

**Abstract:** This study explores the adaptations made to European Union (EU) directives during their legal implementation (i.e. transposition) in member states, so-called customization. To explain why transposition actors customize, and whether these patterns are contingent to the regulatory logic of policy fields, I combine tenets of rational choice and sociological institutionalism. Analysing 13 directives in the Netherlands from both de- and re-regulatory fields of policy, no clear differences in the extent of customization can be discerned between areas. Through the use of multilevel ordinal and linear regressions, I find that more discretion and a higher number of veto players increase the likelihood of customization. Other explanations, such as the preferences of ministers or European Commission monitoring, do not display significant effects. Although these findings diverge from previous work, I conclude that the scope and structure of the data are only sufficient to nuance these earlier findings.

**Keywords:** customization, transposition, discretion, cumulative link-mixed models, Europeanization

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## **Copy paste or tailor-made?**

### **The customization of EU directives across Dutch policy sectors**

“Henry Ford’s customers could have a car in any colour, as long as it was black” (Fitch-Roy, 2016: 586). Akin to Ford’s black cars, research on the legal implementation of European Union (EU) directives by member states has regularly observed a wide range of transposition outcomes, as long as it was painted in (the shades of<sup>1</sup>) one ‘colour’ only: (non-)compliance (e.g. Héritier et al., 2001; Falkner et al., 2005; Di Lucia & Kronsell, 2010; König & Mäder, 2013). Studying transposition (i.e. legal implementation) in terms of compliance, however, is too narrow, as member states implement directives in diverse ways, likely going beyond or staying behind on the requirements formulated in Brussels (Thomann & Sager, 2017a; Bondarouk & Liefferink, 2017). For instance, Fink and Ruffing (2017) find that Germany ‘over-implemented’ the directive on energy grids. Likewise, Cerna (2013) observes how the Blue Card Initiative, which grants visa to high-skilled immigrants, was transposed only partly by (amongst others) Austria, while the text of the same directive was almost ‘copied out’ as precisely as possible by Germany. Not only do outcomes such as these remain partly unobserved by sticking to the classification of compliance or non-compliance, such a perspective is also inadequate to explain these cases (Thomann, 2015).

Recently another ‘colour’ has been added to the transposition palette, which seeks to account for precisely such issues. Coined as ‘customization’ (Thomann & Zhelyazkova, 2017), it concerns the changes of EU rules in their density (i.e. number of policy measures) and restrictiveness (i.e. intensity) during transposition. Despite the fact that customization is analytically broader, much remains unknown about its extent and causes. Even though it has received some scholarly attention in recent years, explanatory analyses have yet remained limited to either case studies (Bugdahn, 2005; Cerna, 2013; Falkner et al., 2005; Falkner & Treib, 2008; Fink & Ruffing, 2017; Liefferink et al., 2011; Logmani et al., 2017; Martinsen & Vasev, 2016; Padgett, 2003; Steunenbergh, 2007) or a qualitative medium-range analysis (Thomann, 2015). Other academics have examined only one aspect potentially affecting customization, such as discretion (Dörrenbacher & Mastenbroek, 2017)

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<sup>1</sup> The shades here being timeliness (e.g. Thomson et al., 2007), substantive conformability (e.g. König & Mäder, 2013), convergence and gold-plating of transposition (Jans et al., 2009).

or role conceptions (Mastenbroek, 2017). Moreover, scholars have focused mainly on possible differences between member states (e.g. Liefferink et al., 2011), while research so far suggests that degrees of customization primarily vary across policy areas (Thomann & Zhelyazkova, 2017). These gaps in transposition scholarship leave important issues to be explored: why are some provisions more customized than others? Are some policy areas more conducive to customization, and if so, for what reasons? Providing answers to such queries is all the more relevant in light of lingering debates on the shift of competences to Brussels and the loss of legitimacy of the European project (see Zimmermann & Dür, 2016): when member states customize directives they “modify EU law and regain control” (Thomann & Zhelyazkova, 2017: 1284), while, at the same time, possibly undermine the harmonised working of EU common policies (Jans et al., 2009). Analysing customization thus improves our understanding of the extent to which the EU actually influences member state policies, how EU policy can be designed in a more effective manner and how domestic implementers resolve issues of legal implementation. One member state where such issues and debates feature prominently is the Netherlands. Moreover, scholars have shown ‘gold-plating’ (i.e. over-implementation in a sense) to be largely absent in this member state (Voermans, 2009; Jans et al., 2009), making the Netherlands a least-likely case for customization. Taken together, this study asks:

*RQ: What explains patterns of customization across policy sectors in the Netherlands?*

In seeking to answer this question, this study will add to the field of transposition performance in general and customization research in particular by, first, expanding on the explanations on customization explored so far. Second, it employs innovative operationalizations of various predictors, such as administrative capacity and discretion. Third, it presents the first systematic explanatory analysis of customization. Fourth, by focusing on the differences between policy sectors, rather than member states, this study provides more insight into the extent to which customization is specific to policy fields. It will make these contributions by combining the neo-institutionalist approaches of rational choice and sociological institutionalism in its theoretical framework, granting a key role to transposition actors in explaining customization. Using cumulative link-mixed models, this study finds that a higher degree of discretion and number of veto players increase the likelihood of customization. Other explanations, such as the preferences of ministers or monitoring by the European Commission (EC) do not display significant effects.

This paper is structured as follows: I begin by discussing the central concepts of this paper and provide an overview of the knowledge available on customization. Then I present the theoretical approach and the hypotheses following from this approach, after which I discuss the study’s research design. Subsequently, I discuss the results and conclude by locating these findings in the broader literature.

## **Conceptualization**

So, what is all the fuss about? Is customization simply a new buzzword for gold-plating (Morris, 2011) or domestication (Bugdahn, 2005) of EU directives? What does it substantively add to the discussion on transposition performance? As Fink and Ruffing (2017: 278) point out, customization “goes beyond the simple conceptualization of ‘too little-just right-too much’ implementation” by shifting the focus towards the problem-solving capacity of domestic implementers. It conceptually detaches from compliance in its entirety by taking the issues of implementation that domestic actors face as

its starting point, rather than the effect of the European policy (Mastenbroek, 2018). In other words, it operates from a bottom-up approach (Hill & Hupe, 2016).

A useful way to further circumscribe the concept is by distinguishing it from ‘gold-plating’. The latter essentially takes place “when implementation goes beyond the minimum necessary to comply with a Directive” (Davidson, 2006 in Voermans, 2009: 83), either by broadening a policy’s scope, refraining from employing available derogations or implementing earlier than the given deadline. Although gold-plating is to some extent related to customization<sup>2</sup>, the phenomena differ from one another in several ways. To begin with, gold-plating works from a top-down perspective (i.e. from the perspective of the EU decision-makers), whereas customization thus works from the opposite. Furthermore, gold-plating presupposes compliance, while customization does not. A directive can be gold-plated only by *overfulfilling* the requirements as laid down in the directive. Customization, by contrast, takes *all* non-literal transposition outcomes as possible cases of customization, regardless of compliance. In other words, customization can also involve ‘under-implementation’ (e.g. lower pricing than allowed by EU policies; Thomann & Zhelyazkova, 2017). Due to these two characteristics, gold-plating has become invested with a generally negative undertone, as almost always obstructing the effectiveness of the EU common market<sup>3</sup> (e.g. European Parliament, 2014). Customization is explicitly distanced from this connotation, by being presented as a way for transposition actors to deal with domestic problems in a more effective manner (Thomann, 2015). Customization is also more meticulous than gold-plating, as it incorporates a distinction between the two dimensions of policy change, density and intensity (Knill et al., 2012). Gold-plating, in contrast, blurs the two elements (Thomann & Zhelyazkova, 2017). All in all, customization consists of modest adaptations to gold-plating rather than being a fundamentally novel concept. Sticking to the earlier analogy of transposition colours, customization may be regarded as a deeper, more well-developed shade of the same colour in which gold-plating is painted.

Even though the domestic level takes a central position in customization, it should not be equated with domestication (Thomann & Sager, 2017b). This concept, describing a situation when member states choose policy options other than those prescribed or advised by ‘Brussels’ (Bugdahn, 2005), only denotes one of two general tendencies producing the customized transposition outcome – the other being Europeanization (Fink & Ruffing, 2017). When implementers transpose a directive, they do not necessarily refrain from EU policy options, but rather tailor the directive to their domestic needs. Sometimes this will mean that the transposed legal act is less Europeanized, while in others it may be less domesticated. A customized directive, in other words, is a product of some amount of either force (Thomann & Sager, 2017a).

More specifically, the customized directive will have undergone changes in density and restrictiveness vis-à-vis the original transposition act. Density concerns the number of policies employed to address a policy issue (Knill et al., 2012; Schaffrin et al., 2015). When a provision is customized in terms of density, “rules [are either] added to or taken away from an EU requirement” (Thomann & Zhelyazkova, 2017: 1271). Restrictiveness (or intensity) refers to the actual *substance* of

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<sup>2</sup> Gold-plating can be a form of customization, but only in the sense of overfulfillment of EU requirements, not the early implementation of a directive (Thomann, 2015)

<sup>3</sup> Morris (2011: 368) even speaks of “allegations of gold-plating”.

a policy instrument<sup>4</sup>. A policy can have more intensity by, for example, addressing more entities (e.g. more types of firms) or a larger territory (e.g. companies in an entire region), as well as broader or smaller objectives (Bondarouk & Mastenbroek, 2017). When an issue is addressed more broadly or more confined than required by the EU, transposition is customized in terms of intensity. The two dimensions are related, but not always in the same direction (i.e. more density is not necessarily more intensity and vice versa) and not always materialize simultaneously.

## Literature review

Although customization is a young concept, several studies of transposition have observed and sought to explain instances of over-implementation<sup>5</sup> or gold-plating, and as such can provide some insight into factors leading to more or less domestic adaptation. The picture that emerges from this 'field' is patchy: some explanations seem to be generally endorsed across the field, but due to the qualitative, small-N character of practically all the studies<sup>6</sup>, operationalizations are inconsistent. As a result, findings are at times conflicting or almost idiosyncratic. This is evident in the case of the misfit hypothesis, with many scholars concluding that the fit of a directive with the domestic policy structure can explain over-implementation, but each conceptualizing and operationalizing 'misfit' in a substantially different way. Goodness-of-fit is understood either as substantive (Cerna, 2013), institutional (Martinsen & Vasev, 2016) or normative (Fink & Ruffing, 2017) misfit, leaving as much confusion as in the transposition literature in general (Treib, 2014). As a form of substantive (or legal) misfit, most case studies nonetheless find that the domestic pre-existence of conflicting legislation enhances the likelihood a directive is transcended (Cerna, 2013; Thomann, 2015; Padgett, 2003; Steunenberg, 2007). However, it is generally acknowledged that misfit in itself is insufficient for clarifying over-implementation (Mastenbroek, 2018), as it is the preferences of veto players that are decisive for (mis)fit to be of significance (Mastenbroek & Kaeding, 2006; Dörrenbacher & Mastenbroek, 2017). That is, where veto players prefer some alternative implementation to the directive, they are more likely to adapt the policy towards this preferred alternative (Falkner & Treib, 2008; Falkner et al., 2005). It should be emphasized however that only where the overall *preference constellation* (i.e. the preferences of all relevant transposition actors) is in favour of an alternative implementation<sup>7</sup>, customization becomes more likely (Steunenberg, 2007; Kaya, 2017). Scholars of over-implementation are also in unison over the importance of discretion (Cerna, 2013; Falkner et al., 2005; Dörrenbacher & Mastenbroek, 2017; Liefferink et al., 2011; Logmani et al., 2017; Martinsen & Vasev, 2016; Padgett, 2003), with more legal leeway 'inviting' customization. Findings of a more isolated character are the importance of public opinion (Fink & Ruffing, 2017) and issue salience (Martinsen & Vasev, 2016; Thomann, 2015).

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<sup>4</sup> Customization only includes substantial intensity (the content of the policy instrument itself), not formal intensity (the administrative and procedural capacities that allow for an instrument to be realized). See Bauer & Knill, 2014.

<sup>5</sup> Gold-plating is not the same as over-implementation. Not only can instances of customization concern over-implementation, but 'double-banking' (i.e. the overlapping of European and domestic regulation; Voermans, 2009) would also fall under the header of over-implementation.

<sup>6</sup> All are single or comparative case studies; Falkner et al. (2005) has a broader scope but focuses on explaining cases of over-implementation for *some* directives only.

<sup>7</sup> This does not mean that the preferences of each actor are equally important. Some actors are more powerful and, as such, will have a larger say in the direction of transposition.

As noted before, no systematic explanatory framework *on customization itself* is presented in these studies, with each work focusing on explaining a single direction of change: *over-implementation*. While Thomann's (2015) study also considers only one direction of customization<sup>8</sup>, it adopts a broader scope conceptually and empirically. In her qualitative comparative analysis (QCA) of the transposition of veterinary drugs regulations she confirms the importance of discretion for customization, as well as the large role interests of key actors play. Drawing on compliance approaches in her theoretical framework, she also finds that the 'institutional' fit (i.e. the fit between the directive's regulatory mode and the so-called domestic interventionist style) reduces customization. Although Thomann's study provides us with important insights, it is limited in several respects. First, the study's research design considerably confines the external validity of its theoretical and empirical findings (Thomann, 2015: 1384). The use of fuzzy-set QCA (see Krogslund et al., 2014) and focus on one issue area limit the inferential strength of the study's conclusions. Second, the five explanatory variables Thomann distils from the compliance literature cover only a share of the most important explanations. She acknowledges herself that possible explanatory factors, such as substantive preferences of domestic administrations and the decision-making process in Brussels, "were neglected" (2015: 1384). Third, the operationalization of various key predictors has limited measurement validity. Discretion is measured employing a binary variable for the degree of flexibility of transposition instruments and the institutional fit is operationalized by comparing the degree of flexibility of the EU directive to the average degree of coerciveness of domestic policy instruments (2015: 1375). Seeking to capture the entire domestic regulatory belief system through measuring the degree of coerciveness seems, however, to be an overly ambitious enterprise. All in all, this leaves her claim that "compliance approaches cannot fully explain [customization]" (2015: 1370) vulnerable to contention.

Thomann and Zhelyazkova (2017) take off where Thomann (2015) left, by mapping the extent of customization in the issue areas of environment and justice and home affairs (JHA). They conclude that customization patterns primarily vary across policy sectors, rather than member states. The particular direction of customization seems furthermore to be determined mainly according to the logic of regulation prevalent in a sector. However, this conclusion is only partly supported by their selection of policy areas, as both JHA and environmental directives are generally re-regulatory (i.e. market-shaping) policies (Hix & Hoyland, 2011). In other words, all these studies leave the questions open of how and why customization differs between fields with de- and re-regulatory modes of regulation. Having mapped the 'known knowns' and 'known unknowns' of customization, I will introduce the theoretical approach adopted in this study.

## Theory

Various groups of actors are involved in the domestic transposition process, but depending on the directive at hand, some more than others. In the Netherlands, most directives are largely transposed at the ministerial level by civil servants. This is overseen by one or multiple ministers, sometimes coordinated by the cabinet as a whole, and administrative actors may also consult interest groups. When directives are transposed through bills, the legislature, including opposition parties, scrutinize the content of the transposing act (Steunenberg & Rhinard, 2010). This constellation of actors creates the foundation for an, at times, complex transposition process: between and among these actors, preferences may align or diverge (Steunenberg, 2007). For example, within the group of

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<sup>8</sup> Thomann (2015) incorporated the presupposition of compliance in her conceptualization of customization.

administrative actors, legislative drafters are typically more inclined to stay close to a ‘European’ interpretation of a directive, while their managers are more likely to accommodate the policy demands of a minister – also where this entails deviating from a directive’s text (Mastenbroek, 2017). Likewise, the involvement of more ministers in transposition, particularly when having different political affiliations, can entangle conflicting dispositions. In parliament, between governing and opposing parties, within the governing coalition and even within parties, differences of opinion on transposing a directive can materialize (Dörrenbacher et al., 2015). Together, these actors produce a particular transposition outcome.

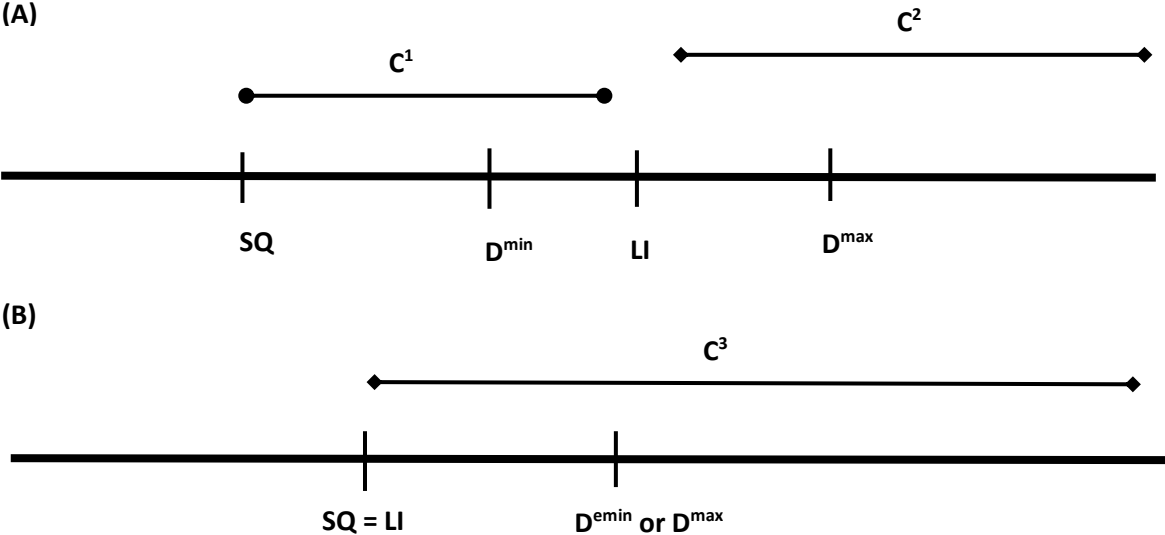
In seeking to understand this type of transposition I opt to take a neo-institutionalist approach, instead of adopting compliance approaches to analyse a phenomenon that is explicitly distinctive from compliance (cf. Thomann, 2015). In my view, none of the institutionalist approaches (rational choice, sociological and historical institutionalism) succeeds in explaining these issues comprehensively on its own (see Mahoney & Thelen, 2010), leading me to combine – to the extent possible and desirable (Aspinwall & Schneider, 2000) – the rational and sociological strands of institutionalism for explaining customization.

Rational choice institutionalism (RCI) assumes actors to make a strategic cost-benefit analysis in deciding on their actions and to seek utility maximization (logic of consequences; Shepsle, 1989; Hall & Taylor, 1996). Since implementing EU policies can come with adaptation costs (in cases of policy misfit, Figure 1A), this helps explain those instances of customization where actors want to stay closer to the domestic situation (see Figure 1, situation C<sup>1</sup>). However, this cannot clarify cases of customization where veto players would opt for (rigorous) policy change at the domestic level ‘beyond’ EU directives (Fink & Ruffing, 2017: 279). This is because at least some actors can be expected to prefer maintaining the status quo (due to lower adaptation costs), making it highly improbable that the *entire* domestic preference constellation shifts in favour of this change (direction C<sup>2</sup> in Figure 1). Only in rare situations where some alternative other than the status quo *and* the literal interpretation of the directive is unanimously preferred, can RCI explain this type of customization. Likewise, when the EU obligation and the status quo align (Figure 1B), RCI cannot clarify customization (situation C<sup>3</sup>): costs of customization would always be higher than literal implementation. Sociological institutionalism (SI), in turn, postulates that preferences of actors are informed considerably by the norms surrounding them (logic of appropriateness; DiMaggio & Powell, 1991). Domestic actors will have different normative positions, influencing their preferences towards and interpretation of a directive (Buller, 2006). Even where there may be substantive fit between the domestic situation and the directive, those actors in favour of change away from the status quo *and* the EU directive may socially construct adaptation pressure in this very direction (Figure 1, situation C<sup>3</sup>; Lombardo & Forest, 2015; Graziano et al., 2011). This may of course also occur in case of policy misfit (situation C<sup>2</sup>). In this way, SI helps clarifying those instances that, on the basis of RCI’s assumptions alone, seem unlikely candidates for customization (C<sup>2</sup> and C<sup>3</sup>).

A useful comparison can be made to Steunenberg’s (2007) representation of the transposition process (the model on which Figure 1 is built). The model used here differs from Steunenberg’s not only in that it does not incorporate the differences *within* the preference constellation itself, but also in that it takes the domestic status quo as starting point. Consequently, it diverges from the assumption that “non-literal transposition arises when all relevant domestic actors jointly prefer a change of EU policy” (Steunenberg, 2007: 32), as I regard a literal transposition of the directive itself

as an alternative, rather than the status quo. In other words, when veto players disagree over transposition, a literal implementation is considered less feasible. However, this only holds for cases where the status quo and a literal interpretation do not align (Figure 1A). This ‘upturned’ model follows from the reversed rationale underpinning customization: a bottom-up rather than top-down perspective.

**Figure 1. Simplified depiction of customization outcomes in cases of policy misfit (A) and fit (B)**



*Note:* SQ = domestic status quo; LI = literal interpretation of directive;  $D^{\min}$  &  $D^{\max}$  = range of discretion granted by directive;  $C^1$  = customization towards status quo;  $C^2$  and  $C^3$  = customization away from status quo *and* directive’s literal interpretation. This figure is a simplification primarily in that it ignores the possible outcome where the dimensions of restrictiveness and density are customized in different directions. The directions of customization depicted here should not be equated to over- or under-implementation.

Synthesizing RCI and SI, it follows, first, that I assign a key role to implementation actors in customizing directives, rather than, for example, the degree of regulatory misfit. Second, in line with customization’s bottom-up take on implementation, I view directives as intervening impulses, not as the main stimuli. Hence, I formulate my expectations *taking the status quo as starting point*, rather than the directive. Third, transposition actors will be regarded here as pursuing their own interests in reaching a particular transposition outcome, using said strategic calculations. *But*, fourth, their preferences are partly shaped by the institutional and normative environment in which they operate, making actors’ interests susceptible to change. This environment consists of European as well as (sometimes counteracting) domestic and international norms (Graziano et al., 2011). Following Mastebroek (2017), this effectively means that implementation actors, particularly civil servants, will often seek to strike a balance between satisficing European requirements and domestic policy demands, with the latter eventually being prioritized when the two are conflicting. It does *not* mean, then, that I assume the preferences of transposition actors to be independent from the EU’s ‘compliance pull’ (Börzel & Risse, 2012: 3) in their efforts at customization, but simply that domestic issues will ultimately have priority.

The first general expectation that follows from these assumptions is that the literal interpretation of a directive must be located *outside* the domestic preference constellation for customization to occur (Cerna, 2013; Kaya, 2017).

**H1:** *If the literal interpretation of a policy specified in a directive is not located between the most preferred positions of the domestic veto players, customization is more likely<sup>9</sup>*

Some actors might be keen to maintain the status quo when the directive does not fit perfectly with the domestic situation, leading to customization. This situation may be more likely when the number of veto players is higher. This expectation follows from the assumption that the status quo, rather than a literal interpretation is the starting point for the preferences of actors.

**H2:** *When the number of veto players involved in transposition is high and the status quo does not align with a directive's literal interpretation, customization is more likely*

Political and administrative actors will put more effort into customizing some issues over others (Thomann, 2015). If the electorate does not express its support for the main issue of a directive to be handled by the EU (Spendzharova & Versluis, 2013), I expect customization to be more likely: actors will be more eager to let diverging domestic policy demands prevail over a literal transposition outcome when they believe the public does not support the latter outcome.

**H3:** *If the policy specified in a directive receives little support from the public to be addressed by the EU, customization is more likely*

The interests of political and (to a lesser extent) administrative actors will also be influenced by their consultation with interest groups in the transposition process (Jans et al., 2009). Often, such consultation procedures are built into a directive's requirements (Braun & Van den Berg, 2013). When more interest groups are involved more intensively in the process, and when the preferences of these groups do not align with a directive's content, implementation actors may experience higher pressure to accommodate these interests, deviating from a literal interpretation of the directive (Kaya, 2017). It follows that I expect this to make customization more likely.

**H4:** *When interest groups are involved more intensively in the transposition of a directive, customization is more likely*

Another logical corollary of these assumptions is that implementation actors' preferences will be affected by the degree to which they perceive the European Commission (EC) to be 'monitoring' the implementation, with more perceived pressure improving the likelihood of substantive compliance (Dimitrova & Steunenberg, 2016; Mastebroek, 2017). When extrapolating from this insight, one can expect lower perceived pressure to increase the likelihood of customization.

**H5:** *When perceived pressure by European Commission monitoring is low, customization is more likely*

An additional way in which this balancing act between domestic and European demands can be expected to affect the likelihood of customization is through discretion. Without legal leeway, there seem to be fewer opportunities for adaptation to domestic conditions (Dörrenbacher & Mastebroek, 2017). While it is indeed possible that implementing actors will transpose a provision 'away' from the literal rule *without* formally delegated discretion, it will generally enable domestic adaptation (Kaya, 2017; Thomann, 2015).

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<sup>9</sup> Formulation of this hypothesis is adopted partly from Steunenberg (2007). Specifying a particular direction for density and restrictiveness would lead to more imprecision, as the relation between the two dimensions (and thus directions) is likely to differ across policy sectors. Therefore, I here use a more general formulation between predictor and customization.



**H6:** *When provisions offer more discretion, customization is more likely*

A factor that is generally neglected in analyses of customization and non-literal transposition, is the availability of resources. This is surprising, given that “many studies have confirmed that administrative capabilities are an important factor influencing transposition performance” (Treib, 2014: 26). A higher capacity allows implementing actors to create opportunities for customization, as actors will have more information on the consequences of the directive and more abilities to adapt the EU legal act (Vasev & Vrangbaek, 2014)<sup>10</sup>. Clearly, then, administrative capacity may increase the likelihood of customization, but only where this is in the interest of domestic actors.

**H7:** *If a policy area has more administrative capacity and domestic veto players do not favour a literal interpretation of the directive, customization is more likely*

In the following section I will discuss the selection of policy areas and directives, as well as the operationalization of the dependent, independent and control variables.

## **Research design**

### *Selection of policy areas and directives*

As pointed out above, Thomann and Zhelyazkova (2017) find that customization patterns differ across policy areas along the particular regulatory logic prevalent in the policy field. To see if this expectation holds for other issue areas than those mapped already, this is the main criterion according to which I selected three policy areas: social and employment policy, internal market and services, and JHA (Appendix, Table A1). While internal market directives are usually deregulatory, employment and JHA policies are re-regulatory (Hix & Hoyland, 2011). Moreover, the field of JHA has historically been less integrated in the EU’s field of competence than the other two areas. From a more pragmatic perspective, these policy fields (particularly internal market) have received relatively little attention in the transposition literature. I selected directives within these policy fields for which implementation should have been completed several years ago to assure transposition was finalized. On a more practical note, I also checked whether the selected directives were included in earlier analyses of customization and if sufficiently detailed data on the potential customization of the provisions of these directives was available in ex-post evaluations (EPLs).

### *Dependent variable: customization*

I will measure both dimensions of customization separately by using three categories per dimension. In the case of density: less density (-1), no customized density (0) and more density (1). Similar categories are used for restrictiveness. With customized density essentially concerning the addition or omission of policy rules, this also means that I code a provision as customized where a rule is specified further, modified, concretized or transposed only partly. A provision is coded as an instance of customized restrictiveness when the procedural, temporal, personal and/or territorial scope is transposed with more or less stringency, or when the provision’s content is adapted by clearly changing a provision’s objectives or definitions. This may, for example, be a consequence of taking advantage of exemptions or options, or the incorporation of a recital in transposition. To ensure

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<sup>10</sup> It could be argued that customization may also be more likely when capacity is low: even where implementing actors would want to customize a directive, their resources and ability simply might not allow for it. However, given that the Netherlands is a member state with relatively high capacity, this is unlikely.

proper coding and to enable replicability, I have made extensive coding tables with a clarification for the coding of each provision. A short overview of the coding scheme and most difficult coding decisions can be found in appendix B.

Subsequently, I will aggregate both measures in two ‘customization scores’: one for the *amount* of customization and one for the *direction* of customization. The ‘amount’ refers to the simple question of whether a provision is customized on one dimension only (scored 1), on both dimensions (scored 2), or not customized at all (0). Concerning the ‘direction’, this measure looks into the type of change made to the provision, ranging from -2 (less restrictiveness *and* density) to 2 (more density and restrictiveness). Table 1 provides an overview of this ordinal measure. My measure weighs both dimensions equally, as I deem both to be of equal importance.

**Table 1.** Measurement of direction of customization (scores in parentheses)

<b>Score per dimension</b>	<b>Aggregated customization score</b>
Less density (-1), less restrictiveness (-1)	-1 -1 = -2
Less density (-1), no change in restrictiveness (0) <i>or</i> No change in density (0), less restrictiveness (-1)	-1 + 0 = -1
No change in density or restrictiveness (0) <i>or</i> Less density (-1), more restrictiveness (1) <i>or</i> vice-versa	0 or -1 + 1 = 0
More density (1), no change in restrictiveness (0) <i>or</i> No change in density (0), more restrictiveness (1)	0 + 1 = 1
More density (1), more restrictiveness (1)	1 + 1 = 2

To obtain these scores I will primarily use EPLs. This has considerable downsides (Thomann & Zhelyazkova, 2017): 1) EPLs do not always cover transposition beyond compliance, 2) they do not provide sufficient information on highly ambiguous directives and 3) establishing the *extent* of customization can be done only in a relative manner (e.g. relative to other policy areas), 4) they do not allow for more in-depth coding of customization, in terms of (e.g.) regulatory scope of a provision or other categories of policy content (objectives, budget). While these drawbacks considerably limit the validity of the data obtained, it is the only type of data that assesses directives in a relatively systematic and readily available manner. In cases where an EPL does not provide sufficient data to make an informed coding decision, I have consulted the domestic legal provisions to which is being referred in the EPL. In relying on these sources, I was unable to code 8.02% of the provisions.

I measure customization on the provision-level, but only consider relevant provisions. That is, I do not analyse ‘standard’ provisions, obligatory to be included in all directives, such as the applicability of the directive (e.g. ‘this is applicable to all member states’) or provisions specifying the date in which the act enters into force (Hartmann, 2016: 426). Relevant articles are those that “provide requirements or guidelines to the member states about how to implement the policy specified in the directive” (Steunenbergh & Toshkov, 2009: 958). A provision is the same as a (sub-)article. Finally, I did not consider purely procedural provisions, as these do not need to be transposed.

### *Independent and control variables*

I operationalize the preference constellation (H1) by focusing on the preferences of the minister(s) responsible for the transposition process, as data on the interests of the main *administrative* actors involved in transposition is either very limited or too time-consuming to collect. I measure the 'ministerial preferences', by first identifying the ministers involved in transposition and their political affiliation. Then I take the issue position of the party as the preference of the minister (as used by Zhelyazkova et al., 2017). Regarding the number of veto players (hypothesis 2), I take the number of actors involved in transposition as an indicator, using information of the EPL, as well as legislative indices (Henisz, 2017; Bergman et al., 2003).

I will measure public support for the EU policy by using data from Eurobarometer surveys. These include questions on whether respondents want the issue of a directive (or policy area more generally) to be a national or EU responsibility, or how the EU's performance on a policy is regarded (Zhelyazkova et al., 2016). For the fourth hypothesis, concerning the degree of interest group involvement, I use Jahn's corporatism index. Although corporatism is a proxy (Kaya, 2017), a more valid alternative incorporating the specific interest groups involved in transposition is absent (see appendix D for more information). The next predictor, the degree of pressure that domestic actors perceive from EC monitoring of the transposition process, is operationalized by taking the number of formal letters sent out by the EC concerning a particular directive (Steunenberg & Rhinard, 2010). I will obtain data on this from the EC's CeLex database.

Operationalizing discretion is notoriously difficult (Hartmann, 2016), as legal norms contained in directives are nested in a complex way. As suggested by Toshkov (2013) and employed by Dörrenbacher & Mastenbroek (2017), I use the Institutional Grammar Tool coding procedure (Crawford & Ostrom, 1995; Siddiki et al., 2012) to determine a provision's degree of discretion (see appendix C). As a safety check, I also created a ratio of open and closed statements (Steunenberg & Toshkov, 2009). The last predictor is administrative capacity. Although determining the relative capacity of different sectors in one member state is challenging (Dimitrova & Steunenberg, 2016), I decided to operationalize capacity here as the performance of a sector as evaluated by its top-tier managers in the COCOPS survey of 2013 (Jilke et al.). This performance is evaluated according to a range of indicators (e.g. 'policy effectiveness' and 'cost and efficiency') for the question how the respondents think their policy area has performed over the last 5 years. I calculate the average score for all respondents per ministry in the survey (see appendix D). Unfortunately, this measure displays little variation, leading me to exclude it from the main analysis: not only would it add little, it would even unnecessarily weaken the effects of the other predictors in the analysis. Its lack of variation may point to two conclusions; namely that the measure does not succeed at capturing differences in capacity between Dutch administrative units, or that these differences are simply very small. I will return to these issues in the discussion of the results.

I will also include two control variables in my analysis. The first, directive complexity, is sometimes mentioned as possible intervening variable in the transposition process, affecting the preferences of actors (Zhelyazkova, 2013). I will measure this by counting the number of recitals included in the directive (Voorst & Mastenbroek, 2017). The second control, legal misfit (e.g. Cerna, 2013), will be

gauged using Steunenberg and Toshkov's (2009) measure. It combines the novelty of a directive and the type of national transposition measure used in one indicator. Data for both components can be derived from the EPLs of the directives. Unfortunately, data limitations prevented me from controlling for a policy area's 'interventionist style'. For an overview of the operationalization and data of all variables, see table 2, and for a detailed discussion (including on the latter issue) and the data itself, see appendix D.

### *Method*

With provisions nested in the 13 directives, the structure of the data is hierarchical: the dependent variable is measured on level-1 (i.e. provisions), as well as one independent variable, discretion, while the other predictors are all measured on level-2 (i.e. directive). Together with the expectation that the direction and strength of the relationships between predictors and outcome variable will differ between directives, the use of a method of analysis controlling for the multilevel data structure seems warranted (Luke, 2004). At the same time, I must note that the number of groups (i.e. directives;  $N = 13$ ) relative to the sample size ( $N = 1,072$ ) and level-2 predictors (8) is very small and is thus likely to pose problems (cf. Stegmueller, 2013). Moreover, the highest Intra-Class Correlation (ICC) of all the models I ran is low (7.15%), indicating low variation between directives. It is the former of these concerns that led me to not to include cross-level interactions between predictors, nor to resort to a different method, because I believe the argument on the data structure overrides these (justified) counterarguments. As both customization measures consist of multiple discrete categories, the method of analysis I employ is a multilevel multinomial logistic regression. More specifically, I use a cumulative link-mixed model, as available in the 'ordinal' package in R (Christensen, 2015). As noted before, the size of missing data is not too large, with 7% being the highest loss of cases (for customization). I chose to omit every missing case (i.e. complete-case analyses).

**Table 2. Overview of operationalization of variables**

<b>Variable</b>	<b>Operationalization</b>	<b>Data</b>
<i>Directive-level</i>		
Administrative capacity	Sectoral capacity: average policy sector scores on the indicators of performance dimensions in the COCOPS survey (own calculation)	Jilke et al. (2013)
Ministerial preferences	Issue position of political party of minister	Chapel Hill Expert Survey (Bakker et al., 2015)
Public EU support	Score on survey question for directive's topic to be an EU competence	Eurobarometer
Interest group diversity	Corporatism index	Jahn (2016)
Commission monitoring	Number of formal letters per directive	CeLex database
Number of Veto players	Veto player index	EPLs of corresponding directives; Political constrain index and Bergman et al. (2003) index
Control: legal misfit	Combined measure of novelty of directive and type of transposition measure	EPLs of corresponding directives
Control: interventionist style	Average share of type of regulatory instruments in policy area	EPLs of corresponding directives
Control: directive complexity	Number of recitals per directive	Text of directives
<i>Provision-level</i>		
Discretion	Institutional Grammar Tool coding procedure (see appendix C)	Text of directives
Customization	Combined measure of density and restrictiveness	EPLs of corresponding directives

**Results**

I collected information on the customization of 1,072 provisions across 13 directives (see appendix E for descriptive statistics). Half of these provisions stem from ‘internal market’-directives, with one directive – the 2007 payment services directive – disproportionately contributing 362 cases (see appendix E for the distribution of cases). When omitting this directive (as I have done in a robustness check, see appendix F), the number of cases is relatively evenly distributed across policy fields, between 300 (justice and home affairs) and 186 cases (employment; overall N = 710).

*Extent and direction of customization*

While, unsurprisingly, the majority of the provisions is not customized at all (662; 61.75%; Table 3), a customization rate of almost 40% is relatively high when considering that earlier research on ‘gold-plating’ of directives in the Netherlands found deviant transposition to be largely absent (Voermans, 2009; Jans et al., 2011). This difference may in part be ascribed to the fact that customization is a broader concept than gold-plating, covering a wider range of transposition outcomes. In most cases of customization, provisions are adapted on both dimensions (278), with a clear majority customized in a uniform direction (220): either less (114) or more (106) density *and* restrictiveness. Of instances where a provision is customized on one dimension only (italicized in Table 3), most provisions are made less restrictive during transposition.

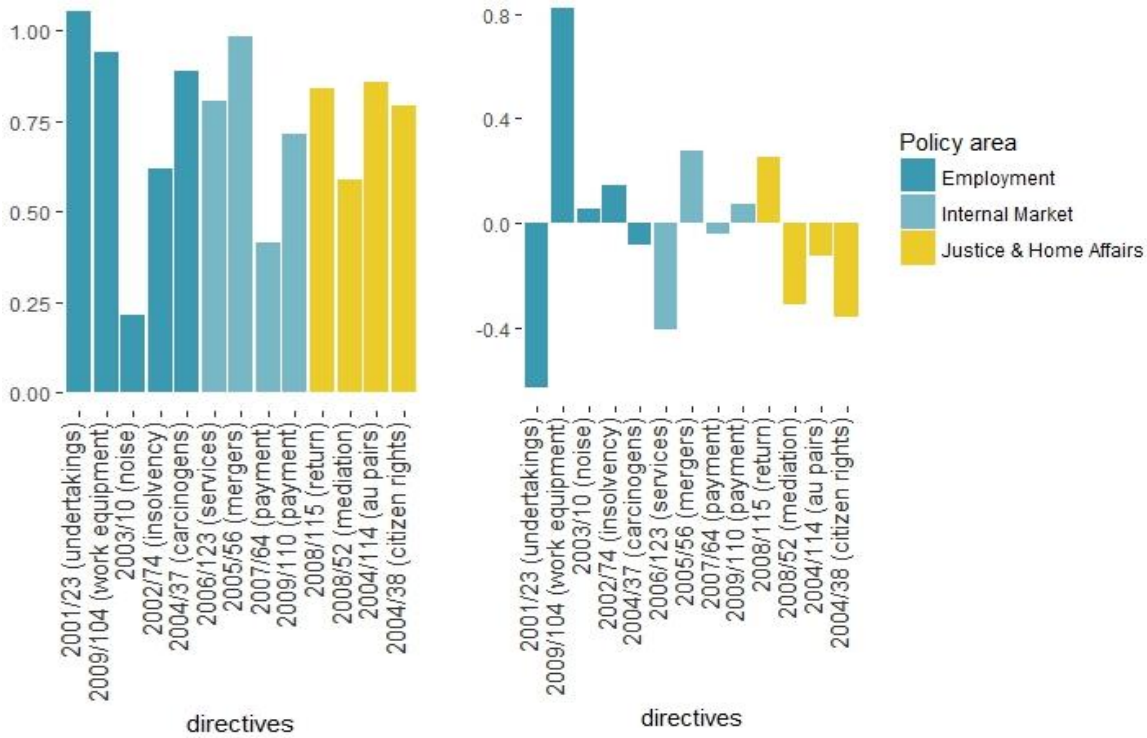
**Table 3.** Distribution of cases on both dimensions of customization

		Density	Less	No change	More
			-1	0	1
Restrictiveness	Less	-1	114	67	19
	No change	0	29	662	20
	More	1	39	16	106

Can area-specific customization patterns be observed for the extent and direction of customization? Regarding the former, as can be seen in Figure 2 (left), the average amount of customization is relatively similar across policy areas. Although within each policy field one directive always has a substantially lower amount of customization than other directives in the sector (e.g. the Noise directive), levels of customization are relatively equal across areas. More interesting for our purposes here is whether policy fields that are generally re-regulatory, such as employment and JHA, depict a pattern of customization in a direction opposite to the deregulatory field of internal market directives (Thomann & Zhelyazkova, 2017). Figure 2 (right) does not corroborate this expectation, as the scrutinized directives do not exhibit a uniform direction per policy area. Although breaking these observations down into the two dimensions does not change the picture (Figure 3), it does show that, on average, directives are customized in the same direction for either dimension: in two cases only (the 2009 payment and 2004 au pairs directives) were provisions generally customized in opposite directions. This also allows me to compare my results to those of Thomann & Zhelyazkova (2017: 1279), as they obtained information on the customization of JHA directives in the Netherlands. The analysed directives display less customization for both dimensions, a result largely

in line with the directives scrutinized here. One directive (the Return directive) is the odd one out in this regard, as it was customized with more density and restrictiveness.

**Figure 2. Left:** Average *amount* of customization per directive and policy area (0 = no customization)  
**Right:** Average *direction* of customization (0 = no customization; 1 = more density and restrictiveness; -1 = less density and restrictiveness)



**Figure 3.** Average customization direction broken down into density (red) and restrictiveness (blue)



### Amount of customization

Although no consistent pattern of customization becomes apparent for each policy field, we may still be able to discern which factors help to explain customization, beginning with the amount. To this end, I estimated two cumulative link-mixed models<sup>11</sup>, one using the discretion measure of the ratio of open and closed statements and one using the IGT as basis for operationalization of discretion (Table 4, models 1 and 2 respectively). I only calculated the odds ratios, as no function for the calculation of predicted probabilities and first differences is available for these models. Relying on the AIC and -2Log-Likelihood (-2LL) to fit each model (as well as non-reported visual diagnostic checks) in a stepwise manner, I fitted both models with only random intercepts<sup>12</sup>. I followed a similar estimation process for the other models presented in this paper.

**Table 4.** Predicting amount of customization, with discretion ratio (model 1) and discretion IGT (model 2): odds ratios

	<b>Model 1</b>			<b>Model 2</b>		
	<i>Discretion (ratio)</i>			<i>Discretion (IGT)</i>		
	<b>95% CI for odds ratio</b>			<b>95% CI for odds ratio</b>		
<b>Level-1 (Provision)</b>	<b>Lower</b>	<b>OR</b>	<b>Higher</b>	<b>Lower</b>	<b>OR</b>	<b>higher</b>
Threshold 0 1	0.98	1.27	1.64	1.03	1.43*	1.98
Threshold 1 2	5.96	7.88*	10.43	0.88	1.25	1.78
Discretion (IGT)				0.65	0.75*	0.87
<b>Level-2 (Directive)</b>						
Discretion (ratio)	0.02	0.60	16.38			
Ministerial preferences	0.89	1.18	1.56	0.99	1.33	1.78
Number of veto players	0.47	0.75	1.21	0.26	0.43*	0.70
Public EU support	0.59	1.00	1.68	0.58	1.00	1.73
Corporatism	0.12	1.64	22.22	0.09	1.51	24.42
EC monitoring (directive)	0.33	0.85	2.19	0.35	0.96	2.64
Misfit	3.80	7.88	16.34	0.61	1.25	2.55
Directive complexity	1.26	1.27*	1.28	1.41	1.43*	1.44
Variance: Intercepts	0.10			0.12		
N (observations)	1,072			1,072		
N (directives)	13			13		

Notes: CLMM ordered logistic regression; models with random intercepts, no random slope(s)

Odds ratios higher than 1 tell us that, when the value of an independent variable increases by one unit, the odds of the outcome (i.e. amount of customization) increase as well. Vice versa, ratios lower than 1 inform us of the opposite. In cases where (the lower and upper bounds of) the odds ratios are entirely below or above 1, the predictor reaches significance (signified by \*). This is the case for only few of the predictors. In model 1, only directive complexity turns significant, indicating that as

<sup>11</sup> Both models were estimated using a 'cauchit' link as this link achieved the highest log-likelihood score.

<sup>12</sup> The 'ordinal' package does not include functions that enable the calculation of the error-correction term to assess improved fit.



complexity increases, the odds of the amount of customization also increase. This effect and its direction are confirmed in model 2. In this model, discretion and the number of veto players also reach significance, but in the direction opposite from complexity. That is, as provisions offer less discretion or when less veto players are involved in transposition, the odds of customization decrease as well.

**Table 5.** Effect of predictors and controls on amount of customization

	<b>Model</b> (random intercepts, No random slope)	<b>CI 99%</b>
<i>Level-1 (Provision)</i>		
(Intercept)	0.51*** (0.10)	0.34; 0.68
Discretion (IGT)	0.16*** (0.03)	0.08; 0.24
<i>Level-2 (Directive)</i>		
Ministerial preferences	-0.07 (0.08)	-0.22; 0.06
Number of veto players	0.15 (0.16)	-0.12; 0.42
Public EU support	0.13 (0.18)	-0.17; 0.43
Corporatism	0.21 (0.84)	-1.24; 1.67
EC monitoring (directive)	0.33 (0.32)	-0.20; 0.89
Misfit	-0.15 (0.22)	-0.53; 0.23
Directive complexity	-0.00 (0.00)	-0.01; 0.00
AIC	2700.16	
BIC	2754.91	
-2LL	2678.16	
N	1072	
N groups	13	
Variance country (intercept)	0.06	
Variance residual	0.68	

Notes: MLM OLS regression; p-values based on 99% confidence intervals; \*p<0.05, \*\*p<0.01, \*\*\*p<0.001

To check these findings, I also modelled a linear multilevel OLS regression with provision-level discretion (also only random intercepts; Table 5). Although in principle fitting a linear regression to a multinomial dependent variable is inadequate (as diagnostic tests also indicate), it may be useful as a double-check. However, the model does not corroborate some of the earlier findings, as it only finds a strong positive significant effect for discretion (at p<0.001). It does find, in line with the two other models, that the majority of predictors cannot explain the amount of customization (at least with this data; see discussion below). Interestingly, as the residual variance is very low (0.68), there does not seem to be much un-modelled variability (Luke, 2004: 28). For the OLS, the exclusion of the

disproportionally large 2007 payment services directive displays identical results (Appendix E, Table E2). The CLMM with discretion at provision-level also has similar results as in model 2, Table 4, but the direction of the effect of the number of veto players changes towards a positive effect (Appendix E, Table E1).

*Direction of customization*

Concerning the direction in which provisions are customized, most predictors exhibit a similar absence of significant effects (Table 6). In the model with the discretion ratio, only the controls misfit and complexity show a positive significant effect. These effects – and their directions – hold in the model with discretion measured through the IGT, but discretion and the number of veto players also significantly increase the odds of customization. This means, in other words, that the odds of customization in direction of more restrictiveness and/or density increase as the number of veto players increase. Interestingly, these findings are contradicted by the linear model (Table 7), with none of the predictors nor controls displaying significant effects. This raises the question why these models display such different results? Finding the right answer to this question proved challenging, as the random effects and predictors used in both models are identical. To strike middle ground, I also estimated a binomial version of the model (Table E3, Appendix E). The results largely echo those of the multinomial model, with the IGT measure of discretion, number of veto players and public EU support all demonstrating significance.

**Table 6.** Predicting direction of customization, with discretion ratio (model 1) and discretion IGT (model 2): odds ratios

	<b>Model 1</b>			<b>Model 2</b>		
	<i>Discretion (ratio)</i>			<i>Discretion (IGT)</i>		
	<b>95% CI for odds ratio</b>			<b>95% CI for odds ratio</b>		
<b>Level-1 (Provision)</b>	<b>Lower</b>	<b>OR</b>	<b>Higher</b>	<b>Lower</b>	<b>OR</b>	<b>higher</b>
Threshold -2 -1	0.81	1.46	2.61	0.50	0.92	1.69
Threshold -1 0	0.27	0.27*	0.38	1.01	1.52*	2.27
Threshold 0 1	1.24	0.73	2.08	0.73	1.24	2.12
Threshold 1 2	143.87	73.68	280.91	87.18	171.00*	335.44
Discretion (IGT)				0.45	0.56*	0.69
<b>Level-2 (Directive)</b>						
Discretion (ratio)	0.08	8.15	836.95			
Ministerial preferences	0.69	1.00	1.44	0.69	1.00	1.44
Number of veto players	0.32	0.58	1.07	4.91	8.70*	15.40
Public EU support	0.76	1.46	2.80	0.49	0.92	1.70
Corporatism	0.01	0.36	14.04	0.01	0.32	11.10
EC monitoring (directive)	0.07	0.27	1.04	0.42	1.52	5.51
Misfit	50.11	143.87*	413.06	67.77	171.00*	431.51
Directive complexity	1.22	1.24*	1.25	1.23	1.24*	1.25
Variance: Intercepts	0.10			0.10		
N (observations)	1,072			1,072		
N (directives)	13			13		

Notes: CLMM ordered logistic regression; models with random intercepts, no random slope(s)

**Table 7.** Effect of predictors and controls on direction of customization

	<b>Model</b> (random intercepts, No random slope)	<b>CI 99%</b>
<i>Level-1 (Provision)</i>		
(Intercept)	2.83*** (0.13)	2.63; 3.04
Discretion (IGT)	0.05 (0.04)	-0.04; 0.14
<i>Level-2 (Directive)</i>		
Ministerial preferences	0.10 (0.10)	-0.08; 0.26
Number of veto players	0.09 (0.20)	-0.25; 0.41
Public EU support	-0.14 (0.23)	-0.51; 0.22
Corporatism	1.13 (1.06)	-0.79; 2.79
EC monitoring (directive)	0.61 (0.40)	-0.10; 1.24
Misfit	-0.41 (0.28)	-0.85; 0.09
Directive complexity	-0.00 (0.00)	-0.01; 0.01
AIC	2978.68	
BIC	3033.43	
-2LL	2678,16	
N	1072	
N groups	13	
Variance country (intercept)	0.10	
Variance residual	0.89	

Notes: MLM OLS regression; p-values based on 99% confidence intervals; \*p<0.05, \*\*p<0.01, \*\*\*p<0.001

## Discussion

To summarize, the vast majority of the predictors do not display a significant effect for both the amount and the direction of customization, across all different models. Only two explanatory variables exhibit significant effects and odds in some models: discretion (when measured at the provision-level) and the number of veto players. Regarding the former, this seems to have the most robust positive effect on the amount of customization, reaching significance in the logistic and linear models. The odds for the direction of customization also decrease when the direction decreases (i.e. towards less restrictiveness and/or density) in the bi- and multinomial models, but the linear model does not confirm this finding. All in all, the expectation that more discretion increases the likelihood of customization is confirmed however (hypothesis 6). As for the number of veto players, the results are contradictory: when including the discretion ratio as measure, its odds become insignificant for amount and direction, but when measuring discretion through the IGT, positive odds ratios can be

found on both accounts, as well as in the binomial model. At the same time, the two linear models do not display significant effects for the number of veto players, although the relation is positive in either case. Taken together, I tentatively confirm the expectation formulated in hypothesis 2 that a higher number of veto players increases the likelihood of customization. The hypotheses for the other predictors (ministerial preferences, support from the public, corporatist arrangements, monitoring by the EC) are all rejected and, at least based on this data, can be said not to be sufficient explanations in its own as to why transposition actors customize. Of the control variables, the complexity of a directive was found to significantly increase the odds of the amount and direction of customization, although this observation is disputed by the linear models. The legal compatibility between directives and the domestic legal situation exhibits a similar pattern, but only for the direction of customization.

To a considerable extent, these results do not conform with previous scholarly work on customization, 'gold-plating', or non-literal transposition more generally (in as far such a clear line can be discerned at all). Comparing to, for example, Thomann (2015), the only explanations tested in both studies that display similar directions are the positive associations of discretion and a higher number of veto players. Rather than dismissing (or at least nuancing) the findings of other studies in the field, I think it is more useful to look at some of the limitations of this research itself. The most prominent of these concerns my operationalization of the dependent variable, customization. In most of my coding decisions, I relied on ex-post evaluations, which not only restricted me in the possibility to create a more in-depth measure, but also limited the validity of the measure employed. Although I mitigated this concern by taking the domestic legal texts in most cases into account in my coding procedure, it remains a justified point of discussion. A second, equally dubitable issue is the structure of the data. With too few groups and cases, but too many predictors at the directive-level, the results are far from robust. At the same time, data and time limitations did not allow for more measures with provisions as unit of analysis, while excluding some higher-level predictors from the analysis would inevitably lead to omitted variable bias. Addressing this matter nevertheless did not insulate my research from this objection, as I did not include theoretically warranted cross-level interactions in my analysis. Another limitation concerning the omission of variables is the exclusion of the domestic interventionist style as control. As I also shortly discuss in the appendix, it was unclear to me how to operationalize this variable, as the directions and descriptions on which to rely are rather vague. In other words, inclusion of an ill-specified and -operationalized variable would have impeded rather than improved the analysis. Finally, I also leave out administrative capacity. Although this measure has proven insufficiently adequate to include in the analysis, due to a lack of variation between policy areas, I think it exemplifies the importance of attempting new ways to measure variables in quantitative transposition scholarship. Often invalid or simply inadequate measures are employed and become practically a standard in the field (e.g. the World Bank 'government effectiveness' index as measure of capacity). I readily acknowledge that some of the operationalizations used in the analysis here help perpetuate the validity of this criticism (e.g. corporatism) and that the limited availability of data confines the options of the researcher, but it remains of paramount importance to develop and follow new ways of operationalizing factors featuring as explanations in much of the transposition literature – even if they turn out unsuccessful, as in this case.

## Conclusion

At its core, customization denotes the efforts of a range of political, civil society and administrative actors in flexibly “settling the boundaries of EU law” (Mastenbroek, 2017: 1299). In this contribution I hope to have shown how this perspective offers a novel (though not entirely original) way to study transposition. Most importantly, by taking a bottom-up approach to transposition, customization highlights the domestic side of implementation. In order to explain why actors customize, and whether these patterns of customization are contingent to the regulatory logic of policy fields, I combined the tenets of rational choice and sociological institutionalism. Analysing 13 directives in the Netherlands from both de- and re-regulatory fields of policy, no clear differences in the extent of customization could be discerned between areas. Through the use of multilevel ordinal and linear regressions, I found that a higher degree of discretion and number of veto players increase the likelihood of customization. Other explanations, such as the preferences of ministers or corporatist arrangements did not display significant results.

These findings have several implications. On a practical level, this study tells us that offering discretion can be a useful tool for the adaptation of EU law, although it may also impede the harmonization of these policies. The relatively high percentage of customized provisions draws into question the effectiveness of one-size-fits-all solutions that – however broadly formulated – EU directives often put forward. This inevitably brings us to the normative implications of these findings. With directives speaking to a wide range of different contexts and actors, each with different economic, social and cultural conditions, customization can hardly be considered a black-and-white matter in terms of desirability. Where there is great disparity between member states in the contexts of implementation, customization may actually lead to higher effectiveness of policies. This is least likely to be advantageous if a policy has negative cross-border effects. Customization may also be an effective, yet indirect way to improve accountability, given that context-sensitive implementers can strengthen the legitimacy of EU policies at lower governance levels.

As this study is the first systematic explanatory analysis of customization, a wide range of issues remain to be explored, three of which I will highlight here. Most importantly, customization itself is still in need of clearer delineation. Current literature seems to place customization at different places in the conceptual field, thereby complicating research on the phenomenon and the cumulation of the findings that follow from it. As a second avenue for further research, students of customization would do well to broaden their horizon towards other policy areas and member states. As this study has a limited scope, an even more extensive comparison between policy fields with different logics would be particularly valuable. A similar recommendation can be made for the development of measures with higher validity for customization and the preferences of key actors, that can relatively easily be used in quantitative analyses. These efforts are highly warranted not only in the nascent strand of customization scholarship but are relevant to transposition research more generally as well.

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**Table A1.** Selected directives

<b>EU directive</b>	<b>Policy content</b>	<b>Corresponding ex-post evaluations<sup>13</sup></b>
<i>Employment and social policy</i>		
2001/23/EC	Transfer of undertakings	Middlesex University (2007)
2009/104/EC	Work equipment	COWI, Milieu & IOM (2015)
2003/10/EC	Noise	COWI, Milieu & IOM (2015)
2002/74/EC	Employer insolvency	Middlesex University (2006)*
2004/37/EC	Carcinogens and mutagens	COWI, Milieu & IOM (2015)
<i>Internal market and services</i>		
2006/123/EC	Services	Stelkens et al. (2015); Milieu (2011)*
2005/56/EC	Cross-border mergers	Lexidale (2013)*
2007/64/EC	Payment Services	Tipik (2013)*
2009/110/EC	Payment services	Tipik (2013)*
<i>Justice and home affairs</i>		
2008/115/EC	Return	Milieu (2013)*; Hartmann (2016)
2008/52/EC	Mediation	Milieu (2013)*
2004/114/EC	Au pairs	GHK Consulting (2010)*
2004/38/EC	Citizens' rights	Milieu (2008)*

\*Reports have been used by Zhelyazkova et al. (2017) to collect data on these directives for the relation between notified and substantive compliance.

<sup>13</sup> I am indebted to Stijn van Voorst for providing the updated dataset of Van Voorst & Zwaan (2018) consisting of most (if not all) ex-post evaluations produced by the EU's DGs and EC. I am also thankful to Asya Zhelyazkova for providing me with the EPLs of the JHA policy field.

## Appendix B: Customization coding decisions

In this appendix, the coding scheme is shown with examples for each decision from the actual coding tables. I created tables including the directive (sub-)article (i.e. provision), the directive text of the provision, the relevant legal articles transposing the provision, the information from the EPL on transposition and my coding decision. I used similar tables to code all other provisions, but due to confidentiality of the included information from the EPLs, as well as the large size of the tables (app. 900 pages in total), the tables are only available on request.

### No customization:

#### - **No use of exemption or expansion**

Example from return directive:

4(2)	This Directive shall be without prejudice to the right of Member States to adopt or maintain provisions that are more favourable to the persons to whom it applies.	Not transposed		Article 4 has <b>not been transposed</b>  Article 4(2) allows Member States to maintain or introduce provisions that are more favourable to third-country nationals covered by Directive 2004/114/EC, provided they are compatible with the Directive. This Article did not need to be literally transposed by Member States (as, for example, more favourable provisions could be adopted in relation to other Articles in the Directive), nor was its transposition compulsory.	By not transposing this provision, the directive is not customized. Since the transposition of these definitions is not compulsory, non-transposition in this case amounts to non-customization.  D = 0 R = 0
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#### - **Transposition of the provision is literal**

Example from 2007 payment services directive:

3(c)	(c) professional physical transport of banknotes and coins, including their collection, processing and delivery;	Art. I (D)(2)(c) professional physical transport of banknotes and coins,	Yes	Article I (D)(2)(c) of RD 436 transposes Article 3, point (c) of the Directive.	The provision has been transposed literally.
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		including their collection, processing and delivery;		The Dutch provision has transposed the provision of the Directive almost in a literal way.	D = 0 R = 0
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Customization on both dimensions, in opposite or same direction:

- **A rule is added or taken away in transposition, is less or more detailed, while the substance (objectives, content) and/or (procedural, territorial, personal, temporal) scope is transposed with more or less stringency**
- **A recital is incorporated in the transposition of a provision, leading to a divergence of a literal interpretation of the provision**
- **The transposition actors take advantage of an option provided by the directive, either expanding on or exempting itself from an obligation**

Example from 2009 payment services directive of customization in opposite direction:

3(3)5	If a holding is acquired despite the opposition of the competent authorities, those authorities shall, regardless of any other sanction to be adopted, provide for the exercise of the voting rights of the acquirer to be suspended, the nullity of votes cast or the possibility of annulling those votes.	Article 3:108a of the Financial Supervision Act (4) When a holding is acquired despite the opposition of the Dutch Central Bank, the Dutch Central Bank can determine, regardless of any other sanction to be adopted, that the exercise of the voting rights of the acquirer shall be suspended or that the votes cast shall be void.	Yes	Article 3:108a paragraph 4 of the Financial Supervision Act identically transposes Article 3 paragraph 3, subparagraph 4 of the Directive. Article 3 paragraph 3, subparagraph 5 of the Directive requires when a holding is acquired despite opposition from the competent authorities, that these authorities shall suspend the exercise of voting rights of the acquirer and the nullity of votes cast. In this regard, Article 3:108a paragraph 4 of the Financial Supervision Act indicates that	The annulment of votes is omitted from the possible measures to be taken by the Central Bank, meaning the provision is transposed with less density (a rule is omitted) and more restrictiveness (the substantive scope is more stringent).  D = -1 R = 1
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				<p>the Dutch Central Bank can determine, when a holding is acquired despite its opposition and regardless of any other sanctions, that the exercise of the voting rights shall be suspended or the nullity of the votes cast.</p> <p>Conformity with the requirements of Article 3 paragraph 3, subparagraph 5 of the Directive is thus observed.</p>	
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Example from cross-border mergers directive of customization in same direction, with more density and restrictiveness:

2(2)a	<p>'merger' means an operation whereby: (a) one or more companies, on being dissolved without going into liquidation, transfer all their assets and liabilities to another existing company, the acquiring company, in exchange for the issue to their members of securities or shares representing the capital of that other company and, if applicable, a cash payment not exceeding 10 % of the nominal value, or, in the absence of a nominal value, of the accounting par value of those securities or shares; or</p>	<p>325(2): Indien krachtens de ruilverhouding van de aandelen recht bestaat op geld of schuldvorderingen, mag het gezamenlijke bedrag daarvan een tiende van het nominale bedrag van de toegekende aandelen niet te boven gaan.</p>	Yes	<p>Triangular mergers possible in Article 2.333a DCC;</p> <p><u>It rules that a 10% threshold is only applicable if a surviving entity is a Dutch entity</u> (Article 2:325(2), Article 2:333a);</p> <p>A dissolved legal person may not merge if a distribution has already been made out of its property on account of a winding-up (liquidation). Cash payment, as referred to in Article 2(2)(a) Directive, may not exceed 10 percent of the</p>	<p>The territorial scope of the provision is more restrictive. This led Dutch transposition actors to add another policy rule.</p> <p>D = 1 R = 1</p>
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				<p>aggregate nominal value of the shares allotted in the surviving entity's capital, if the surviving entity is Dutch (Article 2:325(2) DCC). Therefore, two types of mergers from Articles 2(2)(a) and (b) Directive were transposed by the Dutch.</p>	
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Example from citizen's rights directive of customization in same direction, with less density and restrictiveness:

3(2)2	<p>The host Member State shall undertake an extensive examination of the personal circumstances and shall justify any denial of entry or residence to these people.</p>	<p>Article 3:2, 3:46, 3:47, para 1, General Administrative Law Act</p> <p>Article 3:2 When preparing an order an administrative authority shall gather the necessary information concerning the relevant facts and the interests to be weighed.</p> <p>Article 3:46 An order shall be based on proper reasons.</p> <p>Article 3:47 1. The reasons shall be stated when the order is notified. [...]</p>	Yes	<p>These are guarantees given by the Directive to limit the MS discretion and thus have to be transposed. <u>The NL legislation is not precise enough to comply with the requirement of carrying out an "extensive examination of the personal circumstances"</u>. However it depends on the treatment given by the NL to other family members, i.e., the facilitation. In principle the NL treats them as the core family members Therefore, then they have a right and thus there is no need to carry out the exhaustive examination. The margin of discretion for authorities seems already quite limited.</p> <p>The order to issue a visa is to be considered as a (administrative) decision ex General Administrative</p>	<p>The provision is not transposed with enough specificity, meaning the directive is customized with less density and restrictiveness.</p> <p>D = -1 R = -1</p>
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				Law Act.	
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Customized with more or less density, no change in restrictiveness:

- **A rule is either explicitly added or omitted, but the substantive scope remains identical**

Example from the insolvency directive:

Article	EU obligation	National provision, if referred to in EPL (in Dutch) <sup>14</sup>	Fully in accord?	Notes/Issues (copied from EPL)	Coding decision
1(1)	This Directive shall apply to employees' claims arising from contracts of employment or employment relationships and existing against employers who are in a state of insolvency within the meaning of Article 2(1).	IV WW 61: Een werknemer heeft recht op uitkering op grond van dit hoofdstuk, indien hij van een werkgever, die in staat van faillissement is verklaard, aan wie surséance van betaling is verleend, ten aanzien van wie de schuldsaneringsregeling natuurlijke personen van toepassing is, of die anderszins verkeert in de blijvende toestand dat hij heeft opgehouden te betalen, loon, vakantiegeld, of vakantiebijslag te vorderen heeft of indien hij geldelijk nadeel kan ondervinden doordat deze werkgever bedragen die hij in verband met de dienstbetrekking met de werknemer aan derden verschuldigd is, niet heeft betaald.	No	Article 1(1) of the Directive <u>has not been specifically implemented</u> . In the Dutch legislator's view, Title IV WW already provided the guarantees prescribed by the Directive.	With the provision not having been implemented specifically, the provision is customized with less density, but not more restrictively, as the substantive scope of the Dutch law remains similar.  D = -1 R = 0

- **A provision is transposed with more or less detail, but the content and scope remain the same**

<sup>14</sup> <http://wetten.overheid.nl/BWBR0004045/2018-04-01#HoofdstukIV>; <http://wetten.overheid.nl/BWBR0001860/2018-01-01#TiteldeelIII>;



Example from the Carcinogens directive:

4(1)	The employer shall reduce the use of a carcinogen or mutagen at the place of work, in particular by replacing it, in so far as is technically possible, by a substance, preparation or process which, under its conditions of use, is not dangerous or is less dangerous to workers' health or safety, as the case may be.	AB 4.17 Zodanige technische en organisatorische maatregelen zijn genomen dat de kans op blootstelling van werknemers aan kankerverwekkende of mutagene stoffen of stoffen die vrijkomen bij kankerverwekkende processen zoveel mogelijk bij de bron daarvan wordt voorkomen, met name door kankerverwekkende of mutagene stoffen en kankerverwekkende processen, voor zover dit technisch uitvoerbaar is, te vervangen door stoffen of processen waarbij de werknemers, <u>gelet op de eigenschappen van die stoffen of processen, de aard van de arbeid, de werkmethoden en de werkomstandigheden</u> , niet of minder aan gevaar voor hun veiligheid of gezondheid worden blootgesteld.	Yes	No information provided by EPL, only reference to relevant Dutch legal article	Dutch law is more specific by emphasizing the particular characteristics of the substance to replace the carcinogen or mutagen (i.e. the particular conditions of use). In other words, the provision is customized with more density. It is not customized with more or less intensity, because the substantive scope remains the same.  D = 1 R = 0
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Example from the Return directive; the coding decision in this instance was difficult for density (as indicated in bold in the column on the right):

3(5)	5. 'removal' means the enforcement of the obligation to return, namely the physical transportation out of the Member State;			No definition of removal was transposed in Dutch law. <u>It can be deduced from several provisions that the implicit definition used in the system of the law is conform to the Directive, and involves the physical removal out of the Netherlands, to enforce the obligation to return.</u>	<b>Difficult (D)</b> By not explicitly defining 'removal', but essentially retaining the same scope of the provision, the provision is customized with less density and no change in restrictiveness.
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				Removal can only take place after the voluntary period for departure, though it is already possible to impose freedom-restricting measures on the alien during this period if there are reasons to assume the alien will try to abscond or hamper the expulsion procedures.	D = -1 R = 0
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Customized with more or less restrictiveness, no change in density:

- **The provision is transposed with more or less stringency/broader or smaller scope, but the number of rules and their specificity are identical to the original provision**

Example from the mediation directive:

2(1)b	(b) mediation is ordered by a court;	Wet implementatie richtlijn nr. 2008/52/EG, article 1 b b. parties accept a judges` proposal to mediate	Yes	Effective transposition The court does not order mediation since mediation is not compulsory in the Netherlands. However, a judge can propose mediation. It is up to the parties to decide whether or not they accept the proposal to enter into mediation.	<b>Difficult (D)</b> The provision is customized with less restrictiveness (the rule is less stringent) and no change in density.  D = 0 R = -1
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Missing cases:

- **Too little information to make a sufficiently informed coding decision**

Example from services directive:

20(1)	Member States shall ensure that the recipient is not made subject to discriminatory requirements based on his nationality or place of residence.			No information provided by EPL	Too little information available to make an informed judgment on customization.  D = NA R = NA
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- **Decision proved too difficult to make, regardless of information (3 instances in total)**

Example from 2007 payment services directive:

80(1)	Member States shall ensure that procedures are set up which allow payment service users and other interested parties, including consumer associations, to submit complaints to the competent authorities with regard to payment service providers' alleged infringements of the provisions of national law implementing the provisions of this Directive.			Under the General Administrative Act of the Netherlands the procedures for objecting against a decision or the possibility to appeal are included. The rules are included in Chapter 6, 7 and 8 of this Act. Furthermore, the Law on Financial Supervision provides in Article 4:17 that a financial service provider should adequately deal with complaints from its clients. Because the Dutch legal system provides for the possibility to object or to appeal it before the competent Court, the provision is conform with this provision of the Directive. The Dutch competent authority for	<b>Difficult</b> Insufficient information to code.  D = NA R = NA
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				complaints is the Authority Financial Markets ( <a href="http://www.afm.nl/">http://www.afm.nl/</a> )	
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Some examples of difficult coding decisions (109 in total):

- **The direction of customization on one dimension is not clear**

Example from return directive:

16(3)	3. Continuity of residence shall not be affected by temporary absences not exceeding a total of six months a year, or by absences of a longer duration for compulsory military service, or by one absence of a maximum of 12 consecutive months for important reasons such as pregnancy and childbirth, serious illness, study or vocational training, or a posting in another Member State or a third country.	Article 8.17, para 2, AD 2000  2. For calculating uninterrupted residence as referred to in paragraph 1, no interruption also includes absence from the Netherlands: a. for a maximum of six months a year; b. for a one-off period of not more than twelve consecutive months for compelling reasons; c. to fulfil military service; or d. due to secondment for carrying out work.	No	Incomplete transposition Although the wording of the text is different, the meaning of both provisions is identical. However, <u>the Dutch provision does not explicitly mention what important reasons justify absence of a maximum of 12 consecutive months except for one (posting in another country, i.e. secondment mentioned sub d).</u> Thus, legal certainty that for instance pregnancy constitutes an important (compelling) reasons is lacking.	<b>Difficult (R)</b> The Dutch provision omits reasons for absence of max 12 consecutive months, meaning the provision is customized with less density and more restrictiveness (as less reasons for a restrictive measure are specified).  D = -1 R = 1
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- **A provision is customized in opposing directions on one dimension in the same provision**

There are only three instances of this case and because all are rather long, I do not include these here. Where, for example, the territorial scope of the provision is broadened vis-à-vis the original provision, while the temporal scope is restricted, I decided to aggregate these instances, meaning that for this example, I scored restrictiveness as 0.

- **It is not clear whether the provision is customized, mainly due to ambiguous formulation of the EU provision or broad formulation of the provision**

Example from the return directive:

17(5)	The best interests of the child shall be a primary consideration in the context of the detention of minors pending removal.		It can be argued that putting unaccompanied minors, even only for two weeks, in youth penitentiary facilities is not in the best interests of the child. However, the national authorities clarified that detention is only used as a matter of last resort when other sufficient but less coercive measures can-not be applied effectively, pursuant to the general principles of Dutch administrative law.	<p><b>Difficult</b></p> <p>With minors possibly being detained in penitentiary facilities, the provision is transposed with more restrictiveness (more stringency) and more density (an additional rule).</p> <p>D = 1 R = 1</p>
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## Appendix C: Operationalization of discretion and coding decisions

I operationalized ‘discretion’ using the Institutional Grammar Tool (Crawford & Ostrom, 1995). The IGT coding scheme consists of five elements, each of which refers to a different syntactic element of a statement (Table C1). The only elements considered for my purposes here are the deontic (i.e. type of prescription) of a statement, the condition (i.e. the requirements or restrictions for the aim of the statement) and the aim of the statement (Dörrenbacher & Mastenbroek, 2017). Because Dörrenbacher and Mastenbroek (2017) do not quantify their measure, I will do this here.

**Table C1.** Institutional Grammar Tool components

IGT element	Description (Basurto et al., 2010; Siddiki et al., 2012)	Note
Deontic	The type of prescription	Indicated by e.g. permitted, obliged, forbidden, may, must, should, must not, should not
Condition	Conditions set the prerequisites or restrictions on the aim	When and where the aim is allowed, required or forbidden <sup>15</sup> ; indicated by e.g. if, unless, when, only, where, provided that
aim	The goal or action to which the deontic refers	What action is conducted and how the action is conducted
Attribute	The subject of the provision; the agent charged with performing a particular action	“[when specified] this component [usually] leaves no discretion” (Dörrenbacher & Mastenbroek, 2017: 5), hence I did not include it in my measurement

The most important element of a statement in terms of discretion is the deontic. I consider a deontic (e.g. ‘may’, ‘shall’, ‘must’) to be most indicative for the degree of discretion granted. But the deontic is not the only relevant component for a statement’s permissiveness (Dörrenbacher & Mastenbroek, 2017: 13). Regularly the deontic’s permissiveness is bounded by the particular conditions and aims that are specified in the statement. In case a condition leaves (the temporal, spatial and/or procedural) possibilities largely open to the member state<sup>16</sup>, I consider the condition to be ‘permissive’. For example, “Art 14.3 [of the reception condition directive] obliges reception authorities to lodge children together with their parents, ‘if appropriate,’ which leaves member states discretion regarding the definition of appropriateness.” (Dörrenbacher & Mastenbroek, 2017: 5). Of course, permissive conditions are still limitations, leading me to assume the specification of *any* condition – permissive or restrictive – to be less permissive than the absence of conditions. While a statement always specifies an aim, the degree to which the aim is detailed indicates a particular extent of discretion. In other words, a statement granting much discretion has a permissive

<sup>15</sup> Basurto et al.: also ‘if’ and ‘unless’; when no condition specified, it is assumed to apply at all times

<sup>16</sup> It does not matter whether the condition specifies the application of a permission or obligation (cf. Hartmann, 2016: 429).

deontic, does not specify further conditions and specifies the aim of the deontic restrictively (e.g. ‘you may pass’). Vice versa, a statement offering little leeway has an obligatory deontic, specifies two or more restrictive conditions and spells out the aim extensively (e.g. ‘students should wear blue, tailor-made uniforms at all times and come to school by bike’).

Not all components of a statement are equally indicative of discretion. Following Hartmann (2016: 429), I use the deontic as the main indicator of discretion and then the number and type of condition. Finally, I also evaluate the aim, but I consider this component to be the least indicative. As a consequence, I weigh the three components differently. When provisions consist of two or more sub-articles – which they not seldom do –, the average score of the degree of discretion of the articles is taken as the score for the overall provision (in line with Dörrenbacher & Mastenbroek, 2017: 6). This creates the following calculation of discretion:

$$\text{Discretion of sub-article} = (2 * D) + (1 * C) + (0,5 * I)$$

$$\text{Discretion of provision} = [A1 = (2 * D) + (1 * C) + (0,5 * I)] + [A2 = (2 * D) + (1 * C) + (0,5 * I)] \dots \text{Atot}$$

With A = sub-article in provision, D = deontic, C = condition, I = aim, Atot = total number of sub-articles of provision

For each component, I created categories ranging from 0 (granting little to no discretion) to 1 (granting high discretion), as specified in Table 2.

**Table C2.** Coding scheme of IGT elements

<b>Discretion categories per IGT element (in order of permissiveness)</b>	<b>Description of indicator(s)</b>	<b>Score</b>
<i>Deontic</i>		
Permissive	May, shall, permitted <sup>17</sup>	1,0
Hybrid	May <i>and</i> shall	0,5
Obligatory	Shall, must, obliged, forbidden, no deontic	0,0
<i>Condition</i>		
No condition		1,0
Permissive condition	A condition that specifies the possibilities of the member state to a limited extent (i.e. not detailed) and/or uses no restrictive language (e.g. ‘where relevant’) <sup>18</sup>	0,80
Two or more permissive conditions		0,70
Permissive and restrictive condition(s)		0,50
Restrictive condition	A condition that explicitly limits the possibilities of the member state and/or uses restrictive language (e.g. ‘required’)	0,20
Two or more restrictive conditions		0,0
<i>Aim</i>		

<sup>17</sup> A ‘shall’-deontic sometimes also indicates more discretion (Steunenbergh & Toshkov, 2009)

<sup>18</sup> If it refers to national member state law (e.g. ‘in conformity with national law’), I consider this also permissive

Specified restrictively	Definition of aim is confined <sup>19</sup>	1,00
Specified extensively	Definition of aim is detailed	0,00

The following table, C3, lists a number of examples of (difficult) coding decisions. Similar to the coding of customization, I created tables with the provision's article number, the provision text, the deontic, condition and aim coding decisions.

**Table C3.** Coding examples for discretion

Article <sup>20</sup>	EU obligation (deontic in bold, aims underlined, conditions in italics)	Deontic <sup>21</sup>	Condition	Aim
Example from the undertakings directive:				
1a	This Directive <b>shall</b> <u>apply to any transfer of an undertaking, business, or part of an undertaking or business to another employer as a result of a legal transfer or merger.</u>	Restrictive deontic, shall, does not offer leeway D = 0	2 Restrictive conditions (restrictive, because specifies two categories) C = 0	Detailed aim (categories spelled out) A = 1
Example from noise directive:				
7(1)	<u>Under no circumstances shall</u> the exposure of the worker as determined in accordance with Article 3(2) <u>exceed the exposure limit values.</u>	D = 0 [restrictive deontic: does not allow for leeway]	C = 0,2 [one restrictive condition]	A = 0 [the 'exposure limit values' are specified extensively in other provisions, making the aim restrictive]
Example from carcinogens directive:				
4(1)	The employer <b>shall</b> <u>reduce the use of a carcinogen or mutagen at the place of work, in particular by replacing it, in so far as is technically possible, by a substance, preparation or process which, under its conditions of use, is not dangerous or is less dangerous to workers' health or safety, as the case may be.</u>	D = 0 [restrictive deontic]	C = 0,5 [the first is a permissive condition, while the second condition is restrictive]	A = 0

<sup>19</sup> Not extensive (e.g. few to no categories mentioned) and permissive adjectives (e.g. 'appropriate', 'suitable')

<sup>20</sup> Notation of article numbers: first number refers to the directive's full article, the second element, either in parentheses or not, refers to the sub-article. The third element refers to a sentence or paragraph within the sub-article.

<sup>21</sup> The D(eontic)-score will for the largest part also be taken as the 'open/closed statement' measure; this is possible, because the scoring of the deontic follows the (largely) same rules; in cases where the deontic is coded as 'hybrid' (i.e. with a permissive and restrictive deontic in one statement), I determined what type of statement (open or closed) it is. Where the deontic is scored through averaging multiple sentences, I separately scored each sentence as open or closed for calculating the open/closed ratio. The ratio itself was calculated using Steunenbergh & Toshkov's 2009 function, see appendix D below.



Example from return directive:				
7(1)2	The time period provided for in the first subparagraph <b>shall not</b> <u>exclude the possibility for the third-country nationals concerned to leave earlier.</u>	D = 1 [although the deontic used is 'shall', it is permissive, rather than restrictive]	C = 1 [no condition used]	A = 0 [aim is detailed]
Example from citizen's rights directive, with more than one sentence in the provision:				
31(3)	3. The redress procedures <b>shall</b> <u>allow for an examination of the legality of the decision, as well as of the facts and circumstances on which the proposed measure is based.</u> They <b>shall ensure that</b> <u>the decision is not disproportionate, particularly in view of the requirements laid down in Article 28.</u>	D = 0 D = 0 D = 0 [both deontics are restrictive]	C = 1 C = 0,8 C = 0,9 [only the second sentence has a condition, and this condition is permissive, as it only draws attention to a particular article]	A = 0 A = 1 A = 0,5 [in the first sentence, the aim is well-specified, while the aim in the second sentence leaves discretion over the meaning of 'disproportionate']
Example from au pairs directive, with highest degree of discretion:				
20	Member States <b>may</b> <u>require applicants to pay fees for the processing of applications.</u>	D = 1 [deontic is permissive, as it leaves option to MS]	C = 1 [no conditions specified]	<b>Difficult</b> A = 1 [aim is specified rather broad]
Example from 2007 payment services directive, with lowest degree of discretion:				
78	Liability under Chapter 2 and 3 <b>shall not</b> <u>apply in cases of abnormal and unforeseeable circumstances beyond the control of the party pleading for the application of those circumstances, the consequences of which would have been unavoidable despite all efforts to the contrary, or where a payment service provider is bound by other legal obligations covered by national or Community legislation.</u>	D = 0 [deontic does not provide leeway]	C = 0 [two conditions, both restrictive]	A = 0 [aim is extensively specified]

## Appendix D: operationalization other predictors and controls

### Discretion ratio (open/closed)

Operationalization of discretion ratio, as calculated in Steunenberg and Toshkov (2009)

**Table D1.** Number of open and closed statements per directive

Directive	Open	Closed
Undertakings	8	28
Work equipment	0	17
Noise	2	73
Employer insolvency	5	10
Carcinogens	0	35
Services	12	65
Mergers	6	53
Payment services 2007	59	282
Payment services 2009	20	62
Return	15	53
Mediation	3	26
Au pairs	13	45
Citizens' rights	18	108

From Steunenberg & Toshkov (2009, 959):

$$d_i = \frac{O_i}{O_i + C_i},$$

“with  $d_i$  as the discretion to member states based on directive  $i$ , and  $C_i$  as the number of closed and  $O_i$  as the number of open statements referring to member states in directive  $i$ .”

**Table D2.** Discretion ratio per directive

Directive	Discretion ratio
Undertakings	0,22
Work equipment	0,00
Noise	0,03
Employer insolvency	0,33
Carcinogens	0,00
Services	0,16
Mergers	0,10
Payment services 2007	0,17
Payment services 2009	0,24
Return	0,22
Mediation	0,10
Au pairs	0,22
Citizens' rights	0,14

### Legal misfit

Operationalization of legal misfit, as proposed by Steunenberg & Toshkov (2009: 959). The misfit score is determined as follows:

*“We create a categorical variable with four categories – High, Moderate, Limited, and Small misfit. High misfit is registered when a directive requires the adoption of many (more than two) legislative acts, when these acts are of a higher order (laws and regulations) and when the transposition measures are mostly extensive amendments rather than new acts. A moderate degree of misfit is observed when many, high order acts are adopted but the acts are new and do not replace existing legislation. A limited misfit is present when no more than two transposing acts of second or third order (regulations and ordinances) have been adopted and when these acts are amending existing norms. If two or fewer transposition acts have been adopted which are new and are not primary legislation, we have a small legal misfit.”*

Using these descriptions as guidelines, I scored the degree of legal misfit for each directive (Table E1).

**Table D3.** Coding of legal misfit

<b>Directive</b>	<b>Number of acts and type (first order: law/wet second-order: regulation/besluit third-order: ordinance/ regeling</b>	<b>Novelty of act (new or amending existing norms?)</b>	<b>Misfit score (4 = high 3 = moderate 2 = limited 1 = small)</b>	<b>Notes</b>
Undertakings	1 (law)	Amending	4	Only one transposition act is used, but it is of the highest order (a law) and amending existing legislation. For this instance, I followed the same coding rationale as described in the example of note 6, Steunenberg & Toshkov, 2009: 967.
Work equipment	2 (decree and regulation)	Both amending	2	Two transposition acts of a lower order are used, with both being amending.
Noise	2 (decrees)	Both amending	2	Two transposition acts of a lower order are used, with both being amending.
Employer insolvency	1 (law)	Amending	4	Although only one transposition act is used, it is of the highest order (a law) and (extensively) amending existing legislation. For this instance, I followed the same coding rationale as described in the example of note 6, Steunenberg & Toshkov, 2009: 967.
Carcinogens	1 (decree)	Amending	2	One, lower-order transposition act which is amending existing legislation.
Services	17 (two laws, five decrees, ten regulations)	One novel law, one amending law, two amending decrees, three novel decrees	4	Since a large number of transposition acts are used, two of which are of the highest order and five second-order, together with half of these acts being (extensive) amendments, I decided to code this as high misfit.
Mergers	1 (law)	Amending	4	Although only one transposition act is used, it is of the highest order (a law) and (extensively) amending existing legislation.

				For this instance, I followed the same coding rationale as described in the example of note 6, Steunenberg & Toshkov, 2009: 967.
Payment services 2007	5 (three decrees, one law and one regulation)	One amending law, three amending decrees, one novel regulation	4	Many transposition acts are used (at least more than two), of which four are of high- or middle-order and most are amending. I decided to code this as high misfit.
Payment services 2009	4 (one law, two decrees, one regulation)	All are amending	4	With one highest order amending transposition act, and two amending lower-order acts, the degree of misfit is high.
Return	5 (one law, three decrees and one regulation)	The law, one decree and the regulation are amending	3	With one highest order amending transposition act, and one amending lower-order act, but two novel decrees, the degree of misfit is moderate.
Mediation	1 (law)	The law is amending existing legislation	4	Although only one transposition act is used, it is of the highest order (a law) and extensively amending existing legislation. For this instance, I followed the same coding rationale as described in the example of note 6, Steunenberg & Toshkov, 2009: 967.
Au pairs	2 (decree and regulation)	Both amending	2	“A limited misfit is present when no more than two transposing acts of second or third order (regulations and ordinances) have been adopted and when these acts are amending existing norms.”
Citizens’ rights	3 (one law, two decrees)	All amending	4	With one highest order amending transposition act, and two amending middle-order acts, the degree of misfit is high.

### Ministerial preferences

I follow Zhelyazkova et al. (2017: 835) in their operationalization of ‘ministerial preferences’:

*“In addition to specific evaluations, conformity studies also provide general information about the transposition process (i.e., the main transposition instrument, its date of adoption and the relevant ministries). If the reports did not specifically identify the responsible ministries, we checked the content of the main transposition measure and consulted the national databases to obtain that information. The date of the main transposition measure was also used to identify other political actors at the time of transposition (e.g., the prime minister). We retrieved the party affiliations of all political actors from the European Journal of Political Research Political Data Yearbook. Information about political actors’ positions (regarding common asylum and immigration policy, internal market, environmental and employment policy) was obtained from the Chapel Hill Expert Surveys (Bakker et al. 2012). If there were multiple ministries involved, we took the average of all policy positions.” And: “Although the reports list multiple transposition measures, they explicitly identify the ‘main’ legal instrument. In exceptional cases, we used the law that transposed most provisions of a directive as the main transposition measure.”*

Rather than relying on the Yearbook to retrieve the party affiliations of the ministers concerned, I will use the public online database of Parlement & Politiek<sup>22</sup>, because I consider this the most reliable database on Dutch politicians.

**Table D4.** Coding of ministerial preferences

Directive	Main legal act	Ministries involved	Date adoption main transposition act (Dutch cabinet on date)	Ministers (party)	CHES position (average score) [rescaled to 0,10] <sup>23</sup>	CHES variable
Undertakings	Wet overgang van ondernemingen	Justice Social affairs	18 April 2002 (Kok II)	Korthals <sup>24</sup> (VVD) Vermeend <sup>25</sup> (PvdA)	3.29 6.38 (4.835) [6.392]	EMPLOY (position of party leadership in 2002 on EU employment policy) <sup>26</sup>

<sup>22</sup> [https://www.parlement.com/;](https://www.parlement.com/)

<sup>23</sup> [https://stats.stackexchange.com/questions/25894/changing-the-scale-of-a-variable-to-0-100?utm\\_medium=organic&utm\\_source=google\\_rich\\_ga&utm\\_campaign=google\\_rich\\_ga;](https://stats.stackexchange.com/questions/25894/changing-the-scale-of-a-variable-to-0-100?utm_medium=organic&utm_source=google_rich_ga&utm_campaign=google_rich_ga;)

<sup>24</sup> [https://www.parlement.com/id/vg09llnex2ja/a\\_h\\_benk\\_korthals;](https://www.parlement.com/id/vg09llnex2ja/a_h_benk_korthals;)

<sup>25</sup> [https://www.parlement.com/id/vg09llnzbwu2/w\\_a\\_f\\_g\\_willem\\_vermeend;](https://www.parlement.com/id/vg09llnzbwu2/w_a_f_g_willem_vermeend;)

<sup>26</sup> [https://static1.squarespace.com/static/5975c9bfdb29d6a05c65209b/t/599e333df7e0aba9e96015ed/1503540030247/2002\\_CHES\\_codebook.pdf;](https://static1.squarespace.com/static/5975c9bfdb29d6a05c65209b/t/599e333df7e0aba9e96015ed/1503540030247/2002_CHES_codebook.pdf;)

						1 = strongly opposes 7 = strongly favours
Work equipment	Arbeidsomstandighedenbesluit	Social affairs	2009 (Balkenende IV)	Donner <sup>27</sup> (CDA)	5.78 [7.966]	INTMARK (position of the party leadership in 2006 on the internal market) 1 = strongly opposes 7 = strongly opposes
Noise	Besluit tot wijziging van het AB houdende regels met betrekking tot de blootstelling van werknemers aan de risico's van lawaai <sup>28</sup>	Social affairs	25 January 2006 (Balkenende II)	Van Hoof <sup>29</sup> (VVD)	6.329 [8.882]	INTMARK (position of the party leadership in 2006 on the internal market) <sup>30</sup> 1 = strongly opposes 7 = strongly opposes
Employer insolvency	Wet van 15 september 2005, houdende wijziging van de	Social affairs	15 September 2005	De Geus <sup>31</sup> (CDA)	5.78 [7.966]	INTMARK (position of

<sup>27</sup> [https://www.parlement.com/id/vg9fgopga1o0/j\\_p\\_h\\_piet\\_hein\\_donner;](https://www.parlement.com/id/vg9fgopga1o0/j_p_h_piet_hein_donner;)

<sup>28</sup> [https://zoek.officielebekendmakingen.nl/stb-2006-56.html;](https://zoek.officielebekendmakingen.nl/stb-2006-56.html)

<sup>29</sup> [https://www.parlement.com/id/vg09llphrgph/h\\_a\\_l\\_henk\\_van\\_hoof;](https://www.parlement.com/id/vg09llphrgph/h_a_l_henk_van_hoof;)

<sup>30</sup> [https://static1.squarespace.com/static/5975c9bfdb29d6a05c65209b/t/599dc1b67131a57e633093f2/1503510970990/2006\\_CHES\\_codebook.pdf;](https://static1.squarespace.com/static/5975c9bfdb29d6a05c65209b/t/599dc1b67131a57e633093f2/1503510970990/2006_CHES_codebook.pdf)

<sup>31</sup> [https://www.parlement.com/id/vg9fgoprhbzu/a\\_j\\_aart\\_jan\\_de\\_geus;](https://www.parlement.com/id/vg9fgoprhbzu/a_j_aart_jan_de_geus;)

	Werkloosheidswet ter uitvoering van richtlijn nr. 2002/74/EG		(Balkenende II)			the party leadership in 2006 on the internal market) 1 = strongly opposes 7 = strongly opposes
Carcinogens	Besluit tot wijziging van het AB houdende regels inzake chemische en carcinogene agentia, Staatsblad nr 190 van 2002 <sup>32</sup>	Social affairs	29 March 2002 (Kok II)	Hoogervorst <sup>33</sup> (VVD)	3.29 [3.816]	EMPLOY (position of party leadership in 2002 on EU employment policy) 1 = strongly opposes 7 = strongly favours
Services	Dienstenwet <sup>34</sup>	Economic Affairs Interior Justice	4 December 2009 (Balkenende IV)	Van der Hoeven (CDA) <sup>35</sup> Ter Horst (PvdA) <sup>36</sup> Hirsch Ballin (CDA) <sup>37</sup>	5.78 5 5.78 (5.52) [7.533]	INTMARK (position of the party leadership in 2006 on the

<sup>32</sup> <https://zoek.officielebekendmakingen.nl/stb-2002-190.html>;

<sup>33</sup> [https://www.parlement.com/id/vg09lllc9opo/j\\_f\\_hans\\_hoogervorst](https://www.parlement.com/id/vg09lllc9opo/j_f_hans_hoogervorst);

<sup>34</sup> <http://wetten.overheid.nl/BWBR0026759/2015-01-01>;

<sup>35</sup> [https://www.parlement.com/id/vg09llpdhzz/m\\_j\\_a\\_maria\\_van\\_der\\_hoeven](https://www.parlement.com/id/vg09llpdhzz/m_j_a_maria_van_der_hoeven);

<sup>36</sup> [https://www.parlement.com/id/vhia2qep40ni/g\\_guusje\\_ter\\_horst](https://www.parlement.com/id/vhia2qep40ni/g_guusje_ter_horst);

<sup>37</sup> [https://www.parlement.com/id/vg09llqdn6x0/e\\_m\\_h\\_ernst\\_hirsch\\_ballin](https://www.parlement.com/id/vg09llqdn6x0/e_m_h_ernst_hirsch_ballin);



						internal market) <sup>38</sup> 1 = strongly opposes 7 = strongly opposes
Mergers	Wet van 27 juni 2008 houdende wijziging van boek 2 van het Burgerlijk Wetboek in verband met de implementatie van richtlijn nr. 2005/56/EG van het Europees Parlement en de Raad van de Europese Unie betreffende grensoverschrijdende fusies van kapitaalvennootschappen	Justice	27 June 2008 (Balkenende IV)	Hirsch Ballin (CDA)	5.78 [7.966]	INTMARK (position of the party leadership in 2006 on the internal market) 1 = strongly opposes 7 = strongly opposes
Payment services 2007	Wet van 15 oktober 2009 tot wijziging van de Wet op het financieel toezicht, het Burgerlijk Wetboek en de Wet inzake geldtransactiekantoren en intrekking van de Wet op het grensoverschrijdend betalingsverkeer ter implementatie van richtlijn nr. 2007/64/EG van het Europees Parlement en de Raad betreffende betalingsdiensten	Finance Justice	15 October 2009 (Balkenende IV)	Bos (PvdA) <sup>40</sup> Hirsch Ballin (CDA)	5 5.78 (5.39) [7,316]	INTMARK (position of the party leadership in 2006 on the internal market) 1 = strongly opposes 7 = strongly opposes

<sup>38</sup> The next CHES survey was conducted only in spring of 2011, which, given the change of two cabinets since 2010 before this moment, is more distant politically than the 2006 survey, which is more likely to contain similar issue positions of parties for those in 2009, because the cabinet was the same

<sup>40</sup> [https://www.parlement.com/id/vg09lljtu4za/w\\_j\\_wouter\\_bos;](https://www.parlement.com/id/vg09lljtu4za/w_j_wouter_bos;)

	in de interne markt en tot wijziging van de Richtlijnen 97/7/EG, 2002/65/EG, 2005/60/EG en 2006/48/EG, en tot intrekking van Richtlijn 97/5/EG (PbEU L 319) <sup>39</sup>					
Payment services 2009	Wet van 22 december 2011 tot wijziging van de Wet op het financieel toezicht en enige andere wetten ter implementatie van richtlijn nr. 2009/110/EG van het Europees Parlement en de Raad betreffende de toegang tot, de uitoefening van en het prudentieel toezicht op de werkzaamheden van instellingen voor elektronisch geld, tot wijziging van de Richtlijnen 2005/60/EG en 2006/48/EG en tot intrekking van Richtlijn 2000/46/EG (PbEU L 267) <sup>41</sup>	Finance Justice	22 December 2011 (Rutte I)	De Jager (CDA) <sup>42</sup> Opstelten (VVD) <sup>43</sup>	5.818 6.538 (6,178) [8,630]	EU_INTMARK (position of the party leadership in 2011 on the internal market) <sup>44</sup> 1 = strongly Opposes 7 = strongly favours
Return	Wet van 15 december 2011 tot wijziging van de Vreemdelingenwet 2000 ter	Immigration	15 December 2011 (Rutte I)	Leers (CDA) <sup>46</sup>	7.000	IMMIGRATE_POLICY

<sup>39</sup> <https://zoek.officielebekendmakingen.nl/stb-2009-436.html>;

<sup>41</sup> <https://zoek.officielebekendmakingen.nl/stb-2011-670.html>;

<sup>42</sup> [https://www.parlement.com/id/vhia2qep44vn/j\\_c\\_jan\\_kees\\_de\\_jager](https://www.parlement.com/id/vhia2qep44vn/j_c_jan_kees_de_jager);

<sup>43</sup> [https://www.parlement.com/id/vg09lm0ci8xr/i\\_w\\_ivo\\_opstelten](https://www.parlement.com/id/vg09lm0ci8xr/i_w_ivo_opstelten);

<sup>44</sup> [https://static1.squarespace.com/static/5975c9bfdb29d6a05c65209b/t/599dbe268419c24160add96/1503510056004/2010\\_CHES\\_codebook.pdf](https://static1.squarespace.com/static/5975c9bfdb29d6a05c65209b/t/599dbe268419c24160add96/1503510056004/2010_CHES_codebook.pdf);

<sup>46</sup> [https://www.parlement.com/id/vg09llpegh1s/g\\_b\\_m\\_gerd\\_leers](https://www.parlement.com/id/vg09llpegh1s/g_b_m_gerd_leers);

	implementatie van de richtlijn nr. 2008/115/EG van het Europees Parlement en de Raad van 16 december 2008 over gemeenschappelijke normen en procedures in de lidstaten voor de terugkeer van onderdanen van derde landen die illegaal op hun grondgebied verblijven (PbEU L 348/98) <sup>45</sup>					(2011 position on immigration policy) 0 = strongly opposes tough policy 10 = strongly favours tough policy
Mediation	Law of 15 November 2012 implementing Directive nr. 2008/52/EC on certain aspects of mediation in civil and commercial matters (Wet van 15 november 2012 tot implementatie van de richtlijn nr. 2008/52/EG betreffende bepaalde aspecten van bemiddeling/mediation in burgerlijke en handelszaken abbreviated by the legislator as Wet implementatie richtlijn nr. 2008/52/EG betreffende bepaalde aspecten van bemiddeling/mediation in burgerlijke en handelszaken). <sup>47</sup>	Justice	15 November 2012 (Rutte II)	Opstelten (VVD)	8.454	IMMIGRATE_POLICY (2011 position on immigration policy) 0 = strongly opposes tough policy 10 = strongly favours tough policy

<sup>45</sup> <https://zoek.officielebekendmakingen.nl/stb-2011-663.html>;

<sup>47</sup> <http://wetten.overheid.nl/BWBR0032232/2017-09-01>;

Au pairs	Besluit van 2 oktober 2006 tot wijziging van het Vreemdelingenbesluit 2000 ter implementatie van de richtlijn 2004/114/EG van de Raad van 13 december 2004 betreffende de voorwaarden voor de toelating van onderdanen van derde landen met het oog op studie, scholierenuitwisseling, onbezoldigde opleiding of vrijwilligerswerk (PbEU L 375) <sup>48</sup>	Integration	2 October 2006 (Balkenende III)	Verdonk (VVD) <sup>49</sup>	8	IMMIG (2006 position on immigration policy) <sup>50</sup> 0 = strongly opposes tough policy 10 = strongly favours tough policy
Citizens' rights	Wet van 7 juli 2006 tot wijziging van de Wet werk en bijstand, van de Wet studifinanciering 2000, van de Wet tegemoetkoming onderwijsbijdrage en schoolkosten en van de Vreemdelingenwet 2000 in verband met de totstandkoming van richtlijn 2004/38/EG betreffende het recht van vrij verkeer en	Social affairs Education Integration Foreign Affairs	7 July 2006 (Balkenende II)	Van Hoof (VVD) <sup>52</sup> Bruins (VVD) <sup>53</sup> Donner (CDA) <sup>54</sup> Bot (CDA) <sup>55</sup>	8.17 8.17 7 7 (7.585)	IMMIG (2006 position on immigration policy) 0 = strongly opposes tough policy 10 = strongly favours tough policy

<sup>48</sup> <https://zoek.officielebekendmakingen.nl/stb-2006-458.html>;

<sup>49</sup> [https://www.parlement.com/id/vggf1fmjymy3/m\\_c\\_f\\_rita\\_verdonk](https://www.parlement.com/id/vggf1fmjymy3/m_c_f_rita_verdonk);

<sup>50</sup> Unfortunately, no question in the CHES 2006 was asked on the party position on immigration policy at the EU-level

<sup>52</sup> [https://www.parlement.com/id/vg09llphrgph/h\\_a\\_l\\_henk\\_van\\_hoof](https://www.parlement.com/id/vg09llphrgph/h_a_l_henk_van_hoof);

<sup>53</sup> [https://www.parlement.com/id/vhbo1bl3p8u8/b\\_j\\_bruno\\_bruins](https://www.parlement.com/id/vhbo1bl3p8u8/b_j_bruno_bruins);

<sup>54</sup> [https://www.parlement.com/id/vg9fgopqa1o0/j\\_p\\_h\\_piet\\_hein\\_donner](https://www.parlement.com/id/vg9fgopqa1o0/j_p_h_piet_hein_donner);

<sup>55</sup> [https://www.parlement.com/id/vg09llzsaexi/b\\_r\\_bernhard\\_bot](https://www.parlement.com/id/vg09llzsaexi/b_r_bernhard_bot);

	verblijf op het grondgebied van de lidstaten voor de burgers van de Unie en hun familieleden, alsmede goedkeuring van een daarmee samenhangend voorbehoud bij het Europees Verdrag inzake sociale en medische bijstand <sup>51</sup>					
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### Number of veto players

In operationalizing the number of veto players, I will create a ‘procedural veto player index’, in line with Steunenberg and Rhinard (2010: 503), “(...) which takes account of the fact that the number of veto players involved depends on the procedure that is used.”

And: “This index was constructed based on the knowledge that the general/parliamentary legislative process involves the highest possible number of administrative and political veto players: in addition to parliamentary actors, the bill must also be approved by the government (or cabinet), along with the ministries involved in the preparatory process. [...] The decision-making processes within ministries and cabinets work differently. Transposition in these cases relies upon the making of ministerial orders, a process that does not involve the entire government and thus other members of the governing coalition. [...] Our new index uses insights related to the actual stages of national transposition and we construct it as follows. If transposition is handled at the ministerial level, by adopting a ministerial order or similar instrument, the number of ministries involved is counted. If transposition is decided at cabinet level, by adopting a government decree or similar instrument, a score based on the autonomy of the prime minister is added to the index. This score is based on the analysis by Bergman et al. (2003) of cabinet governments in Western Europe [...] and takes account of various aspects of the prime minister’s position in government. The original measurement is rescaled to the [0,1] interval. A very powerful prime minister, who dominates the decision-making in the cabinet, has a value of one, while a weak prime minister, unable to exercise power over his or her ministers, has a value close to zero. Finally, if transposition requires the passing of a bill, the national legislative veto player index, as proposed by Tsebelis (2005), is added.”

Because the data in Tsebelis’ legislative veto player index is only available until 2000, I use the Political Constraint Index<sup>56</sup> of Henisz (2017) instead. This index builds on Tsebelis’s index and seeks to measure the degree of ‘political constraints’ by incorporating the number of institutional veto players while

<sup>51</sup> [https://zoek.officielebekendmakingen.nl/stb-2006-373.html?zoekcriteria=%3Fzkt%3DUitgebreid%26pst%3DStaatsblad%26vrt%3D360%26zkd%3DInDeGeheleText%26dpr%3DAlle%26sdt%3DDatumUitgifte%26pnr%3D29%26rpp%3D10%26\\_page%3D25%26sorttype%3D1%26sortorder%3D4&resultIndex=245&sorttype=1&sortorder=4;](https://zoek.officielebekendmakingen.nl/stb-2006-373.html?zoekcriteria=%3Fzkt%3DUitgebreid%26pst%3DStaatsblad%26vrt%3D360%26zkd%3DInDeGeheleText%26dpr%3DAlle%26sdt%3DDatumUitgifte%26pnr%3D29%26rpp%3D10%26_page%3D25%26sorttype%3D1%26sortorder%3D4&resultIndex=245&sorttype=1&sortorder=4;)

<sup>56</sup> [https://mgmt.wharton.upenn.edu/faculty/heniszpolcon/polcondataset/;](https://mgmt.wharton.upenn.edu/faculty/heniszpolcon/polcondataset/)

“taking into account the extent of alignment across branches of government using data on the party composition of the executive and legislative branches” (Henisz, 2002). Given that Henisz (2002) finds that the results of his analysis using the political constraint index echo those of Tsebelis, I deem this an adequate alternative. To be specific, I use the POLCONiii-version of the index, which does not include judicial and lower governmental veto players.

Although the data of Bergman et al. (2003; 190) is also only collected until 2000, one of the two determinants of the scores is likely to be the same for the years concerning the directives in this analysis: the Dutch prime minister’s institutional powers have not changed (Andeweg & Irwin, 2014). The other determinant, party system cohesion, is scored by applying Bergman et al.’s coding scheme for the cabinets of concern. Subsequently, the scores are aggregated and rescaled to a scale of [0,1] (the original maximum score possible was 30).

For identifying the transposition process, I take the main transposition measure (as indicated by the EPL) as reference.

**Table D5.** Number of veto players

Directive	Type of transposition	Date adoption main transposition act (Dutch cabinet on date)	Type of cabinet and score using Bergman et al.’s coding directions (data on cabinet type from Andeweg & Irwin, 2014)	Political constraint index (ranges between 0 – 1)	Number of ministers	Prime minister [rescaled to 0,1]	Total score
Undertakings	Law	18 April 2002 (Kok II)	Oversized (pivotal party coalition) 7/15	0,640763287	2	11/30 [0,366]	3,007
Work equipment	Decree	2009 (Balkenende IV)	Minimal winning 5/15	Not relevant	1	9 [0,300]	1,300
Noise	Decree	25 January 2006 (Balkenende II)	Minimal winning 5/15	Not relevant	1	9 [0,300]	1,300
Employer insolvency	Law	15 September 2005 (Balkenende II)	Minimal winning 5/15	0,638393131	1	9 [0,300]	1,938
Carcinogens	Decree	29 March 2002 (Kok II)	Oversized 7/15	Not relevant	1	11 [0,366]	1,366
Services	Law	4 December 2009 (Balkenende IV)	Minimal winning 5/15	0,661950541	3	9 [0,300]	3,962
Mergers	Law	27 June 2008 (Balkenende IV)	Minimal winning 5/15	0,661950541	1	9 [0,300]	1,962

Payment services 2007	Law	15 October 2009 (Balkenende IV)	Minimal winning 5/15	0,661950541	2	9 [0,300]	2,962
Payment services 2009	Law	22 December 2011 (Rutte I)	Minority 3/15	0,411015902	2	7 [0,233]	2,644
Return	Law	15 December 2011 (Rutte I)	Minority 3/15	0,411015902	1	7 [0,233]	1,644
Mediation	Law	15 November 2012 (Rutte II)	Majority 5/15	0,691087974	1	9 [0,300]	1,991
Au pairs	Decree	2 October 2006 (Balkenende III)	Minority 3/15	Not relevant	1	7 [0,233]	1,233
Citizens' rights	Law	7 July 2006 (Balkenende II)	Minimal winning 5/15	0,650312594	4	9 [0,233]	4,883

### Administrative capacity

Although determining the relative capacity of different sectors in one member state is challenging (Dimitrova & Steunenberg, 2016), I decided to operationalize capacity here as the performance of a sector as evaluated by its top-tier managers in the COCOPS survey of 2013 (Jilke et al.). This performance is evaluated according to a range of indicators (e.g. 'policy effectiveness' and 'service quality') for the question how the respondents think their policy area has performed over the last 5 years. I calculate the average score for all respondents per ministry in the survey.

As measure for 'administrative capacity', I am using the answers to the question "Thinking about your policy area over the last five years, how would you rate the way public administration has performed on the following dimensions?" (Jilke et al., 2013: 28). The dimensions range from 'citizen trust in government' to 'cost and efficiency', but I will only take the average score for each policy sector respondent score on the dimensions 'policy coherence and coordination' and 'policy effectiveness'. Unfortunately, there is very little variation in the scores, which leaves little relevance to include it in the final analysis, particularly in light of the multilevel data structure.

**Table D6.** Coding administrative capacity

Directive	Ministries involved	Policy area in cocops	N	Policy effectiveness	Policy coherence	Weighted average
Undertakings	Justice	Justice	77	4,58	4,58	4,59
	Social affairs	Employment	98	4,60	4,61	
Work equipment	Social affairs	Employment	98	4,60	4,61	4,61

Noise	Social affairs	Employment	98	4,60	4,61	4,61
Employer insolvency	Social affairs	Employment	98	4,60	4,61	4,61
		Other social protection	85	4,61	4,61	
Carcinogens	Social affairs	Employment	98	4,60	4,61	4,61
Services	Economic	Economic	90	4,56	4,59	4,59
	Interior	General government	76	4,62	4,62	
	Justice	Justice	77	4,58	4,58	
Mergers	Justice	Justice	77	4,58	4,58	4,58
Payment services 2007	Finance	Finance	84	4,56	4,58	4,57
	Justice	Justice	77	4,58	4,58	
Payment services 2009	Finance	Finance	84	4,56	4,58	4,57
	Justice	Justice	77	4,58	4,58	
Return	Immigration	Justice	77	4,58	4,58	4,58
Mediation	Justice	Justice	77	4,58	4,58	4,58
Au pairs	Integration	Justice	77	4,58	4,58	4,58
Citizens' rights	Social affairs	Employment	98	4,60	4,61	4,59
	Education	Education	85	4,61	4,61	
	Integration	Justice	77	4,58	4,58	
	Foreign Affairs	Foreign Affairs	95	4,58	4,58	

### Public EU support

To determine the score for public EU support, I use Eurobarometer survey data. In these surveys I looked for questions that concern – in one way or another (but as closely as possible) – whether the central policy issue of the directive should be under the competences of the EU and evaluate the EU's performance in this regard.

**Table D7.** Coding public EU support

Directive	Date adoption main transposition act (Dutch cabinet on date)	Eurobarometer source and question	Average score
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Undertakings	18 April 2002 (Kok II)	EB 60.2 (2003) Q7: In general, would you say that what you see, read or hear about what the European Union does in the area of employment and social affairs is very positive, fairly positive, fairly negative or very negative?	2,41/4 (1 = very positive)
Work equipment	2009 (Balkenende IV)	EB 71.2 (2009) Q20.1: Please tell me to what extent you think the European Union has a positive or negative impact on each of the following employment and social policies: Setting minimum standards for working conditions throughout the EU	2,09/4 (1 = very positive)
Noise	25 January 2006 (Balkenende II)	EB 65.3 (2006) Q20.1: Please tell me to what extent you think the European Union has a positive or negative impact on each of the following employment and social policies: Setting minimum standards for working conditions throughout the EU	1,97/4 (1 = very positive)
Employer insolvency	15 September 2005 (Balkenende II)	EB 65.3 (2006) Q20.2: Please tell me to what extent you think the European Union has a positive or negative impact on each of the following employment and social policies: Creating new job opportunities and fighting unemployment	1,76/4 (1 = very positive)
Carcinogens	29 March 2002 (Kok II)	EB 60.2 (2003) Q7: In general, would you say that what you see, read or hear about what the European Union does in the area of employment and social affairs is very positive, fairly positive, fairly negative or very negative?	2,41/4 (1 = very positive)
Services	4 December 2009 (Balkenende IV)	EB 65.1 (2006) Q3.1-3: In your opinion, would you say that, for consumers, the Single Market has been very positive, fairly positive, fairly negative or very negative in respect of...? 1) The range of products and services 2) The prices of products and services 3) The quality of products and services	2,49/4 <sup>57</sup> (1 = very positive)
Mergers	27 June 2008 (Balkenende IV)	FEB 263 (2009) Q21_D: Could you say for the following statements if you would completely agree, agree, disagree or completely disagree: The Internal Market in the EU ensures that there is fair competition between companies	0,92/4 <sup>58</sup> (1 = completely agree)
Payment services 2007	15 October 2009 (Balkenende IV)	FEB 263 (2009) Q21_D: Could you say for the following statements if you would completely agree, agree, disagree or completely disagree: The Internal Market in the EU ensures that there is fair competition between companies	0,92/4 (1 = completely agree)
Payment services 2009	22 December 2011 (Rutte I)	EB 75.1 (2011) QD9_8: If you have done one of the following, how easy or difficult was it? Opening a bank account in another EU country	1,95 <sup>59</sup> /4

<sup>57</sup> I calculated the average over these three mean scores (2,15; 2,70; 2,61)

<sup>58</sup> I reversed the score because the scale is in the opposite direction from the other questions (1 = completely disagree), the original being 3,08

<sup>59</sup> I reversed the score because the scale is in the opposite direction from the other questions (1 = very easy), the original being 2,05

			(1 = very difficult)
Return	15 December 2011 (Rutte I)	EB 76.4 (2011) QB7_2: Asylum is granted to people who, out of fear of being persecuted for reasons of race, religion, nationality or other, are outside their country of origin and are in need of international protection. To what extent do you agree or disagree with each of the following statements? Across the EU the rules for admitting asylum seekers should be the same	1,44/4 (1 = totally agree)
Mediation	15 November 2012 (Rutte II)	FEB 385 (2013) Q8: Imagine you are seeking a solution to a dispute with a company, another citizen or an administration. If you could use an alternative instead of going to court, would you prefer to... 1) go to court anyway 2) find an agreement with the other party directly 3) find an agreement with the other party with the help of a non-judicial body that has a mediation role	0,93/4 <sup>60</sup> (1 = mediation)
Au pairs	2 October 2006 (Balkenende III)	EB 65.4 (2006) QD1_1: For each of the following, please tell me if you believe that more or less decision-making should take place at a European level: Asylum and migration policy	1,63/4 <sup>61</sup> (1 = more at EU level)
Citizens' rights	7 July 2006 (Balkenende II)	EB 65.4 (2006) QD1_1: For each of the following, please tell me if you believe that more or less decision-making should take place at a European level: Asylum and migration policy	1,63/4 (1 = more at EU level)

### Commission monitoring

I follow two possible ways to operationalize this variable. In the first, I take the number of letters of formal notice issued directly to the directive as measure, obtaining the date from the CeLex-database. To ensure that the data is reliable, I also checked the EPLs on information in this regard. For the second operationalization I also rely on this data, but then take the number of letters of formal notice for issued in the year of transposing the 'main' transposition act as indication of perception of EC monitoring.

<sup>60</sup> I rescaled the score to a scale of 4, as the other items also use a four-point scale, the original being 2,38. The rescaled score is 3,07, after which I reversed the scale, because the scale is in the opposite direction from the other question (3 = mediation).

<sup>61</sup> I rescaled the score to a scale of 4, as the other items also use a four-point scale, the original being 1,21 (/2).

**Table D8.** Coding EC monitoring

Directive	Date adoption main transposition act	Infringements mentioned in database <sup>62</sup> (FN = letter of formal notice; RO = reasoned opinion; IF = Infringement referral) (infringement number in brackets)	Number of infringements in policy area <sup>63</sup> in year of main transposition <sup>646566</sup>
Undertakings	18 April 2002	0	2 FN
Work equipment	2009	0	2 FN, 3 RO, 2 IF
Noise	25 January 2006	0	0
Employer insolvency	15 September 2005	1 FN (20074066)	0
Carcinogens	29 March 2002	0	2 FN
Services	4 December 2009	0	8 FN, 3 RO
Mergers	27 June 2008	2 FN, 2 RO, 1 IF (20080179, 20084746)	11 FN, 9 RO, 2 IF
Payment services 2007	15 October 2009	0	8 FN, 3 RO
Payment services 2009	22 December 2011	1 FN (20110621)	9 FN, 1 RO
Return	15 December 2011	1 FN, RO (20110285)	2 FN, 2 RO, 1 IF
Mediation	15 November 2012	1 FN, RO, IF (20110896)	2 FN, 1 RO
Au pairs	2 October 2006	0	4 FN, 1 RO
Citizens' rights	7 July 2006	0	4 FN, 1 RO

**Interest group diversity/Corporatism**

<sup>62</sup> [http://ec.europa.eu/atwork/applying-eu-law/infringements-proceedings/infringement\\_decisions/index.cfm?lang\\_code=EN&typeOfSearch=true&active\\_only=0&noncom=0&r\\_dossier=&decision\\_date\\_from=&decision\\_date\\_to=&EM=N&title=2008%2F115&submit=Search;](http://ec.europa.eu/atwork/applying-eu-law/infringements-proceedings/infringement_decisions/index.cfm?lang_code=EN&typeOfSearch=true&active_only=0&noncom=0&r_dossier=&decision_date_from=&decision_date_to=&EM=N&title=2008%2F115&submit=Search;)

<sup>63</sup> The DG responsible for the directive

<sup>64</sup> Because the 'main transposition date' refers to the date on which the transposition act was adopted, the further administrative process of transposition takes place after this date.

<sup>65</sup> When a case is being closed in the year of concern, and the reasoned opinion is not issued in that same year, it is not taken into account

<sup>66</sup> When the title of the infringement case explicitly refers to lower-levels of government (e.g. 'municipality of ...'), I did not take it into account

Although I managed to obtain the interest group diversity data from Kaya (2017), the data only covers internal market directives. Because the open consultations on which the coding of the data is based, are not available for social and JHA directives (Kaya, 2017: 8), I had to find an alternative operationalization. Zhelyazkova and Schrama (2018) use the ‘civil-society organization consultation score’ (from V-dem) together with the civil participation score (Eurobarometer survey items), but the data for these variables hardly varies over time (for example, the Eurobarometer survey scores are extracted from three survey items only for all years). As an alternative, I use Jahn’s corporatism index (2016). This index does not measure the diversity in interest groups, but it does broadly measure the change in corporatist arrangements over time (in terms of scope, function and structure of corporatism). Because Jahn’s original data is only available until 2010, I incorporated data from the updated dataset by Visser (2018), which builds on Jahn’s original index<sup>67</sup>. In the table below, I included data of all three operationalizations I just discussed.<sup>68</sup>

**Table D9.** Coding corporatism

Directive	Kaya diversity score	Date adoption main transposition act	CSO consultation score (Zhelyazkova & Schrama, 2018)	Civil participation score (62.2; 66.3; 76.2)	Corporatism Jahn (including updated Visser data for 2011 and 2012) = data used in my analysis
Undertakings (2001/23/EC)		18 April 2002	2,12		1,11612713336945
Work equipment (2009/104/EC)		2009	2,12		1,00842714309692
Noise (2003/10/EC)		25 January 2006	2,12		0,846936285495758
Employer insolvency (2002/74/EC)		15 September 2005	2,12		0,949768900871277
Carcinogens (2004/37/EC)		29 March 2002	2,12		1,11612713336945
Services (2006/123/EC)	0.0526000000536442	4 December 2009	2,12		1,00842714309692
Mergers (2005/56/EC)	0.624028563499451	27 June 2008	2,12		0,581182062625885

<sup>67</sup> Both available at <http://comparativepolitics.uni-greifswald.de/download.php>;

<sup>68</sup> As an alternative, I could incorporate other civil participation data, and thereby pursue a similar operationalization as Zhelyazkova & Schrama (2018), but this would lead to little variation and is not necessarily a more valid measure.

Payment services (2007/64/EC)	0.497044444084167	15 October 2009	2,12		1,00842714309692
Payment services (2009/110/EC)	0.427599996328354	22 December 2011	2,12		0,584294021129608
Return (2008/115/EC)		15 December 2011	2,12		0,584294021129608
Mediation (2008/52/EC)		15 November 2012	3,32		0,571490005183239
Au pairs (2004/114/EC)		2 October 2006	2,12		0,846936285495758
Citizens' rights (2004/38/EC)		7 July 2006	2,12		0,846936285495758

### Sectoral interventionist style

I tried to operationalize this control variable following the directions put forward by Thomann<sup>69</sup> (2015). However, they are rather general, leaving unclear what kind of data is used to derive the interventionist style. By 'regulatory instruments', does this refer to actual policy instruments (i.e. practical implementation), or to the particular legal instruments used? In the description she seems ambiguous: "The countries' sectoral interventionist styles are expressed through the average degree of coerciveness of, i.e., the relative prevalence of sermons, carrots and sticks in, the transposing domestic veterinary drugs regulations" (2015:1374). It is not clear to me what is meant by 'the transposing regulations'. The literature on which she, in turn, relies (Sager, 2009) uses information on the practical implementation of legislation. Should it concern this, I would not be able to control for this, as I do not have sufficient information available on the practical implementation stage for all directives. Therefore, I have not been able to control for this yet, although I do not expect it to change the results considerably.

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<sup>69</sup> She is the first (and only one it seems) to have used this variable in the context of transposition research. For this reason, I am dependent to a large extent on her operationalization, as well as the few relevant previous studies (Sager, 2009; Sager et al., 2011), to look for possible guidance on the operationalization of this variable.

## Appendix E: tables and figures

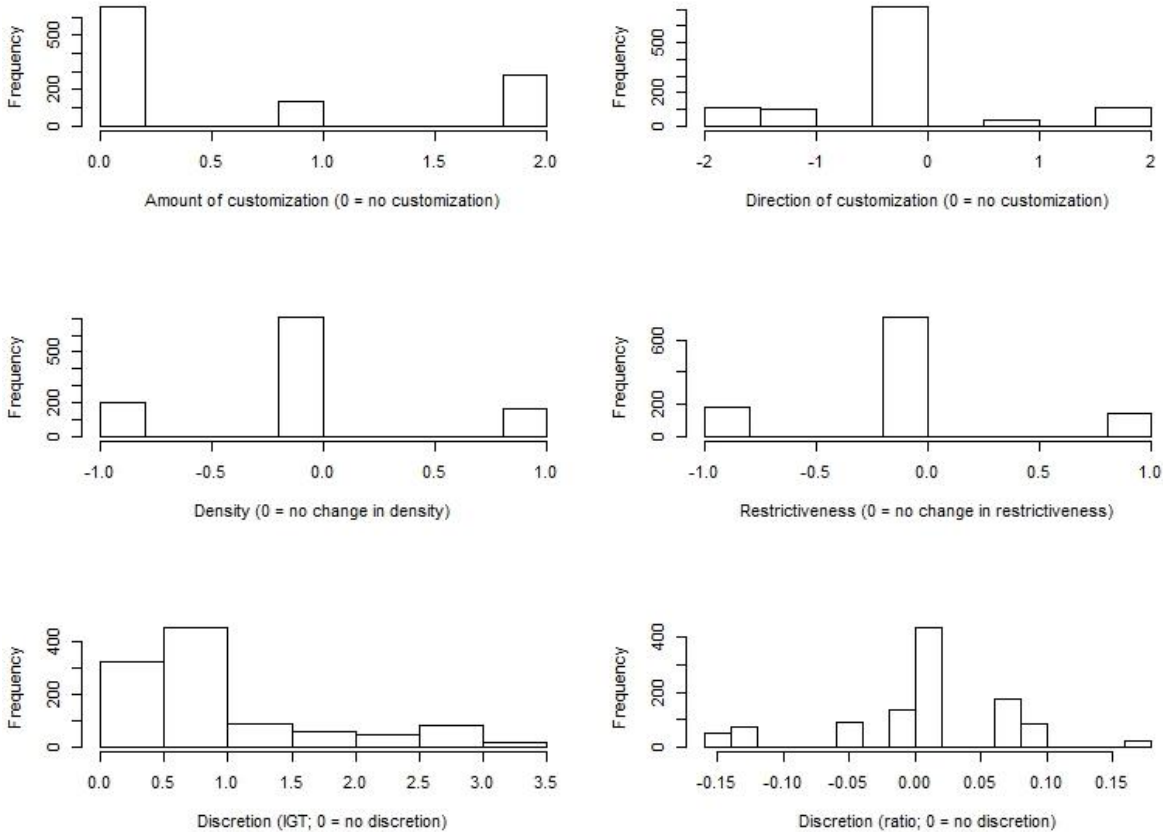
**Table E1.** Descriptive statistics

	<b>N</b>	<b>Mean</b>	<b>SD</b>	<b>Min.</b>	<b>Max.</b>	<b>Scale</b>
Directive number (grouping variable)	1,072	8.10	3.11	1	13	
Policy area (grouping variable)	1,072	2.11	0.67	1	3	
Density	1,072	-0.04	0.58	-1	1	-1 = Less density
Restrictiveness	1,072	-0.03	0.55	-1	1	-1 = Less restrictiveness
Customization (aggregated)	1,072	-0.07	0.97	-2	2	-2 = Less density and restrictiveness
Customization (amount)	1,072	0.64	0.87	0	2	2 = customization on both dimensions
Discretion (ratio)	1,072	0.16	0.07	0.00	0.33	0 = closed statement
Discretion (IGT)	1,072	1.03	0.83	0.00	3.50	0 = no discretion
Number of veto players	1,072	2.76	1.11	1.23	4.88	0 = no veto players
Ministerial preferences	1,072	7.54	0.90	3.82	8.88	0 = strongly supports line of directive
Corporatism	1,072	0.87	0.18	0.57	1.12	0 = no corporatist arrangements
Public EU policy support	1,072	1.49	0.56	0.92	2.49	0 = more support
EC monitoring (directive letters)	1,072	0.31	0.57	0	2	0 = no formal letter sent concerning directive
EC monitoring (area letters)	1,072	5.71	3.25	0	11	0 = no formal letter sent in policy area
Administrative capacity	1,072	4.58	0.01	4.57	4.61	0 = no capacity
Number of ministers	1,072	1.97	0.96	1	4	0 = no minister involved
Complexity	1,072	43.46	28.23	10	118	0 = no recitals
Misfit	1,072	3.58	0.77	2	4	0 = no misfit
Employment (dummy)	1,072	0.17	0.38	0	1	1 = employment
Internal market (dummy)	1,072	0.54	0.50	0	1	1 = internal market
JHA (dummy)	1,072	0.28	0.45	0	1	1 = JHA

**Table E2.** Distribution of cases across policy areas and directives

EU directive	N
<i>Employment and social policy</i>	186
2001/23/EC (undertakings)	38
2009/104/EC (work equipment)	17
2003/10/EC (noise)	75
2002/74/EC (insolvency)	21
2004/37/EC (carcinogens)	35
<i>Internal market and services</i>	584
2006/123/EC (services)	76
2005/56/EC (mergers)	62
2007/64/EC (payment)	362
2009/110/EC (payment)	84
<i>Justice and home affairs</i>	302
2008/115/EC (return)	75
2008/52/EC (mediation)	29
2004/114/EC (au pairs)	63
2004/38/EC (citizen rights)	135
Total	1,072

**Figure E1.** Histograms of distribution of customization and discretion



**Table E3.** Predicting amount of customization, with discretion ratio (model 1) and discretion IGT (model 2): odds ratios

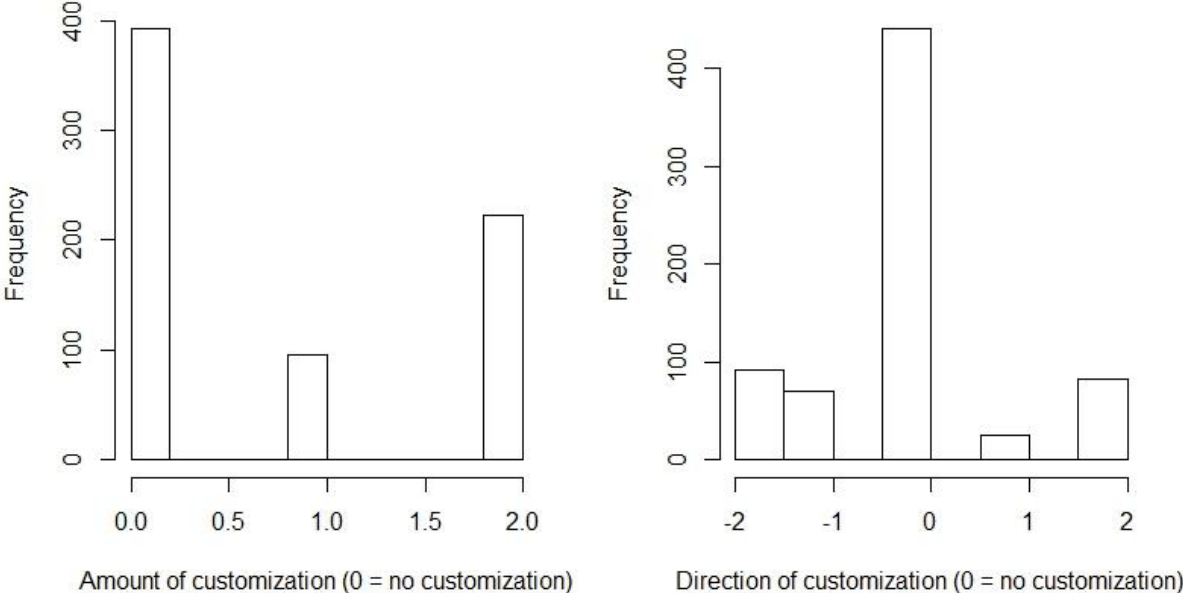
	<b>Model 1</b>			<b>Model 2</b>		
	<i>Discretion (ratio)</i>			<i>Discretion (IGT)</i>		
	<b>95% CI for odds ratio</b>			<b>95% CI for odds ratio</b>		
	<b>Lower</b>	<b>OR</b>	<b>Higher</b>	<b>Lower</b>	<b>OR</b>	<b>higher</b>
<b>Level-1 (Provision)</b>						
(Intercept)	0.46	0.59*	0.75	0.33	0.43	0.56
Discretion (IGT)				1.16	1.36*	1.58
<b>Level-2 (Directive)</b>						
Discretion (ratio)	0.00	0.06	6.80			
Ministerial preferences	0.43	0.69	1.11	0.41	0.67	1.09
Number of veto players	0.78	1.12	1.60	1.02	1.36*	1.80
Public EU support	1.32	1.97*	2.92	1.23	1.65*	2.20
Corporatism	0.04	0.50	6.19	0.05	0.64	7.96
EC monitoring (directive)	0.82	1.71	3.59	1.18	2.31	4.52
Misfit	0.56	1.31	3.07	0.47	0.88	1.64
Directive complexity	1.00	0.99	1.01	1.00	0.99	1.01
Variance: Intercepts	0.05			0.03		
Variance: random slope misfit*dir.	0.28			0.17		
N (observations)	1,072			1,072		
N (directives)	13			13		

Notes: Binomial logistic regression; models with random intercepts and random slope for legal misfit



**Appendix F: Robustness check: exclusion of 2007 payment services directive (so far only for amount of customization)**

**Figure F1.** Histograms of amount (left) and direction (right) of customization, excluding 2007 payment services directive



**Table F1.** Predicting amount of customization (excluding PS 2007 directive), with discretion ratio (model 1) and discretion IGT (model 2): odds ratios

	<b>Model 1</b>				<b>Model 2</b>			
	<i>Discretion (ratio)</i>				<i>Discretion (IGT)</i>			
	<i>(random intercepts only)</i>				<i>(random intercepts &amp; 1 random slope on n_vp)</i>			
	95% CI for odds ratio			% change in odds	95% CI for odds ratio			% change in odds
<b>Level-1 (Provision)</b>	Lower	OR	Higher		Lower	OR	higher	
Threshold 0 1	0.92	1.05	1.20		1.08	1.32*	1.62	
Threshold 1 2	6.79	7.90*	9.19		0.96	1.18	1.44	
Discretion (IGT)					0.77	0.86*	0.97	32.06
<b>Level-2 (Directive)</b>								
Discretion (ratio)	0.29	1.96	13.30	690.01				
Ministerial preferences	0.56	0.65*	0.76	-20.84	0.80	0.93	1.07	-13.52
Number of veto players	0.58	0.79	1.08	5.46	1.49	2.13*	3.05	17.71
Public EU support	0.60	1.00	1.67	-34.87	0.66	1.00	1.51	-7.42
Corporatism	0.26	1.20	5.49	95.99	0.39	1.45	5.33	113.36
EC monitoring (directive)	0.53	1.04	2.00	19.98	0.54	0.93	1.60	44.77
Misfit	4.77	7.90*	13.09	3.51	0.77	1.18	1.79	-7.43
Directive complexity	1.05	1.05*	1.06	0.31	1.31	1.32*	1.33	-0.09
Variance: Intercepts	0.10				0.00			
Variance: n_vp					0.02			
Deviance								
N (observations)	710				710			
N (directives)	12				12			

Notes: CLMM ordered logistic regression; p-values based on 95% confidence intervals; \*p<0.05, \*\*p<0.01, \*\*\*p<0.001;

**Table F2.** Effect of predictors and controls on amount of customization (excluding 2007 PS directive)

	<b>Model</b> (random intercepts, No random slope)	<b>CI 99%</b>
<i>Level-1 (Provision)</i>		
(Intercept)	0.94 (1.17)	-0.83; 2.74
Discretion (IGT)	0.18*** (0.04)	0.08; 0.29
<i>Level-2 (Directive)</i>		
Ministerial preferences	-0.09 (0.08)	-0.22; 0.03
Number of veto players	0.09 (0.18)	-0.20; 0.34
Public EU support	-0.08 (0.31)	-0.55; 0.36
Corporatism	0.43 (0.91)	-0.91; 1.78
EC monitoring (directive)	0.20 (0.37)	-0.37; 0.75
Misfit	-0.07 (0.25)	-0.42; 0.36
Directive complexity	0.00 (0.00)	0.00; 0.01
AIC	1875.75	
BIC	1925.96	
-2LL	1853.75	
N	710	
N groups	12	
Variance country (intercept)	0.06	
Variance residual	0.76	

Notes: MLM OLS regression; p-values based on 99% confidence intervals; \*p<0.05, \*\*p<0.01, \*\*\*p<0.001

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