directive ensures that under presence of a lawyer a suspect or accused person may waive the rights referred to in Article 3 and 10 of the directive and lays out the conditions under which this might be done (European Union, 2013). As Appendix III shows, Article I section D and Article II section F of the *Wet van 17 November* introduce amendments to articles 28a Sv and 43a Ow that must ensure compliance with these provisions. Transposition was partially correct, as Article 28a Sv does not specify how suspects must be informed of the consequences of their waiver of right although Article 9 of the directive specifically mentions this must be orally or in writing (Ministerie van Veiligheid en Justitie, 2017c). In addition, as Article II section F of the *Wet van 17 november 2016* shows, Article 43a Ow does not mention any conditions regarding a waiver of rights for an individual subject to a European Arrest Warrant (Ministerie van Veiligheid en Justitie, 2017c).

Directive Article 10(1) (2) (3) & Article II section A, B, C, F and H Wet van 17 november 2016

Article 10(1) and 10(2) of the directive provide suspects and accused persons subject to European Arrest Warrant proceedings with the same rights as individuals in criminal proceedings (European Union, 2013). In addition, Article 10(3) stipulates that, since suspects and accused persons subject to a European Arrest Warrant are provided with the same rights

as suspects and accused persons in criminal proceedings, consequently the conditions for derogations as stated in directive Article 4, 5, 6, 7 and 9 also apply to them (European Union, 2013). Article II section F of the *Wet van 17 november 2016* introduces changes to Article 43a(1) and 43(2) Ow which now stipulate that the rights granted to a person subject to a European Arrest Warrant correspond with those in criminal proceedings and includes the conditions for derogations (Ministerie van Veiligheid en Justitie, 2017c). Furthermore, in accordance with Article 10(2)c of the Right to Access a Lawyer directive, Article 17(4), 18(2) and 21(5) and (8) Ow state that a requested individual may have the right to be assisted by a lawyer during hearings (Ministerie van Veiligheid en Justitie, 2017c).

Directive Article 10(4) & Article II section A Wet van 17 november 2016

Article 10(4) of the directive states that upon arrest, those who are subject to a European Arrest Warrant have the right to appoint a lawyer in the Member State that has issued the European Arrest Warrant (European Union, 2013). This is addressed in Article II section A of the *Wet van 17 november 2016* that amends Article 17(3) Ow (Ministerie van Veiligheid en Justitie, 2017c). As a result of these amendments, Article 17 (3) Sv includes references to Article 43a and 21a Ow in which the right to access a lawyer and the right to appoint a lawyer in the issuing Member State are stipulated (Ministerie van Veiligheid en Justitie, 2017c). The provisions of Article 10(4) are therefore sufficiently enshrined in Dutch law and thus transposed correctly by the Dutch government.

Directive Article 10(5) & Article II section D Wet van 17 november 2016

Also correctly transposed are the provisions of Article 10(5) of the directive which determine that a requested person under a European Arrest Warrant upon arrest shall promptly receive information that facilitates them in selecting a lawyer from the issuing Member State. Furthermore, it stipulates that the executing Member State shall inform the issuing Member State that a request under Article 10(4) of the directive has been made (European Union, 2013). As the transposition table in Appendix III shows, this is addressed by Article II section D and G of the *Wet van 17 november 2016*, which introduces Article 21a and 48a Ow. As a result, under a European Arrest Warrant a suspect or accused person has the right to request that a lawyer from the issuing Member State assist the Dutch lawyer with the proceedings of the case and requires the judicial authorities to inform the issuing Member State without undue delay of such a request (Ministerie van Veiligheid en Justitie, 2017c).

Directive 10(6) & Article II section D and G Wet van 17 november 2016

Article II section D and G of the *Wet van 17 november 2016* address Article 21a and 48a Ow. The amendments made to these articles of the *Overleveringswet* involve the obligation that the rights of those subject to a European Arrest Warrant under Article 10(5) of this directive do not affect the conditions and time-limits for of the judicial procedures in extradition proceedings sets out in Framework Decisions 2002/584/JHA (European Union, 2013). This provision is also correctly transposed since Article 21a and 48a Ow that address the procedure addressed by Article(10)5 of the directive specifically state that the time-limits of the judicial procedures are applied in full and without prejudice (Ministerie van Veiligheid en Justitie, 2017c).

Directive Article 13 & Article I section D, F and G Wet van 17 november 2016

Article 13 of the directive stipulates that the provisions of the Right to Access a Lawyer directive are also applicable to those labeled as vulnerable persons (European Union, 2013). In the Dutch Criminal Code, vulnerable persons are minors, people with limited mental capabilities and persons who are accused of a crime with a minimum sentence of 12 years in prison (Tweede Kamer der Staten-Generaal, 2017). Dutch transposition was correct as Article I section D of the *Wet van 17 november 2016* includes new provisions ensuring that vulnerable suspects or accused persons have the same rights as regular suspects or accused persons under Article 28 Sv (Ministerie van Veiligheid en Justitie, 2017c). In addition, Article 28a Sv protects them in case they want to waive their rights by obliging the investigative authorities to inform them of the consequences of a waiver. Furthermore, 28c (2) Sv complements the provisions of Article 28 by specifically stating that those suspects accused of a crime with a minimum sentence of 12 years in prison can only waive their rights after being informed by a legal counselor (Ministerie van Veiligheid en Justitie, 2017c). Lastly, in accordance with the amendments in Article I Section F and G, Article 488b Sv and 488c Sv minors cannot waive their rights and are guaranteed that upon deprivation of liberty, a legal guardian and child protection services are always informed.

4.4. Results

Generally, the analysis shows that on average, the Netherlands uses two legal transposition instruments to transpose the EU directives of the Area of Freedom, Security & Justice and knows a legal misfit degree that varies between moderate and high. As explained in section

4.2, timely transposition occurred one out of three times and although transposition was not flawless, correct transposition took place in all cases because in all cases there was enough correspondence between the content of the directives and the content of the amendments to Dutch legislation. However, the analysis provides different outcomes in all three cases. In the case of the Right to Interpretation and Translation directive the findings of the analysis show that the moderate degree of legal misfit did not influence the Netherlands transposition performance as the country transposed the directive in time. In addition, the changes to Dutch legislation were of such a nature that there was sufficient correspondence between the provisions of the directive and Dutch legislation.

Figure 5

Directive	Degree of Legal Misfit	Timely Transposition	Correct Transposition
Right to Interpretation and Translation Directive	Moderate	Yes	Yes (partially)
Right to Information Directive	Moderate	No	Yes (partially)
Right to Access a Lawyer Directive	High	No	Yes (partially)

Where the Right to Information directive is concerned, the degree of legal misfit was moderate as a maximum of two acts of a higher legal order were used to transpose the directive. The analysis shows that in the case of this directive, transposition occurred six months after the deadline and was late. However, transposition was done correctly as most provisions were already addressed in Dutch law and where the existing legislation did not go as far as the directive demanded, the Netherlands ensured adaptation of existing articles of both laws in such a way that they corresponded with the directive.

The transposition of the Right to Access a Lawyer directive required the adoption of three legislative acts of a high legal order and resulted in the amendment of two Dutch laws. The findings of the analysis show that with a high degree of legal misfit the Netherlands indeed experienced some difficulties transposing this directive. Although done correctly, it was transposed four months after the deadline had passed and was therefore late.

Chapter 5: Conclusion and Discussion

In this chapter, the answer to the research question is given. In addition, limitations as well as recommendations are discussed.

5.1 Conclusion

The central theme of this thesis is compliance with EU directives. Within this central theme this research has aimed to provide an explanation for the Dutch transposition performance based on the legal misfit theory. This resulted in the following research question: *To what extent does legal misfit influence the transposition performance of the Netherlands?*

The theoretical framework was introduced to further elucidate the theoretical context in which this research has taken place and specifically focused on a model used to determine the degree of legal misfit. In order to answer the research question this study adopted an in-depth approach where the degree of legal misfit model functioned as the independent variable and the components of transposition performance as the dependent variables. Based on the theoretical framework the following hypothesis was introduced: *The higher the degree of legal misfit the higher the impact on transposition performance.* This hypothesis was tested through three directives of the Area of Freedom Security and Justice.

The findings of the analysis of the directives find no direct evidence that unambiguously support the hypothesis and the hypothesis is therefore invalid. Initially, the degree of legal misfit seems to influence the Dutch transposition performance as two out of three directives experience late transposition when having a moderate and high degree of legal misfit. However, further observations indicate that since correct transposition occurred in all three cases several nuances must be applied. In one case, the degree of legal misfit had no influence on transposition at all since this directive was categorized as having a moderate degree of legal misfit but was transposed both in time and correct. Causal relation between the independent and dependent variable thus limits itself to only one component of the dependent variable. In short, we can therefore state that legal misfit cannot fully explain Member States' transposition performance.

As the hypothesis is rejected, it is concluded that legal misfit only influences the transposition performance of Member States to a limited extent. This means that it is difficult to provide the research question with an unequivocal answer. It has become evident from the research that legal misfit does influence the transposition performance of the Netherlands but the extent to which the legal misfit theory influences Dutch transposition performance is actually hard to determine.

5.2 Discussion

This study's attempt to test the legal misfit hypothesis and answer the research question demanded a carefully selected research design. The components of the dependent variable were translated into measurable concepts that were based on deep-rooted theoretical approaches. As the results show, the degree of legal misfit has some influence on timely transposition and no influence on correct transposition since in all three cases the directives were correctly transposed despite moderate and high legal misfit degrees

However, regardless of the motivation behind the operationalization of the dependent variables, there are several issues that must be considered. As discussed in section 3.4, there are different ways to indicate the transposition date of a directive. Therefore, it must be taken into consideration that the Commission might conclude that the transposition of the directives has taken place at an earlier or later period in time than the analysis indicates. In addition, the approach to the analysis of correct transposition is not complete as not all provisions were analyzed. Furthermore, although the content of the directives and of the parliamentary acts that changed the Dutch laws may correspond, in practice different result might occur. Therefore, it must be considered that, although the action taken by the Netherlands to meet the requirements of a directive may seem appropriate, transposition could still have been flawed.

The independent variable was designed based on the misfit theory and provided a very solid foundation for the measurement of legal misfit as the model is a framework in which domestic transposition instruments could be placed and measured. The results show that a high degree of legal misfit results in late transposition whereas in the case of a moderate degree of legal misfit late transposition does not automatically occur. Therefore, although some relation between legal misfit and transposition performance has been established, legal

misfit cannot completely account for Member States' transposition performance. In the case of this study, this is explained by the fact that the model built around the legal misfit theory holds a limited amount of explanatory power and thus provides ambiguous results.

This limited explanatory power of legal misfit was to a certain extent expected. Although the practical application of the legal misfit model shows that it is able to determine the influence of legal misfit on transposition performance, the degree of explanatory power that the legal misfit theory holds is somewhat disappointing. Although the model takes the order, number and scope of legislative acts into consideration, it fails to provide a classification for every combination of the different components. The model consists of several scenarios that might occur when Member States deal with timely and correct transposition of directives but unfortunately, it does not consider every possible scenario. Thus, determining the degree of legal misfit was largely dependent on the interpretation of the researcher. In addition, the model refers to extensive amendments but the theory supporting the model does not provide unambiguous standards or explanations that explain what extensive amendments are.

Lastly, it is important to consider the small N-size. Due to length constraints, only three directives are studied which is a relatively small amount of directives. However, not every case of Dutch transposition performance can be predicted based on the scope of one study.

All issues considered, it can be concluded that the legal misfit theory limits its own extent to which it can explain transposition performance. Nevertheless, this study demonstrates that the theory and the model cannot completely be discarded as they prove to consist of a solid foundation on which further research could be conducted. Further research on the influence of legal misfit on transposition performance is recommendable as it might further contribute to understanding Member States transposition behavior and can help Member State predict whether the transposition of a directive might become problematic. Based on the implications of this study, future research should focus on further developing the theoretical foundation on which the degree of legal misfit model is based. In addition, it is recommendable to transform the model in such a way that it allows for more nuances and is thus capable of including a wide range of scenarios in which domestic transposition can occur. In addition, follow-up studies might expand the analysis of correctness by considering all domestic transposition acts and all provisions of a directive. Lastly, future studies should extend the scope of research to a wider range of Member States, policy areas and directives so that a more comprehensive analysis of the influence of legal misfit on transposition performance can be conducted.

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Appendix I : Transposition table Directive 2010/64/EU

Transponeringstabel behorende bij de implementatie van de richtlijn nr. 2010/64/EU van het Europees Parlement en de Raad van 20 oktober 2010 betreffende het recht op vertolking en vertaling in strafprocedures (PbEU L 280)

Artikel richtlijn	Artikel wetsvoorstel of bestaande wet- of regelgeving	Toelichting en, indien van toepassing, invulling van beleidsruimte
Artikel 1 lid 1	-	Bepaling behoeft uit haar aard geen implementatie
Artikel 1 lid 2	Artikel I, onderdelen A, C, D, E, F, H, I, J, K, L, M, N, P, R, S, T, U, V en W, van het wetsvoorstel	
Artikel 1 lid 3	Artikel I, onderdelen M en N, van het wetsvoorstel en artikel 257f, derde lid, Wetboek van Strafvordering	
Artikel 1 lid 4	-	Bepaling behoeft uit haar aard geen implementatie
Artikel 2 lid 1	Artikel I, onderdelen A, E en L van het wetsvoorstel en artikelen 275 en 276 Wetboek van Strafvordering	
Artikel 2 lid 2	Artikel I, onderdelen C en D, van het wetsvoorstel	
Artikel 2 lid 3	Artikel I, onderdelen K en S, van het wetsvoorstel	
Artikel 2 lid 4	Aanwijzing bijstand van tolken en vertalers in het opsporingsonderzoek	
Artikel 2 lid 5	Artikel 404 Sv en de artikelen 16 t/m 27 van de Wet beëdigd tolken en vertalers	
Artikel 2 lid 6	-	Bepaling behoeft uit haar aard geen implementatie
Artikel 2 lid 7	Artikel 30 Overleveringswet jo. artikelen 274 t/m 276 Sv	
Artikel 2 lid 8	Artikel 3 Wet beëdigd tolken en vertalers	
Artikel 3 lid 1	Artikel I, onderdelen F, H, J, P, U, V, W en X, van het wetsvoorstel	
Artikel 3 lid 2	Artikel I, onderdelen H, J, P, T, U, V, W en X, van het wetsvoorstel	
Artikel 3 lid 3	Artikel I, onderdeel F, van het wetsvoorstel.	
Artikel 3 lid 4	Artikel I, onderdelen F, H, J, P, U, V, W en X, van het wetsvoorstel	
Artikel 3 lid 5	Artikel 404 Sv en artikelen 16 t/m 27 Wet beëdigd tolken en vertalers	
Artikel 3 lid 6	Artikel II, onderdeel A, van het wetsvoorstel	
Artikel 3 lid 7	Artikel I, onderdelen J en U, van wetsvoorstel	
Artikel 3 lid 8	-	Van de beleidsruimte die in dit artikel wordt geboden, wordt geen gebruik gemaakt.
Artikel 3 lid 9	Artikelen 3 Wet beëdigd tolken en vertalers	
Artikel 4	Artikel 1, derde lid, Wet tarieven in strafzaken	
Artikel 5 lid 1	Artikel 3 Wet beëdigd tolken en vertalers	
Artikel 5 lid 2	Artikel 2 Wet beëdigd tolken en vertalers	
Artikel 5 lid 3	Artikelen 29 en 32 Wet beëdigd tolken en vertalers en artikel 272 Wetboek van Strafrecht	
Artikel 6	-	Bepaling behoeft uit haar aard geen implementatie.
Artikel 7	Artikel I, onderdeel E, van dit wetsvoorstel alsmede de artikelen 25, eerste lid, 57, derde lid, 152, eerste lid, 172, eerste lid en 326, eerste lid, Wetboek van Strafvordering	
Artikel 8	Artikel 94 Grondwet	
Artikel 9	-	Bepaling behoeft uit haar aard geen implementatie.
Artikel 10	-	Bepaling behoeft uit haar aard geen implementatie.
Artikel 11	-	Bepaling behoeft uit haar aard geen implementatie.
Artikel 12	-	Bepaling behoeft uit haar aard geen implementatie.

Appendix II : Transposition table Directive 2012/13/EU

Transponeringstabel behorende bij de implementatie van de richtlijn nr. 2012/13/EU van het Europees Parlement en de Raad van 22 mei 2012 betreffende het recht op informatie in strafprocedures (PbEU L 142)

Artikelrichtlijn	Artikel wetsvoorstel of bestaande wet- of regelgeving	Toelichting en, indien van toepassing, invulling van beleidsruimte
Art. 1	–	Bepaling betreffende doel; heeft uit haar aard geen implementatie
Art. 2 lid 1	Artikel I, onderdeel A, wetsvoorstel	
Art. 2 lid 2	–	Zie paragraaf 3.1. van het algemeen deel van de toelichting.
Art. 3 lid 1 sub (a)	Artikel I, onderdeel A, wetsvoorstel (voorgestelde artikel 27c, tweede lid, Sv)	
Art. 3 lid 1 sub (b)	Artikel I, onderdeel A, wetsvoorstel (voorgestelde artikel 27c, tweede lid, Sv)	
Art. 3 lid 1 sub (c)	Artikel I, onderdeel A, wetsvoorstel (voorgestelde artikel 27c, eerste lid, Sv)	
Art. 3 lid 1 sub (d)	Artikel I, onderdeel A, wetsvoorstel (voorgestelde artikel 27c, tweede lid, Sv)	
Art. 3 lid 1 sub (e)	Artikel 29, tweede lid, Sv	
Art. 3 lid 2	–	Uitvoeringsbepaling; heeft uit haar aard geen wettelijke implementatie. Zie overweging 38 preambule.
Art. 4 lid 1	Artikel I, onderdeel A, wetsvoorstel (voorgestelde artikel 27c, derde lid, Sv) en amvb	
Art. 4 lid 2 aanhef en sub (a)	Artikel I, onderdeel A, wetsvoorstel (voorgestelde artikel 27c, derde lid, onderdelen a t/m d, Sv)	
Art. 4 lid 2 sub (b)	Artikel I, onderdeel A, wetsvoorstel (voorgestelde artikel 27c, derde lid, onderdeel g, Sv) en amvb	
Art. 4 lid 2 sub (c)	Artikel I, onderdeel A, wetsvoorstel (voorgestelde artikel 27c, derde lid, onderdeel g, Sv) en amvb	
Art. 4 lid 2 sub (d)	Artikel I, onderdeel A, wetsvoorstel (voorgestelde artikel 27c, derde lid, onderdeel e, Sv)	
Art. 4 lid 3	Artikel I, onderdeel A, wetsvoorstel (voorgestelde artikel 27c, derde lid, onderdeel f, Sv)	
Art. 4 lid 4	–	Uitvoeringsbepaling; heeft uit haar aard geen wettelijke implementatie. Zie overweging 38 preambule.
Art. 4 lid 5	Artikel I, onderdeel A, wetsvoorstel (voorgestelde artikel 27c, vierde lid, Sv)	
Art. 5 lid 1	Artikel II wetsvoorstel (voorgestelde artikelen 17, derde lid, en 21, eerste lid, Overleveringswet)	
Art. 5 lid 2	–	Uitvoeringsbepaling; heeft uit haar aard geen wettelijke implementatie. Zie overweging 38 preambule.
Art. 6 lid 1	Artikel I, onderdeel A, wetsvoorstel (voorgestelde artikel 27c, eerste lid, Sv)	
Art. 6 lid 2	Artikel I, onderdeel A, wetsvoorstel (voorgestelde artikel 27c, eerste lid, Sv), en artikelen 59, tweede lid, en 78, tweede lid, Sv	
Art. 6 lid 3	Artikelen 258, 261, eerste en tweede lid, Sv	
Art. 6 lid 4	Artikelen 265, 313, 314 Sv	

Appendix III : Transposition table Directive 2013/48/EU

Transponeringstabel

Transponeringstabel behorende bij de implementatie van richtlijn nr. 2013/48/EU van het Europees parlement en de Raad van 22 oktober 2013 betreffende het recht op toegang tot een advocaat in strafprocedures en in procedures ter uitvoering van een Europees aanhoudingsbevel en het recht om een derde op de hoogte te laten brengen vanaf de vrijheidsbeneming en om met derden en consulaire autoriteiten te communiceren tijdens de vrijheidsbeneming (PbEU L294)

Artikel richtlijn	Artikel wetsvoorstel of bestaande wet- of regelgeving	Toelichting en, indien van toepassing, invulling van de beleidsruimte
Artikel 1	-	Bepaling over het onderwerp van de richtlijn; behoeft uit haar aard geen implementatie.
Artikel 2, eerste lid	Artikel I wetsvoorstel	
Artikel 2, tweede lid	Artikel II, onderdeel F, wetsvoorstel (artikel 43a Olw)	
Artikel 2, derde lid	Artikel I, onderdeel B, wetsvoorstel (artikel 27d Sv)	
Artikel 2, vierde lid	-	Nederland maakt geen gebruik van de mogelijkheid lichte strafbare feiten uit te sluiten.
Artikel 3, eerste lid	Artikel I, onderdelen C, D en G, wetsvoorstel (artikelen 28 t/m 28d en 488c Sv)	
Artikel 3, tweede lid	Artikel I, onderdelen C, D en G, wetsvoorstel (artikelen 28, 28b, 28c en 488c Sv)	
Artikel 3, derde lid (a)	Artikelen 28, tweede lid, en 50 Sv, artikelen 36, 37, 38, zevende lid, en 39, vierde lid, Penitentiaire beginselenwet en artikelen 41, 42, 43, zevende lid, en 44, vierde lid, Beginselenwet justitiële jeugdinrichtingen	
Artikel 3, derde lid (b)	Artikel I, onderdelen C en D, wetsvoorstel (artikelen 28 en 28d Sv), ontwerpbesluit inrichting en orde politieverhoor, alsmede de artikelen 57, tweede lid, 59a, tweede lid, 63, vierde lid, 65, eerste lid, in verbinding met 23, derde lid, 86, tweede lid, 124, 186a, 272, eerste lid, en 331, eerste lid, Sv	
Artikel 3, derde lid (c)	Artikelen 61a, 62, 76, 124 en 151 Sv, Besluit maatregelen in het belang van het onderzoek en ontwerpbesluit inrichting en orde politieverhoor	
Artikel 3, vierde lid, eerste volzin	-	Uitvoeringsbepaling; behoeft naar haar aard geen implementatie in regelgeving.
Artikel 3, vierde lid, tweede volzin	Artikel I, onderdelen D, E en G, wetsvoorstel (artikelen 28b, 40 en 488c Sv)	
Artikel 3, vijfde lid	-	Van deze uitzonderingsgrond maakt Nederland geen gebruik.
Artikel 3, zesde lid	Artikel I, onderdeel D, wetsvoorstel (artikel 28e Sv)	
Artikel 4	Artikelen 50, eerste lid, 98 en 126aa, tweede lid, Sv, artikelen 37, eerste lid, onder i, 38, zevende lid, en 39, vierde lid, Penitentiaire beginselenwet en artikelen 42, eerste lid, onder i, 43, zevende lid, en 44, vierde lid, Beginselenwet justitiële jeugdinrichtingen	
Artikel 5, eerste lid	Artikel I, onderdeel B, wetsvoorstel (artikel 27e, eerste lid, Sv)	
Artikel 5, tweede lid	Artikel I, onderdeel F, wetsvoorstel (artikel 488c, eerste lid, Sv)	
Artikel 5, derde lid	Artikel I, onderdeel B, wetsvoorstel (artikel 27e, derde lid, Sv)	
Artikel 5, vierde lid	Artikel I, onderdeel F, wetsvoorstel (artikel 488b, tweede lid, Sv)	

Artikel richtlijn	Artikel wetsvoorstel of bestaande wet- of regelgeving	Toelichting en, indien van toepassing, invulling van de beleidsruimte
Artikel 6, eerste lid	Artikel 490 Sv en artikelen 36, eerste lid, 38, eerste lid, en 39, eerste lid, Penitentiaire beginselenwet en artikelen 41, eerste lid, 43, eerste lid, en 44, eerste lid, Beginselenwet justitiële jeugdinrichtingen	
Artikel 6, tweede lid	Artikelen 61a, eerste lid, 62, tweede lid, en 76 Sv, artikelen 36, 38 en 39 Penitentiaire beginselenwet en artikelen 41, 43 en 44 Beginselenwet justitiële jeugdinrichtingen	
Artikel 7, eerste lid	Artikel 36 van het Weens Verdrag inzake consulaire betrekkingen en artikel 94 Grondwet alsmede artikel I, onderdeel B, wetsvoorstel (artikel 27e, tweede lid, Sv)	
Artikel 7, tweede lid	Artikel 36 van het Weens Verdrag inzake consulaire betrekkingen en artikel 94 Grondwet	
Artikel 7, derde lid	Idem	
Artikel 8, eerste lid	Artikel I, onderdelen B en D, wetsvoorstel (artikelen 27e, derde lid, en 28e Sv)	
Artikel 8, tweede lid	Artikel I, onderdeel D, wetsvoorstel (artikel 28e Sv) en artikel 359a Sv	
Artikel 8, derde lid	Artikel 359a Sv	
Artikel 9, eerste lid	Artikelen I, onderdeel D, en II, onderdeel F, wetsvoorstel (artikelen 28a Sv en 43a Olw)	
Artikel 9, tweede lid	Idem	
Artikel 9, derde lid	Idem	
Artikel 10, eerste lid	Artikel II, onderdeel F, wetsvoorstel (artikel 43a Olw)	
Artikel 10, tweede lid (a)	Idem	
Artikel 10, tweede lid (b)	Artikel II, onderdeel F, wetsvoorstel (artikel 43a, eerste en vierde lid, Olw), artikelen 36, 37, 38, zevende lid, en 39, vierde lid, Penitentiaire beginselenwet en artikelen 41, 42, 43, zevende lid, en 44, vierde lid, Beginselenwet justitiële jeugdinrichtingen	
Artikel 10, tweede lid (c)	Artikel II, onderdelen B, C en F, wetsvoorstel (artikelen 17, vierde lid, 18, tweede lid, 21, vijfde en achtste lid, en 43a, eerste en derde lid, Olw) en artikel 25, derde lid, Olw	
Artikel 10, derde lid (met betrekking tot artikel 4)	Artikel II, onderdeel F, wetsvoorstel (artikel 43a, eerste lid, Olw), artikelen 37, eerste lid, onder i, 38, zevende lid, en 39, vierde lid, Penitentiaire beginselenwet en artikelen 42, eerste lid, onder i, 43, zevende lid, en 44, vierde lid, Beginselenwet justitiële jeugdinrichtingen	
Artikel 10, derde lid (met betrekking tot de artikelen 5 en 8)	Artikel II, onderdeel A, derde lid, wetsvoorstel (artikel 17, derde lid, Olw)	
Artikel 10, derde lid (met betrekking tot artikel 6)	Artikel II, onderdeel H, wetsvoorstel (artikel 62 Olw) en artikelen 36, 38 en 39 Penitentiaire beginselenwet en artikelen 41, 43 en 44 Beginselenwet justitiële jeugdinrichtingen	
Artikel 10, derde lid (met betrekking tot artikel 7)	Artikel II, onderdeel A, tweede lid, wetsvoorstel (artikel 17, derde lid, Olw), artikel 36 Weens Verdrag inzake consulaire betrekkingen en artikel 94 Grondwet	
Artikel 10, derde lid (met betrekking tot artikel 9)	Artikel II, onderdeel F, wetsvoorstel (artikel 43a, eerste lid, Olw)	
Artikel 10, vierde lid	Artikel II, onderdeel A, eerste lid, wetsvoorstel (artikel 17, derde lid, Olw)	
Artikel 10, vijfde lid (eerste volzin)	Artikel II, onderdeel D, wetsvoorstel (artikel 21a, Olw)	
Artikel 10, vijfde lid (tweede volzin)	Artikel II, onderdeel G, wetsvoorstel (artikel 48a Olw)	

Artikel richtlijn	Artikel wetsvoorstel of bestaande wet- of regelgeving	Toelichting en, indien van toepassing, invulling van de beleidsruimte
Artikel 10, zesde lid	Artikel II, onderdelen D en G, wetsvoorstel (artikelen 21a en 48a Olw)	
Artikel 11	–	Bepaling dat de richtlijn geen afbreuk doet aan nationale bepalingen over gefinancierde rechtsbijstand; behoeft naar haar aard geen implementatie.
Artikel 12, eerste lid	Artikelen 358, derde lid, 359, tweede lid, tweede volzin, en 404 Sv (strafprocedures); artikelen 28 Olw en 6:162 Burgerlijk Wetboek (overlevingsprocedures)	
Artikel 12, tweede lid	Artikel 359a Sv	
Artikel 13	Artikel I, onderdelen D, F en G, wetsvoorstel (artikelen 28b, eerste lid, 28c, tweede lid, 488b en 488c Sv)	
Artikel 14	Artikel 94 Grondwet	
Artikel 15	–	Bepaling betreffende omzetting; behoeft uit haar aard geen implementatie.
Artikel 16	–	Bepaling betreffende verslaglegging; behoeft uit haar aard geen implementatie.
Artikel 17	–	Bepaling betreffende inwerkingtreding; behoeft uit haar aard geen implementatie.
Artikel 18	–	Bepaling betreffende adressaten; behoeft uit haar aard geen implementatie.

Appendix IV: Overview of Dutch Transposition Measures and EU Directive Articles to be Analyzed for Correct Transposition

Directive 2010/64/EU		Directive 2012/13/EU		Directive 2013/48/EU	
Transposition Measure	Directive Article	Transposition Measure	Directive Article	Transposition Measure	Directive Article
Wet van 28 februari 2013	2.1	Wet van 5 november 2014	3	Wet van 17 november 2016	3.2
	2.2		4		3.3
	2.3		5.1		5
	3.1		6.1		9
	3.2		6.2		10
	3.3		8.1		13
	3.4				
	3.6				
	3.7				