



**Universiteit
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In the Fast Lane:

Comparing the Speed of Transposing European Procurement Directives in the United Kingdom and the Netherlands

Master Thesis Public Administration, track: Public Management

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Abstract

This thesis aims to assess which factors of speedy transposition are determinant variables influencing the transposition process of EU public procurement directives in the United Kingdom and the Netherlands. EU public procurement is substantial for the workings of the internal market. As public procurement is considered to consist of complex regulation, the application of EU public procurement rules across the EU remains a challenge. This research argues that fast transposition is preferred as transposition delay endangers collective application of EU public procurement policy. This study is relevant as it contributes to knowledge on transposition literature and the transposition process by adding more empirical testing of theory in the under-represented policy area of public procurement.

This research aspires to answer the question: “*Which conditions best explain a difference in speed of transposition of EU public procurement directives in the UK and the Netherlands?*” Following implementation literature, this research is interested in national institutional causes and selected the causal factors: *EU negotiation strategy, fit with government interest and complexity of legislative procedure*. These causal factors were tested in a comparative case study analysis of public procurement implementation in the United Kingdom and the Netherlands. Whereas the UK moved in the fast lane transposing the public procurement directives long before the final deadline, the Netherlands on the other hand is less fast.

Fit with government interest is considered to exist of two components. First, an expressed interest in fast transposition and second, a good fit between the EU directives and national procurement interests. The findings of this research suggest that government interest in fast transposition is a very important factor for speedy transposition. In addition, the same can be said for the *complexity of the legislative procedure*, which also seems a main factor in this. Furthermore, while the factors *EU negotiation strategy* and a directive in line with national policy interests (*fit with government interest*) also seem to be important factors for speedy transposition, they are relatively less important than an interest in speedy transposition and the complexity of the legislative procedure.

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List of Abbreviations

ACM	Dutch Authority for Consumers and Markets
ARW	Aanbestedingsreglement Werken (Public Procurement Rules for Public Works)
CCS	Crown Commercial Service
CO	Cabinet Office
DG	Directorate-General
EC	European Commission (or Commission)
ECJ	European Court of Justice
ERG	Efficiency and Reform Group
EPP	European Procurement Passport
EU	European Union
GDP	Gross Domestic Product
HFW	Holman, Fenwick, Willan
OECD	Organization for Economic Cooperation and Development
PCR 2015	Public Contracts Relations 2015
PIANOo	Professioneel en Innovatief Aanbesteden, Netwerk voor Overheids -opdrachtgevers (Public Procurement Expertise Centre)
PP	Public Procurement
PPD	Public Procurement Directives
PWC	Price Waterhouse Cooper
SIGMA	Support for Improvement in Governance and Management
SME	Small- and Medium-Sized Enterprises
SI(s)	Statutory Instrument(s)
TED	Tenders Electronic Daily
UK	United Kingdom
WTO	World Trade Organization

Introduction

Laws establish agreements and rules to regulate certain aspects of life. Policies formed at the level of the European Union (EU) prescribe actions covering many policy areas and affect many aspects of life in 28-member states. The most significant example of EU policy is the establishment of the internal market. Member states have established internal market legislation with the objective to integrate their economies and to stimulate cross border trade. Public procurement (PP) legislation forms a significant component of the functioning of the internal market (Bovis, 2012a, p. 3).

Public procurement is the term used to cover the process by which national, regional and local governments and other public authorities spend public money on works, goods and services (PwC & Ecorys, 2013 p. 19). The public procurement market of the EU is the biggest in the world (Trybus, 2006, p. 409). In 2011, tending worth 425 billion Euro were announced in the Tenders Electronic Daily (TED) database, making PP account for around 20% of EU's gross domestic product (GDP) (EC, 2014a, p. 21). According to the European Commission (EC), examples of public procurement include: building a state school, purchasing furniture for a public prosecutor's office or contracting cleaning services for a railway station (2015b, p. 1).

Before the opening up of national markets, European wide public procurement represented a significant potential welfare gain for member states but the market was characterized by national protectionism (Gelderman, Ghijsen, & Schoonen, 2010, p. 244). By removing legal and administrative barriers, public procurement directives (PPD) ensure a competitive single market for the delivery of public services (Bovis, 2012a, pp. 2-3). The scope of EU public procurement encompasses hundreds of companies bidding on hundreds of calls for tenders every day, divided over different sectors of industry and dispersed over 28 EU member states. Public procurement in the EU thus demands a capable administrative apparatus.

The EU public procurement directives hold a prominent place in the internal market legislation due to public procurement's considerable scope and economic significance in the EU. Moreover, public procurement also forms the cornerstone of the Europe 2020 strategy of growth and competitiveness, which continuously aims to make the EU competitive in the future (European Parliament and the Council, 2014, p. 1).

The current public procurement directives originated in 2004. In 2014,

however, the EU adopted 'new' PPD in order to keep up with society's modern progress in terms of political, economic and social developments (EC DG Internal Market and Services, 2014, p. 5). The modified public procurement directives have been adopted with the purpose of modernizing, simplifying and improving the efficiency of PP legislation for public purchases and companies (EC, 2015b). Additionally, the new PPD supposedly enhance the inclusion of Small- and Medium-Sized Enterprises (SME) and enable the selection of Social and Green procurement. It is the responsibility of member states to implement (transpose and apply) EU law into their national legal systems (EC, 2012, p. 27). Member states are expected to have transposed the PPD into national law by 18 April 2016 (European Parliament and the Council, 2014, p. 46).

Public procurement directives are supposed to improve the efficiency of the internal market but only function properly if the same rules are applied by 28-member states, all with their own political, administrative and legal system (Carroll, 2014, p. 12). The difficulty of implementing the public procurement directives lies partly in the complexity of PP as a policy area. Christopher Bovis described PP as: "a highly complex process, notably in relation to the extent of centralization or decentralization which varies among Member States, as a function of the organization of their public administration" (2012a, p. 2). Because of numerous actors involved and the complexity of implementation, the correct and uniform application of EU policy in 28-member states is quite demanding (Dimitrakopoulos, 2001, p. 605). According to the EC: "the correct, efficient and effective application of EU public procurement rules across the EU remains a constant challenge", as expressed in the 2012 Annual Public Procurement Implementation Review (EC, 2012, p. 4).

In view of the difficulty to achieve collective implementation of EU directives, the Commission relies on monitoring and inspection mechanisms in place in seeking to improve EU implementation of directives (Mastenbroek, 2003, p. 373). The Commission monitors and inspects whether the member states implement and apply the directives correctly (2012, p. 27). The EC does so by keeping track of transposition notifications in the Single Market Scoreboard and with the Annual Public Procurement Implementation Review (2014/2015, p. 2; 2012, p. 4). If necessary, the EU can instigate legal proceedings against a member state to ensure compliance (Treib, 2014, p. 6).

Deviation, incorrect and incomplete implementation of directives could form a considerable problem in the EU, especially with regards to internal market legislation and its importance for the workings of economic integration (Carroll, 2014, p. 13). The established objective of the single market may even be harmed if member states apply directives differently and alter from the intended PP policy. Divergence from the intended outcomes could damage the legitimacy and effectiveness of the EU as an institution and must be prevented (Carroll, 2014, p. 13). In order to achieve collective implementation of EU directives, proper policy implementation is essential.

The necessary first condition for the application of EU laws is “complete and correct transposition” (Carroll, 2014, p. 13). Transposition of a EU directive is the adoption of national legislation to meet the requirements of the directives before a certain deadline (Carroll, 2014, p. 17). This research particularly focuses on the transposition phase and the early phases of the implementation process due to the importance of transposition for the further application. The literature on EU policy implementation has brought forward “a range of explanatory factors that positively or negatively influence the timeliness and correctness of implementation” (Falkner, Hartlapp, & Treib, 2007, p. 395). This research has a similar focus but specifically looks at those factors enhancing or inhibiting the speed of transposition.

The definition of ‘speed of transposition’ in this research refers to a definition given by Duina: “Speed of transposition refers to the time required by each member state to translate EU directives into national law within the time limit specified by the EU” (1997, p. 156). However, whereas Duina regards transposition being equal to the translation of a directive, this research views transposition as the adoption of EU directives into national law. This research regards the definition of transposition speed to refer to the time needed by each member state to adopt EU directives into national law within the statutory deadline specified by the EU.

Often in the transposition process of EU directives, correct and timely transposition goes wrong. Some countries fail to transpose directives on time or member states transpose directives in a timely, but incorrect manner (Carroll, 2014, p. 13). Timely transposition is preferred as transposition delay endangers collective application of EU public procurement policy and makes member states suffer from implications of unequal transposition (Mastenbroek, 2003, p. 372). Non-transposition endangers market competitiveness, national growth and employment performances throughout the EU (Kaeding, 2008, p. 118). With the modified PPD, all actors

involved are supposed to benefit from transposition. This research argues that as the new directives aim to modernize, simplify and improve the efficiency of PP, it is in the interest of all member states to transpose the directives on time. The sooner a new policy is transposed by a member state, the sooner actors involved can benefit from its alleged improvements.

It is accounted for that when a member state experiences conflict during the transposition process, and ends up in a trade-off between timely and correct transposition, correct transposition is always preferred. However, taking a normative perspective, a directive should in principle be implemented both correctly and before the deadline as transposition delay could impose harm on other member states (Mastenbroek, 2003). In addition, even when a directive is delayed but correctly transposed, this could still cause problems for the application and enforcement stages of the implementation process (Mastenbroek, 2003, p. 391). Kaeding argued in his research on transport directives that even early transposition, also known as ‘gold-plating’, could also harm efficient and effective policy-making (2008, p. 132). ‘Gold-plating’ is the transposition of a directive by a member state exceeding the requirements of a directive (Miller, 2011, p. 2). This could result in businesses profiting from a competitive advantage (Kaeding, 2008, p. 132). All in all, is important to keep in mind that this research examines factors influencing the speed of the transposition and does not consider the relationship between speedy transposition and the effect on policy outcomes.

The main factors on the speed of transposition are discussed in existing literature. The factors considered in this research are: *EU negotiation strategy, fit with the interests of national governments* and the *complexity of legislative procedure*. This research will elaborate more on these factors derived from implementation literature in chapter 1. In order to see the workings of these factors in practice, they are applied to the case studies of the UK and the Netherlands because these member states differ in speed of transposing the EU PP directives. The UK has already transposed the new PP directives considerably before the final deadline of 18 April 2016, making this country (together with Denmark) an exception among member states. For this reason, the UK has been selected as a case study for further exploration on fast transposition. The Netherlands, on the other hand, has taken several steps in the transposition process and the new legislation implementing the PPD are about to be finalized. While both are, in principle, still before the deadline of

18 April 2016, the UK has progressed in the fast lane while the Netherlands has been slower. This offers ideal comparative material for the research question of this thesis:

“Which conditions best explain a difference in speed of transposition of EU public procurement directives in the UK and the Netherlands?”

The research question allows a comparative investigation into the factors influencing speedy transposition in two different national contexts. The following sub-questions are formulated in order to answer the research question:

1. Which conditions supposedly influence the speed of transposition?
2. What is public procurement?
3. How has the United Kingdom transposed the public procurement directives?
4. How has the Netherlands thus far transposed the public procurement directives?

The first sub-question is dealt with in Chapter 1, the second sub-question in Chapter 3, the third sub-question in Chapter 4, the fourth sub-question in Chapter 5.

Relevance

It is the aim of this research to better understand the factors influencing the pace of the transposition process. This research builds on past studies and aims to contribute to transposition literature by adding more empirical testing of theory in the under-represented policy area of public procurement. There has not been much research on the transposition of PP directives, despite its importance for the internal market. Gelderman, Ghijsen and Schoonen (2010) have conducted a quantitative study on the transposition of procurement directives but they did not consider aspects of transposition speed. This research’s qualitative approach on the speed of transposition in the policy area of public procurement therefore fills this gap.

The literature review presents possible factors influencing the speed of transposition. The selected causal factors are focused on national/ institutional differences between member states. A *EU negotiation strategy* focuses on the policy formation phase and traces whether the UK and the Netherlands differed in their approach of interest representation. The second factor, *fit with government interest* assesses firstly whether there is an expressed interest in fast transposition and

secondly whether there is a good fit between national policy interests and the EU directives. Lastly, this research focuses on the national institutional structure and the *complexity of legislative procedure*, which assesses the number of institutional bodies involved in the legislative procedure, which enhances or inhibits the speed of transposition within a member states.

The case studies explain the transposition process of the PPD. The analysis will reveal to what extent the factors of transposition speed were present in the case studies. In addition, the analysis assesses which factors were the most influential in determining the speed of transposition in relation to each other. The objective of this thesis is to gain a deeper understanding of transposition speed and this might lead to improved theoretical explanations. Better transposition can contribute to less transposition delay and this is important because it is preferred to achieve collective EU implementation across different policy areas within all 28-EU member states. In addition, the PPD create better value for money by efficient allocation of resources, which can contribute to more stability and trust in government (EC, 1998, p. 1). The sooner these policies are implemented in the EU, the better.

Research Design

This research has a qualitative approach and uses a comparative case study design with a small N. This research takes a qualitative approach due to the nature of the data. Reasons for speedy transposition are, after all, to be found in the rich context of individual countries and their political interest and institutional systems. A qualitative case study suits the detailed level of analysis and contextual purpose best (Punch, 2006, p. 151). This research aims to assess which factors were responsible for influencing fast transposition in the case of public procurement directives in the UK and the Netherlands. In this way, this research aims to contribute to theory on transposition speed. The research design will be elaborated upon more extensively in the following chapter.

Outline

In order to answer the research question, this research will proceed as follows: the first chapter reviews implementation and transposition literature and presents an overview of factors influencing timely procurement transposition in a literature

review. Additionally, a selection is made of causal factors, which are investigated for causal links with the speed of EU policy transposition. The second chapter will present how factors of speedy transposition are operationalized and how the case studies of the UK and the Netherlands are assessed. Process tracing is the method used for assessing the UK and the Netherlands on the causal factors. Chapter 3 offers a description of the functioning of EU public procurement legislation. Chapter 4 presents the case study of the UK and chapter 5 presents the case study of the Netherlands. By investigating the transposition of the PPD in the English and the Dutch cases, this research attempts to determine which factors were present and/or absent. A comparative analysis is presented in chapter 6, this chapter reflects on the data derived from the case studies and considers the presence or absence of the selected theoretical factors. Additionally, this chapter assesses which factor was relatively more important for influencing the speed of transposition. Finally, the main findings and an answer to the research question are presented in the conclusion.

Chapter 1: Literature Review

The aim of this chapter is to present the theoretical framework of this research. This chapter is divided into four sections. The first section elaborates on the stages of policy implementation. The second section reviews implementation and transposition literature relevant for answering the research question. This section aims to give a clear overview of theoretical concepts and causal assumptions influencing speed of transposition in a literature review. The third section presents the relative importance of the selected factors considered in this research. The presence of these factors are established and assessed in the analysis chapter. Finally, the major findings of this chapter are summarised in the last section, which gives an answer to the sub-question of this chapter: What conditions brought forward by implementation literature influence the speed of transposition?

1.1 Stages of Policy Implementation

Implementation literature is concerned with the assessment of implementation success or failure (Falkner et al., 2007, p. 396). Its research area comprises the entire process of policy implementation. The process of policy implementation consists of steps to convert law into action (Treib, 2014, p. 5). Once a legal text has been adopted and a policy is formed, the first stage of the implementation process begins.

The process of implementing EU policy is considered to exist of two or three steps according to different authors. The first step is transposition, the second and third steps are application and enforcement, although some authors consider these last two as one and the same. Transposition of EU directives obligates member states to adapt national legislation in time (before a deadline) and in a complete and correct manner as specified in the EU directive (Mastenbroek, 2003, p. 372). Application and enforcement sequel the transposition period and refer to the adaptation of behaviour in line with the new EU requirements and enforcement of legislation (Carroll, 2014, p. 13). Application and enforcement are also referred to as ‘compliance’ which is defines adjusted behaviour conform the adopted rules (Treib, 2014, p. 5). Oliver Treib has placed the process of EU policy implementation clearly visible in Figure 1:

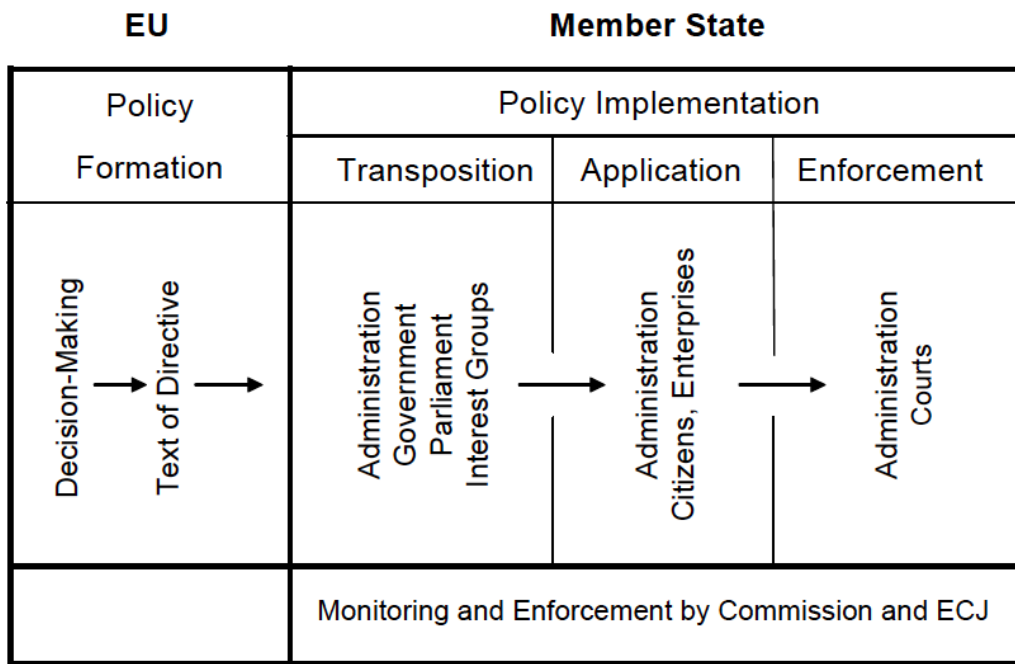


Figure 1: Process of EU Policy Implementation (Treib, 2014, p. 6)

Implementation difficulties can occur at any stage of the implementation process, which could result in a different application of law than the intended policy (Carroll, 2014, p. 12). Transposition literature has a particular focus on the implementation of directives as supposed to other types of EU law. While Treaties and other EU regulation are directly applicable in member states, directives require transposition into national context. The implementation of EU directives creates a challenge as directives prescribe the minimum legal requirements but leave the choice for the form and method to member states (Trybus, 2006, p. 412). The transposition of directives allows some leeway for the interpretation of member states. Member states may imply stricter regulation according to national interests as long as the intention of the EU directive is respected. This leeway is referred to as ‘discretionary authority’. The transposition of directives into national law thus creates a challenge for collective implementation of EU policy.

1.2 Literature Review

Concepts brought forward by implementation, transposition and compliance literature are concerned with differences in implementation behaviour among member states and aim to explain why member states fail to implement EU directives. Within these literatures, different studies put different emphasis on the importance of: policy specific aspects, actors and their interests, the decision-making process, institutional/

administrative aspects, political aspects, EU level aspects and cultural aspects as explanatory factors for the success or failure of implementation.

Roughly speaking, these factors can be categorized according to five main approaches. This categorization is based on the work of Carroll (2014). The five main categories that cover the main perceptions within the implementation literature are: goodness of fit approach, institutional approach, management approach, cultural approach and top-down approach (Carroll, 2014, p. 42). These approaches are interpreted in the light of this research question and the factors brought forward by these approaches are valued as factors that supposedly influence the speed of transposition. Table 1 presents an overview of these approaches.

Although all these approaches have made valuable contributions to the study of EU policy implementation, this research considers factors suggested by some approaches more interesting and valuable than others. It is obvious that in the UK and Dutch transposition process a large variety of factors could be responsible for speedy transposition. However, for practical reasons (also for reasons of parsimony), this thesis opts for selecting the role played by only a few specific factors to get a closer look at specific causes for speedy transposition. Of course, more research into other factors and further testing of the factors in this thesis is encouraged. I will elaborate on this at the end of the thesis when discussing avenues for future research.

This research has a particular interest in national institutional differences between the UK and the Netherlands as determinant variables for the speed of transposition. This research will only take a selection of factors suggested by the goodness of fit, institutional and implementation approach into account. By putting the focus on the national institutional realm, it is believed that this research increases our understanding of the role that national politics and institutions play on the transposition speed within the sample states. Future research will have to delve into other factors as well as their relation to the factors discussed in this thesis. Most notably, those factors suggested by the management and cultural approaches are considered less interesting in the case of the UK and the Netherlands. This justification is briefly explained in the following paragraphs.

Management approach

The management approach explains non-compliance by referring to the political and/or administrative capacity of member states and proposes related factors such as

budgetary resources and number of staff as determinant variables (Carroll, 2014, p. 39). For example, a study by Berglund, Gange and Van Waarden considers (among other explanatory factors) the organizational capacity of an administration to establish legislative routines as important variable to speed up transposition (2006, p. 701). Although factors of administrative capacity could influence the speed of transposition, (as less resources and fewer human capital inhibits the speed of transposition) this research assumes that these variables do not vary significantly between the UK and the Netherlands and are therefore considered to take a less significant role influencing the speed of transposition. However, the management approach might be a valuable explanation in a comparative study between other states (such as old and new member states).

Cultural approach

The cultural approach suggested by Falkner, Hartlapp & Treib divides EU member states according to their compliance behaviour and suggest a typology of three different ‘worlds of compliance’, each of them characterized by an optimal transposition style of EU policy (2007, p. 395). Although the compliance typology might be valuable for determining the transposition behaviour of member states over time, this typology is less interesting as a factor of influence on the speed of transposing the 2014 procurement directives in the UK and the Netherlands, as this research dives into the domestic context. The following section presents the top-down approach.

Top-down approach

Among the concepts that belong to the top-down approach are considered: characteristics of the decision-making process, policy complexity and level of discretionary authority (Carroll, 2014, p. 42). Mastenbroek (2003) suggested (among other factors) the decision-making procedure at EU level as an explanatory factor for the differences among member states transposition of EU directives. According to Mastenbroek, directives decided upon in the Commission are generally less sensitive in nature and are thus easier to implement (taking less implementation time) than directives decided by the European Parliament and the Council (2003, p. 376). However, this approach is not relevant for this research as EU decision-making was the same for both sample states.

Moreover, other studies (see Kaeding, 2006; Steunenberg & Kaeding, 2009) considered (among a variety of factors) policy specific features, such as the complexity of a directive and the allotted time for the transposition of a directive, as explanations for transposition delay. Even though the decision-making and policy specific factors are easily brought in relation to the speed of transposition, these factors do not match the research problem of this thesis. The influence of these factors is more interesting in a research problem that considers the transposition of several directives. As this research is focussed on the transposition of the 2014 EU procurement directives, the decision-making at EU level and policy specific features are the same for both the UK and the Netherlands, making these factors unsuitable for this research.

Another factor brought forward by the top-down approach influencing the speed of transposition is the factor of discretionary authority. As mentioned in the beginning of this chapter (see 1.1), discretionary authority refers to the margin by which member states can adapt EU directives according to national interests when transposing directives into national legislation. The extent of discretionary authority granted per directive and how a member state chooses to apply this possibility during transposition could vary (Carroll, 2014, p. 22). A textual analysis of legal documents reveals the margins for the interpretation of member states within the EU legislation, or an analysis of transposed domestic legislation could demonstrate where a member state made use of its discretionary authority (Carroll, 2014, p. 228). On a similar note, Steunenberg (2007) argued that member states could adopt a literally or non-literally approach towards transposing EU directives (p. 23). By that means, the discretionary authority could be considered a factor enhancing or inhibiting the speed of transposition. However, according to Steunenberg & Toshkov (2009) the influence of discretion on enhancing or inhibiting the transposition process is contested (p. 954).

However interesting the factor of discretionary authority is for the speed of transposition, this factor is not selected for this research's theoretical framework. The reason the discretionary authority is not considered a determinant variable for the speed of transposition is because it would result in a predominantly legal judgement.

This Research's Selection of Factors

This research considers different national factors more interesting than a strict legal explanation. It is for this reason that the following sections elaborate further on the goodness of fit and institutional approach.

Goodness of fit approach

The goodness of fit approach originated in the late 1990s, when *Europeanization* (measuring the effect of European decision-making on domestic policies) became a concept of importance in political science (Falkner et al., 2007, p. 396). The goodness of fit approach (also referred to as: (mis)fit or 'adoption cost') assumes that the implementation of EU policies involves a certain level of adaptation by member states (Carroll, 2014, p. 28). According to Carroll, the 'goodness of fit' perspective originated in Héritier's 1995 theory of 'uploading' national policies to EU policymaking (2014, pp. 28-29). This theory argues that member states attempt to 'upload' national policies to EU level in order to keep the costs of adapting to EU policy low (Héritier, 2005, p. 200). The better the fit between European and domestic policies, the lower the implementation costs at national level (Börzel, 2002, p. 194). The (mis)fit approach can be considered between a EU policy in relation to a member state's institution, existing policy or both (Falkner, Treib, Hartlapp, & Leiber, 2005, p. 16). Duina formulated the following 'cost hypothesis': "When a directive is in line with the current policy legacy of a country and with the organization of interest groups, it is well implemented. When it envisions major policy shifts and the re-organization of interest groups, it suffers from poor implementation" (1997, p. 158).

Criticism expressed towards the misfit approach is threefold. The first point of criticism considers the ambiguity of the *misfit* concept and criticizes the fact that misfit could indicate a disparity between a EU measure and either: domestic institutions, policy instruments, standards or problem-solving approaches (Steunenberg, 2007, p. 26). The second point of criticism is directed towards the disregard of actors involved in the policy making process and the third point criticizes the presumed static nature of institutions (Carroll, 2014, p. 29). The next section turns to the institutional approach, which considers actors involved in the decision-making process.

Institutional approach

The institutional approach focuses on the institutional arena in which decision-making takes place and on the interest of domestic actors involved in the decision-making process (Steunenberg, 2007, p. 23). Following the works of Steunenberg (2007) and Thomson, Torenvlied, Arregui (2007) the interest of domestic actors involved is a considerable aspect in the transposition process. According to Steunenberg: “the *actor-or interest-based* approach focuses on the domestic decision-making structure and the way in which the interests of political and administrative actors affect outcomes” (2007, p. 26). Thomson et al. suggested an interest-based explanation for the negotiation stage prior to policy adaptation in which they investigated the link between EU decision-making and infringements and delay in national transposition (2007, p. 685). The interest-based explanation takes into consideration national governments’ policy interests towards the policy to be implemented. Thomson et al. argued that the difference between the preferred and actual outcome would result in ‘an incentive to deviate’ (2007, pp. 686-687).

Although both Steunenberg (2007) and Thomson et al. (2007) further elaborate on the influence of interests of domestic actors on the degree of discretionary authority, the aspect of domestic interests is derived from these works. From the works of Steunenberg (2007) and Thomson et al. (2007) it becomes clear that the interests of government could play an important role in a speedy transposition. An area for future research indicated in the study by Thomson et al. (2007) is the suggestion to make a connection between the goodness of fit explanation and the interest-based explanation. This suggestion is considered for the formulation of a causal factor (see section 1.3).

Another perception within the institutional approach is derived from studies with a particular interest in timely transposition. Some studies (Berglund, Gange, & Van Waarden, 2006; Kaeding, 2006; Mastenbroek, 2003) considered the importance of the legal/institutional structure as a determinant variable for the transposition process. In particular, they considered the type of legal instrument for adopting EU transposition in national legislation as a factor that influences the speed of the transposition process.

Mastenbroek (2003) assessed timely transposition and explained delays of EU directives in the Netherlands by arguing that the institutional structure might inhibit fast transposition. For example, Mastenbroek argued that directives in the Netherlands

often fall under the responsibility of more than one ministry, which could result in conflict and delay (2003, p. 378). Kaeding argued: “different legal types can be more or less time consuming depending on the actors involved” and “the fewer actors involved in the making of a legal instrument, the faster the transposition progress” (2006, p. 237). Besides considering factors of an administration’s capacity (see the management approach discussed above), Berglund, Gange & Van Waarden also considered the type of legal instrument an important determinant during transposition (2006, p. 700). Berglund et al. provided two ways in which the type of legal instrument is expected to affect the timeliness of transposition. First: “the legal instrument that is chosen defines the legislative procedure that has to be followed, and thus also identifies which actors get involved in the process and when, what their authority is”. Second, “the type of legal instrument also determines the complexity of the legal process and sometimes also indicates whether there is a time limit within which they have to intervene” (Berglund et al., 2006, p. 700). The choice of legal instrument is often pre-structured in the institutional context and stated in constitutional and administrative law (Berglund et al., 2006, p. 700). From the works of Mastebroek (2003), Kaeding (2006) and Berglund, Gange & Van Waarden (2006), the idea can be derived that the more complex the legislative procedure is by the institutional bodies involved, the longer the transposition process takes.

Table 1: Literature Review of Factors Supposedly Influencing the Speed of Transposition

Approach:	Concept:	Derived from:	Causal relationship:
Management approach	<i>Administrative capacity</i>	(Berglund, Gange, & Van Waarden, 2006)	The administrative capacity of a member state influences the speed of transposition.
Cultural approach	<i>World of compliance typology</i>	(Falkner, Hartlapp, & Treib, 2007)	The compliance behaviour of member states can be categorized according to three different ‘worlds of compliance’; each world is characterized by ideal transposition behaviour.
Top-down approach	<i>Policy specific features</i>	(Kaeding, 2006; Steunenberg & Kaeding, 2009)	The complexity of a directive or the transposition time allotted for a directive influence the speed of transposition.
	<i>Discretionary authority</i>	(Carroll, 2014; Steunenberg, 2007; Thomson, Torenvlied, & Arregui, 2007)	The level of discretionary authority (margin to interpret EU directives to national policy preferences) is considered to have different effects on the speed of transposition.
	<i>Decision-making at EU level</i>	(Mastenbroek, 2003)	Whether directives are decided upon in the Commission or by the European Parliament and the Council influences the transposition process.
Goodness of fit approach	<i>EU negotiation strategy</i>	(Börzel, 2002; Héritier, 2005)	A EU negotiation strategy that keeps the cost of policy implementation low enhances the speed of transposition.
	<i>Fit with government interest</i>	(Steunenberg, 2007; Thomson, Torenvlied, & Arregui, 2007)	A strong fit between the interests of a government and a EU directive enhances the speed of the transposition process. Additionally, a government interest in fast transposition enhances speedy transposition.
Institutional approach	<i>Complexity of legislative procedure</i>	(Mastenbroek, 2003; Kaeding, 2006; Berglund, Gange, & Van Waarden, 2006)	The complexity of the legislative procedure indicates the institutional bodies involved, which influences the speed of the transposition process.

1.3 Selection of Factors

This section presents the selection of causal factors that supposedly influence the speed of transposition derived from the literature review presented above. The selected factors: *EU negotiation strategy*, *fit with government interests* and *complexity of legislative procedure* are considered the independent variables of this research. By selecting these factors from the goodness of fit and institutional approach, this research selected a combination of factors with a focus on political and legal/institutional factors, covering important domestic differences between the UK and the Netherlands that possibly contributed to the speed of transposition. The aim of this section is to distinguish the interdependent effect on speedy transposition. This serves the purpose of establishing the relative importance on the influence of speedy transposition in the analysis (see section 6.2).

The first factor this research selected is whether the UK and the Netherlands differed in the way they attempted to influence the policy formation phase, by indicating what kind of *negotiation strategy at EU level* both countries had. For fast transposition, it is suggested that a negotiation strategy could be a valuable condition for fast transposition. If the outcome of the EU negotiations is disadvantageous for a member state it can still transpose a EU policy rapidly after the text of a directive is adopted. However, the kind of negotiation strategy at EU level could reveal the incentive of a member state to upload their policy interests in an attempt to keep the cost of implementation low. An active negotiation strategy could contribute to creating a better policy fit with procurement policy. This research considers a EU negotiation strategy in which a member state actively represents their interests an interesting factor as it could uncover different incentives between the member states to keep the cost of implementation low. A successful negotiation outcome could ease the implementation process and therefore enhance speedy transposition. The first factor of this research is therefore related to the second one in the sense that a EU negotiation strategy could contribute to a better policy fit.

The second factor is a combination of the goodness of fit approach and the institutional approach. This research chose to look at *fit with government interest* as a causal factor influencing the speed of transposition and investigates whether a strong fit with the interest of a government towards procurement policy and the EU procurement directives enhances the speed of transposition. To counter the criticism

of the goodness of fit approach, this research ensured a clearly stated concept and included actors involved in the policy making process. This research restricted itself to the investigation of the fit with the interests of *government* and considered the fit with interests of major *interest groups* to lie outside the scope of this research.

It is expected that a fit with government interest is an important factor for fast transposition as it eases the transposition process. A misfit with EU policy directly makes transposition more difficult inhibiting the speed of transposition. It is therefore assumed that the better the fit, the faster the transposition process. Despite a good fit, it must also be in the interest of a government to transpose the directives faster than the statutory deadline. Therefore, an additional concept is attributed to the interest of a government factor. This research will assess whether there is an expressed interest for fast transposition. An expressed interest of fast transposition is of substantial value for speedy transposition.

The third and final causal factor delineated by this research is the *complexity of legislative procedure* to transpose the EU directives into national law. Following from the work of Berglund et al. (2006) the legislative procedure is part of the institutional context of a member state. Constitutional and administrative law indicate which legal instrument is applied when and which institutional bodies are involved with what authority (Berglund et al., 2006, p. 700). The more institutional bodies involved, the more complex the legislative process. This research considers that the complexity of the legislative procedure (indicated by the institutional bodies involved in the legislative procedure) enhances or inhibits the speed of transposition in a country. Each member state has several legal instruments available to transpose a directive. The complexity of the legislative procedure is considered an important determinant because the institutional bodies involved could vary between member states, affecting the speed of transposition. One could have an interest in fast transposition, but if the legislative procedure is very complex (with many actors involved) the statutory procedure might inhibit the speed of transposition.

All in all, it is considered that even though a EU negotiation strategy of active interest representation is not the most important condition, it could make a valuable contribution to a better fit with government interests, which is considered to ease the transposition process. In addition, an expressed interest of fast transposition is considered a substantial aspect of speedy transposition. Lastly, the complexity of

legislative procedure is also considered important as it directly affects the transposition speed.

1.4 Summary

Transposition is the first stage in the policy implementation process and the transposition of directives require member states to adapt national legislation in time and in a complete and correct manner. Implementation and transposition literature consists of many theories and approaches that suggest different conditions influencing the transposition process. This chapter has posed the following sub-question: Which conditions supposedly influence the speed of transposition? This chapter has selected *EU negotiation strategy, fit with interests of a government and complexity of the legislative procedure* as causal factors that supposedly influence the speed of transposition. This research will investigate the presence and extent of these factors in the case of the transposition process of the procurement directives in the UK and the Netherlands in order to establish their influence on enhancing or inhibiting the speed of transposition. The following chapter will discuss the research method used and operationalization of the causal factors.

Chapter 2: Research Design

The aim of this chapter is to present the research design and operationalization, which explicate how this research is structured and how concepts are operationalized to be measured in the analysis. This chapter therefore also considers reliability and validity of the research conducted. The following is divided in two paragraphs. The first discusses the research method and the second discusses how the causal factors have been operationalized.

2.1 Research Method

This research adopted a qualitative approach as reasons for fast transposition are mainly found in the rich context of individual countries and their political interests and institutional systems. This research aimed to detect traces of the selected causal factors by analysing policy documents. Process tracing was conducted in this research as it enabled a detailed investigation of policy transposition in a member state.

Andrew Bennett and Alexander George were among the first scholars to develop the process tracing method. The main contribution of process tracing rests in the descriptive analysis of socio-political events, which could gain insights into causal relationships (Collier, 2011, p. 823). The considerable amount of detailed information could contribute to diverse research projects. A weakness of process tracing occurs when data is not accessible as this inhibits finding information for identifying causal inferences (Bennett & George, 1997). An important process-tracing tool for causal inference is the adequate restructuring of events. Process tracing focuses on key steps in the process, which allows a good analysis of the development of a process, such as its sequence or when it changes (Collier, 2011, p. 824). Moreover, it allows the application of theoretical concepts and gaining a better insight into the practical implications of transposition process. Process tracing allows the discovery of how the world really works (Checkel, 2005, p. 15). According to David Collier, process tracing is a suitable method for qualitative analysis as it enables the collection of diagnostic information that provides the basis for descriptive and causal inferences analysed in terms of a posed research question (2011, pp. 823-824).

Process tracing method is applied in different ways and this research uses process tracing in a comparative case study design with a small N. According to Pascal Vennesson, “process tracing is an important element of case study research”

(2008, p. 224). A case study is a research strategy based on in-depth level of investigation of a small number of events or phenomena (Vennesson, 2008). Process tracing is often used in within-case studies or studies with a small N based on qualitative data as it adopts comprehensive description of political or social events to evaluate causal relationships (Collier, 2011, p. 823).

Process tracing enables the assessment of a theory by identifying causal chain(s) linking independent and dependent variables in order to uncover relations between possible causes and observed outcomes (Vennesson, 2008, p. 231). This research uses a theoretical framework for the selection of causal factors as explanations of transposition speed. In this research, case study research and process tracing are used to trace the presence (or absence) of causal factors, which allows an assessment of the relative importance of these factors in order to establish the determined variables for influencing the speed of transposition. Ultimately, this research aims to detect a causal relation between the selected causal factors (independent variables) and the speed of transposition (dependent variable). The purpose of this research is to contribute theoretical explanations (Vennesson, 2008, p. 227).

One of the biggest challenges of process tracing is confirmation bias. Confirmation bias occurs in process tracing when merely the information confirming a causal link is selected, leaving out contradicting information. It is therefore important not to ignore negative evidence. The identification of the absence of a causal factor could be important for the outcome of the research (Vennesson, 2008, pp. 237-238). This research is aware of this challenge and has attempted to observe data neutrally and to reflect critically on both the presence and the absence of factors.

Rather than applying process tracing to a within-case analysis, this research conducts a comparative case study design with a small N in order to increase the validity and external generalization of this research. Perhaps factors that influenced the speed of transposition in the UK were also present in the Dutch case, in spite of fast transposition. A comparative case study design enhances the validity of this research.

Moreover, as the analysis of the collected data was subject to interpretation, the reliability of this research is modest. However, a way this research has attempted to augment the reliability is by providing a clear operationalization of the concepts.

2.2 Operationalization

The operationalization of this research discusses three aspects, first the case selection and expected generalization is presented. Second, the way in which the causal factors are measured is discussed. Table 2 presents the operationalization of causal factors. Third, the data collection is presented.

Case Selection and Generalization

The selection of the UK and the Netherlands as case studies is guided by the consideration that these countries show variation in the speed of transposition. The UK is an example of a member state that has transposed the PP directives long before the deadline is due. The Netherlands, on the other hand, is an example of a member state that is still in the process of transposition. They are taking more time. This means, essentially, that the Netherlands is less fast than the UK, which makes it an interesting case to compare for reasons of speedy transposition. Other countries could have been selected (see recommendations for further research in final chapter) but the UK and NL are ideal for the purposes of this thesis because of available sources.

This research attempts to better understand the workings of the transposition process in the UK and the Netherlands in practice and, in doing so, it also aims to contribute to a deeper understanding of the transposition process in general. Of course, the results of this research cannot be generalized to all member states of the EU, in part because of the level of detail of this research. Future research must reveal whether the causal factors of this research also account for fast transposition in other policy areas within the same sample or whether these factors also account for speedy transposition of the EU public procurement directives in other member states. Future studies are encouraged to apply this research proposal and extend the variation of member states.

Measuring Causal Factors

Official policy documents and government statements are traced to collect evidence for the presence or absence and extent of the causal factors. Based on the extent of evidence found per factor, a causal relation is established. The extent to which the presence of theoretical factors influenced the speed of transposition is assessed on certain conditions. The next paragraphs will present the operationalization per theoretical factor and the objective of this section is to clarify the terms on which

causal relationships are considered valid. Table 2 presents the operationalization of the concepts.

1. A EU Negotiation strategy: this research will investigate what kind of strategy towards the EU negotiations was formulated by the member states. A well-considered strategy of influencing the decision-making at EU-level increases the chance to create a successful outcome in which a greater fit with government policy interests could contribute to faster transposition.

2. Fit with government interests: The fit with interests of government in the UK and the Netherlands towards EU PP directives on national level is measured by determining whether national procurement priorities are in line with the adopted directive. Moreover, this research will investigate if there was an explicit formulated interest in fast transposition.

3. Complexity of legislative procedure: This research will investigate whether variation exist in the speed of the legislative procedure between the UK and the Netherlands in the transposition of the EU procurement directive by comparing the complexity of the legislative process. With a comparative assessment this thesis assesses whether the legislative process was more complex in one state than the other. An indication for complexity is the institutional bodies involved in the legislative procedure such as Cabinet, Parliament, Council of State, Council of Ministers. The extent in which these institutional bodies are involved in the legislative procedure influences the speed of transposition.

Table 2: Operationalization of Selected Causal Factors

Theoretical factor:	Operationalization	What is investigated?	Source:
1.EU negotiation strategy	To what extent does the formulation of a EU negotiation strategy reduce the adaptation costs.	What kind of strategy was adopted towards the EU negotiations?	EU negotiation strategy expressed in official policy documentation.
2. Fit with government interests	When a directive is in line with government policy interests towards procurement policy, there is a good fit. Is it the interest of a member state to transpose the directives faster than the statutory deadline?	Where the national policy priorities for procurement in line with the PPD? Was there an expressed interest in fast transposition?	Member states expressed interest towards PP policy in official documents.
3.Complexity of legislative procedure	Comparing the complexity of the legislative procedure.	Is the legislative procedure complex or simple?	Policy document indicating institutional bodies involved which allows a judgement on the complexity of the legislative procedure.

Data Collection

This research primarily obtained data from official policy documents from the EU, UK and Dutch government, in order to find support for the selected factors influencing the speed of transposition. Official documents are considered the most reliable sources for this research, from either the EU or a representative of the EU and from official UK or Dutch government documentation or from a government representative. Academic works and articles were consulted to elucidate the research design and the topic of public procurement. This research has limited the consultation of sources other than official government (or EU) documents. Some sources were derived from a solicitor's office, consultancy companies and other procurement practitioners. When they have been consulted, they have been critically valued for its content. Interviews or other data flows could have enhanced the analytical results, however, due to time restraints this possibility was considered to lie outside the scope of this research. Nevertheless, this research has provided as much attention to detail as possible and paid close attention to the systematic description of results in the comparative analysis. The following paragraphs identify per chapter the sources from which data was obtained.

Chapter 3 presents the workings of the European public procurement directives. Numerous sources from the European Commission and other EU sources have been consulted for this chapter. The sources used in Chapter 3 are: the EC Single Market Scoreboard on Public Procurement (2013), the Commission's website on public procurement (2015a), a document published by the EC Directorate-General (DG) Internal Market and Services presenting information on the new rules on public contracts and concessions rules (2014) and information from a general EU website on public contracts rules and procedures (EU, 2015). Furthermore, a presentation held at the 10th Public Procurement Knowledge Exchange Platform by Jean-Yves Muylle (representative of the Head of Unit International Dimension of Public Procurement of DG Internal Market and Service) was consulted to obtain information on the modifications of EU procurement (2014). In addition, the Organization for Economic Cooperation and Development (OECD) published a series of SIGMA (Support for Improvement in Governance and Management) papers on public procurement. SIGMA is a joint initiative of the OECD and the European Union, principally financed by the EU (2007; 2010). A presentation by Oliver Moreau (representative of

the European Bank for Reconstruction and Development) on the implementation process of the new EU public procurement directives was consulted to obtain general information on the (judicial) competences of the European Commission (Moreau, 2015). Moreover, several academic sources of EU procurement professors were consulted. The work of Christopher Bovis proved particularly useful to present the policy objections of EU procurement legislation (2012a; 2012b). The works of Peter Trepte (2007) and Martin Trybus (2006) were generally used to clarify the procurement procedure. The study by Gelderman, Ghijsen and Schoonen, explaining non-compliance with EU procurement directives was used to accurately describe the development of procurement legislation (2010). A study by consultancy company Price Waterhouse Cooper (PWC) and Ecorys was used to give a definition of public procurement and to explain the procurement process in practice (2013). A general comment by Matt Wynne (see paragraph below) was used to indicate the commonly accepted notion for the need to modernize the former procurement directives (2013).

In order to determine the UK government policy interests in Chapter 4, the following government sources have been identified: the Crown Commercial Service briefing for procurement practitioners on the modifications of EU procurement rules (CCS, 2015), procurement information from the Cabinet Office, a government response to public consultations on the UK transposition of EU procurement directives (2015a) and a policy paper describing the government procurement policy form 2010 to 2015 (2015b). In addition, both the CCS and CO have provided useful information on the transposition of EU procurement directives on a collective website (2015). Furthermore, information from the House of Commons Library was obtained to indicate the institutional bodies involved and the complexity of legislative procedure to transpose the directives (House of Commons Information Office, 2008) and to clarify the concept of ‘gold-plating’ (see chapter 1) (Miller, 2011). The OECD source referred to in this chapter was used to clarify the procurement structure of the UK (2007). In addition, several presentations given by representatives of the CCS and CO were consulted. Matt Wynne, from Efficiency and Reform Group (part of the Cabinet Office) gave a presentation in 2013 in which he gave an update on the procurement negotiations at EU level and the UK implementation plans (2013). Peter Bennett (senior policy advisor and member of the CCS Procurement Policy Team) gave presentations on several occasions. Bennett gave a presentation on the UK’s approach to the new procurement directives and the UK’s implementation plan and

another on the state of play of the UK's transposition of the new procurement directives (2014a; 2014b). Both these presentations reflect UK's procurement priorities and the way in which the government portrays its policy interest during the procurement negotiations at EU level. These documents form the main sources for analysing the government interest towards the PPD. The statement that the UK was the first EU member state to transpose the new procurement directives was taken from a presentation held by Dariusz Piasta. His presentation, "Modernisation of the European Union public procurement policy and legal framework" was given on the SIGMA Regional Conference on Public Procurement (Piasta, 2015). On a few occasions, the document on the arrival of the UK Public Contracts Regulations 2015 by Holman, Fenwick and Willan (HFW) (a solicitor's office) was consulted to display specific data on the adopting and entering into force of the UK's procurement legislation.

An important source for both the UK and the Netherlands was a study by Deloitte called: "Transposition of EU regulation on public procurement. Country comparison between Sweden, UK and the Netherlands." (2014). This study provides a comparative analysis of procurement in the Netherlands, Sweden and the UK and on the transposition (plans) of the new procurement directives. This study is conducted to support a Danish government committee responsible for preparing legislation for the transposition of the new public procurement directives into Danish law, which was set up by the Minister for Business and Growth (Deloitte, 2014). This source gives a structured analysis of procurement in the UK and the Netherlands and the information in this document was used to obtain information on the government policy interest and number of actors involved to each country case.

In chapter 5, the following sources of information were consulted for determining the Dutch government policy interest: the speech given by Mr Verhagen, (at the time) Minister of Economic Affairs on the High Level Conference on Public Procurement is considered a valuable source of the Dutch government's expression of interest towards procurement policy on EU level (2011). Another important document is a policy document by the current Minister of Economic Affairs, Mr Kamp in which he further explains this incentive towards procurement policy and in which a reflection is made on the decision-making at EU level (2016). An advice given by the Council of State (*Raad van State*) was consulted as this rapport led to (technical) alterations of the draft Act (Raad van State, 2015). Other information was derived

from PIANOo, the Dutch centre of procurement expertise and official body of the Ministry of Economic Affairs (2015). Additional official websites were also consulted such as: ‘Overheid.nl’ (*government.nl*) which gives a chronological overview of decision-making on the adjustment of the Dutch Public Procurement Act 2012 (which transpose the new EU directives) (Overheid.nl) This information was verified by consulting the ‘regulation calendar’ on the ‘Xpert’ website, a website specialized in procurement and tenders (2015). In addition, the website of the Dutch Parliament (*‘Tweede Kamer der Staten-Generaal’*) was consulted in order to trace when important meetings on the modifications of the Procurement Act took place (2015; 2016). Lastly, the work of Mastenbroek on the transposition of EU directives in the Netherlands was consulted, in order to judge the complexity of several legal procedures in the Netherlands (2003).

The majority of sources were found online, either through regular search engines (such as Google scholar) or via the Leiden University catalogue. Sources in search engines were found by a combination of key words in the search job. Additionally, key events and documents also allowed a specific search (for example on the High Level Conference on Public Procurement).

The following books were lent from the library such as: ‘EU Procurement Law’ (Bovis, 2012a) and ‘Complying with Europe, EU Harmonization and Soft Law in the Member States’ (Falkner et al., 2005). The book ‘Developing Effective Research Proposals’ (Punch, 2006) is owned by the researcher.

Chapter 3: European Public Procurement

This chapter is divided into two sections. First, the development of EU public procurement legislation and the EU public procurement latest modifications are described. Second, it moves on by describing the workings of the public procurement directives by laying out the EU procurement thresholds and by describing the tendering procedures. The aim of this chapter is to get a better understanding of public procurement policy and to give an answer to the sub-question: What is public procurement?

3.1 Development of European Public Procurement

As mentioned in the introduction, public procurement is the term used to cover the process by which national, regional and local governments and other public sector and utility service providers spend public money on works, goods and services (PwC & Ecorys, 2013 p. 19). The main aim of EU PP legislation has been to stimulate economic growth in the internal market by prohibiting discrimination and stimulating transparency and fairness in the award of government contracts (EC, 2015a). The core principles underlying PP legislation are therefore non-discrimination, efficiency and transparency (Bovis, 2012a, p. 5). These three principles in turn reflect the aim to *optimize competitiveness* in the EU common market, *create value for money* and establish an *accountability tool* for public expenditure (Bovis, 2012a, p. 1). *Competition is optimized* by removing administrative and legal obstacles and by allowing cross-border tendering (Bovis, 2012a, p. 2). Furthermore, public procurement stimulates trade, resulting in increased competition, which leads to price convergence and best *value for money* for the taxpayer (Bovis, 2012a, p. 3). Public procurement enhances the transparency and *accountability* of public expenditure, which in turn is a useful tool for controlling mismanagement (Bovis, 2012a, p. 1). The directives enhance transparency, as they require that contracts awarded by a public actor (worth more than the established monetary thresholds) must be announced publically in the Official Journal of the EU (Trybus, 2006, p. 410). In practice, the publication often comes down to an e-notification in the TED database (Trybus, 2006, p. 413). According to the European Commission, PP legislation provides a framework that enables public authorities a greater choice when awarding a contract, while

ensuring the most efficient tender wins an assignment by establishing fair competition (EC, 2013; EC, 2015a).

Legislation of EU public procurement has developed as early as the 1970s (Gelderman et al., 2010, p. 244). The 1992 European Community Treaty (signed in Maastricht in 1992) forms the basis of the EU framework of free movements of goods, services and of public procurement legislation (Trybus, 2006, p. 411). As time progressed and member states continued to hold on to economic nationalism (in the case of public procurement; a tendency to choose national suppliers over other EU suppliers) additional legislation was necessary (Trybus, 2006, p. 412).

Over the years, the EU PP legislation expanded. The ECJ is an important actor in the evolution of PP law as the interpretations of legal concepts have been influenced by its jurisprudence (Bovis, 2012b, p. 221). Modifications to procurement rules have generally been introduced to simplify the procurement procedures, while other alterations reflect developing ECJ case law (Trepte, 2007, p. xxvii). With the 2004 procurement directives, a well-known problem was the fact that there was a perceived inefficiency about them; this would supposedly have a negative influence on their compliance (Gelderman et al., 2010, p. 251). Over time, there have been many calls for simplifying the procurement directives (Wynne, 2013, p. 3).

The European Commission announced it wanted to present legislative proposals by the end of 2011 and initiated the modifications of the 2004 procurement directives by opening public consultations with the publication of the ‘Green Paper on the modernization of EU public procurement policy’ in January 2011 (EC, 2011, p. 2). The public consultations collected responses from various stakeholders involved in public procurement legislation (such as businesses, public authorities, civil society, academics, legal experts, citizens etc.) (Muylle, 2014, p. 3). In June 2011, an impact assessment was presented, evaluating the existing rules on public procurement. The results of the impact assessment and the responses to the Green paper formed the foundation for a conference on public procurement (held 30 June 2011) which was held to exchange different viewpoints between policy-makers, procurement practitioners and civil society representatives on the modernization of the procurement directives (EC, 2011, p. 18). These developments led to a legislative proposal in December 2011 and in 2012, detailed negotiations in the European Council took place in working group meetings. In early 2013, the negotiations between the Commission, Council and European Parliament started to reach

agreement on the final text of the directives, which ended mid-2013 (Wynne, 2013, p. 4). All these recommendations resulted in the simplification of EU public procurement legislation and the adoption of the PPD on 28 March 2014 (Muylle, 2014, p. 3).

The modified EU public procurement directives are prescribed in three different directives. Directive 2014/23/EU on the award of concession contracts which is a new directive, Directive 2014/24/EU on public procurement (replacing Directive 2004/18/EC for Public Sector contracts) and Directive 2014/25/EU on procurement by entities operating in the water, energy, transport and postal services sectors (replacing Directive 2004/17/EC, for Utilities Contracts) (CO, 2015a, p. 2). Generally, legislation regarding the Sector Directive has been more flexible in providing companies operating in these lines of businesses more leeway to balance market pressure on the one hand and their monopoly position on the other hand (Trybus, 2006, p. 413).

Member states have two years to transpose the more than 350 pages of the directives into national legislation (Moreau, 2015, p. 3). The PPD came into force on 17 April 2014, and the deadline of transposing the PPD into national law is due on 18 April 2016 and September 2018 for implementing the mandatory e-procurement (EC, 2015a).

The EC monitors the progress of member state by questionnaires informing the EC on the planning and intentions of member state's implementation (Moreau, 2015, p. 5). The EC has launched several initiatives in order to assist member states with the transposition process. In response to requests for assistance received from member states during the implementation process, the EC provided several guidance notes on specific issues in order to aid consistent transposition of the procurement directives (Moreau, 2015, p. 6). Moreover, member states were able to send questions and even meet with the Commission to win answers and discuss certain issues. The aim of the Commission was not only to provide clarification but also enhance the commitment of member states towards proper implementation. When a member state appears to be lacking behind on implementation progress, the EU could issue letters at Director-General or even Commissioner level, stressing the importance of correct and timely transposition and signifying the legal consequences such as infringement measures (Moreau, 2015, p. 7).

Among the alleged improvements of the modified directives are:

simplification of the rules for bidders and contracting authorities by reducing the administrative burden, enhanced access of SME by providing the possibility to divide large contracts into smaller bids, gradually mandatory e-procurement (e-procurement refers to electronic public procurement: which requires publication via e-notification and provides electronic access to tender documents), clarifying the rules for public procurement exemptions, stimulating environmental considerations (Green Procurement), stimulating social and innovative policies, increasing the transparency and sound procurement procedures, strengthening the grounds for exclusion and anti-corruption measures (EC DG Internal Market and Services, 2014, p. 8; EC, 2015b).

The new public procurement directives consider broader parameters to include social considerations and the stimulation of Green Procurement in the evaluation and awarding of bids. An example of social procurement occurs when a local authority grants a contract to a firm that employs more long-term unemployed people for the maintenance of urban green spaces. An example of Green Procurement could be favouring the purchase of new (initially more expensive) public busses, which use less fuel, are more sustainable and require less maintenance (EC DG Internal Market and Services, 2014, pp. 8-9).

3.2 The Workings of Public Procurement

The process of public procurement occurs roughly in four phases: preparation of the tender, publication of the tender, evaluation of the bid and the post-award phase (PwC & Ecorys, 2013, p. 70). In the preparation of the tender, the contracting authority estimates the value of the tender and determines the award criteria on which the tenders are evaluated upon. Examples of award criteria could be: sustainable criteria or best value for money (EU, 2015).

The PPD establish thresholds above which EU PP rules apply (EC, 2014a, p. 21). The monetary thresholds are established by the European Commission and reviewed every two years (Directive 2014/23/EU, p.22). Allowed exemptions from the EU procurement rules are formed by specialized services such as defence purchases for reasons of national security (Trybus, 2006, pp. 413, 419). The ECJ argued that these exemptions of PP law should be interpreted narrowly (Trybus, 2006, p. 419). The monetary thresholds are different for central government authorities and

sub-central contracting authorities and they are divided into public works, public supply and public services.

Tenders with a value below the EU thresholds are procured on national level. EU rules on public procurement apply only above these thresholds, because for less valued contracts, the costs of EU tending are likely to outweigh the benefits (Trybus, 2006, p. 419). Less valued contracts are particularly interesting for SME as these contracts comprised 2% of EU's GDP and amounted to an estimated € 250 billion in 2008 (Bovis, 2012a, p. 4). Additionally, SME represent over half of the EU economy (52%) (EC DG Internal Market and Services, 2014, p. 6). By allowing the possibility to divide large contracts into smaller bids, the new PPD aim to enhance the participation of SME.

Many member states regulate public procurement law below EU thresholds according to similar complex and tough legislation as EU procurement legislation. Generally, these do not differ much in principle from open, fair and competitive procedures applicable under the EU directives (OECD, 2010, p. 7). After all, the general principles of the EU Treaties such as transparency and non-discrimination on grounds of nationality must always be ensured (Trybus, 2006, p. 419).

Apart from overseeing monetary thresholds, the EU PP legislation also prescribes procedures and requirements for the award of contracts. The awarding of contracts proceeds according to tending procedures in order to establish an equal level playing field for tenders involved in EU public procurement (Bovis, 2012a, p. 2). The procurement procedures require the consultation of several tenders in order for the best bid to be selected as this ensures a better value for money. The procedures prescribed by the PP directives allow a different degree of competition for business to respond to a call for tenders (EC, 2014b, p. 26). The four subsequent procedures are among the most commonly used:

- *Open procedure*: any business can participate in submitting a tender; there is open competition. The contract is announced in the Official Journal of the European Union (Trepte, 2007, p. 649).
- *Restricted procedure*: any business may respond to the notification published in the Official Journal, but only pre-selected businesses may submit a tender based on their qualifications (Trepte, 2007, p. 651). The pre-selection narrows down the amount of tenders, making the Restricted procedure less time consuming and less expensive.

- *Negotiated procedure*: enables the public authority to invite at least three businesses of its choice with whom the terms of the contract are negotiated upon. There is either publication or no notification published of the call for tenders. This procedure may only be used in a limited number of cases (Trepte, 2007, pp. 652-653).
- *Competitive dialogue*: is suitable for complex contracts; this encompasses a tender of which the technical specifications cannot be defined by the public authority (EC, 2013, p. 2). An example in which the competitive dialogue procedure may be used is for large infrastructure projects (EU, 2015).

Public actors can apply the Open and Restricted procedure without any restrictions, only when they would want to make use of the Negotiated procedure, they have to justify their choice. This can be justified by demonstrating specific circumstances, such as: “extreme urgency or intellectual property constraints” (Trybus, 2006, p. 420). Other procedures include: *Single tender*: when a contract’s value does not exceed € 5000,- a provider might be selected without competition and the *Dynamic Purchasing System*: encompasses a “completely electronic process for making commonly used purchases” for which the threshold is not delineated (Trepte, 2007, p. 654).

3.3 Summary

This section summarizes the findings of this chapter and by that means gives an answer to the sub-question: ‘What is public procurement?’ Public procurement covers the process by which national, regional and local governments spend public money on works, goods and services. Public procurement legislation creates an equal level playing field for the award of contracts. The awarding of contracts proceeds according to tendering procedures and monetary thresholds, which determines the consultation of several tenders for the best bid to be selected, ensuring a better value for money. The procurement framework allows public authorities a greater choice when awarding a contract, ensuring competitive tendering, non-discrimination and transparency. The modifications of the PPD aim to establish flexible legislation, which enhances the inclusion of SME and selection of social and Green procurement. The following chapter moves on to the examination of the transposition of the PPD in the UK, followed by the case study of the Netherlands the subsequent chapter.

Chapter 4: Case Study the United Kingdom

This chapter gives an outline of the transposition process of the public procurement directives in the UK. The objective of this chapter is to give an answer to the sub-question: How has the United Kingdom transposed the public procurement directives? In order to answer this question, the UK's public procurement institutional setting is described in the first section. Secondly, the position of the government towards the PP directives is indicated. The third section describes the transposition process and the legal procedure that led to the transposition of the directives. The last section of this chapter summarizes the findings of this chapter.

4.1 Institutional Setting

Since July 2014, the Crown Commercial Service (CCS) is in charge of the government procurement policy representing the UK's central procurement service (CCS, 2015, p. 3). The CCS is assigned to negotiate public contracts on behalf of all government departments and the wider public sector and aspires to achieve greater value for money in public procurement (CO, 2015b). The CCS is an executive agency of the Cabinet Office (CO) and responsible for preparing the transposition of the procurement directives into UK legislation by means of regulations (CCS, 2015, p. 6). The CCS merged the former Government Procurement Service and procurement activities undertaken by departments and other Cabinet Office purchasing teams (CCS, 2015, p. 3). The aim of the CCS is to be a comprehensive expert on commercial advisory service and to function as a central representative body towards the EU and other international institutions (CCS, 2015, p. 4). Before the creation of the CCS, the public procurement structure of the UK was considered to be 'semi-centralised' (OECD, 2007, p. 83). With the establishment of the Crown Commercial Service, the UK procurement created a centralised procurement structure.

The Efficiency and Reform Group (ERG) laid the foundations of the Crown Commercial Service. The ERG put forward several policy objectives in 2010 to save money by improving UK procurement policy (CO, 2015b). Two policy objections identified were: the creation of the CCS and a target to spend 25 % of government spending on SME in 2015 by creating accessible government contracts and procurement projects for SME (Deloitte, 2014, p. 9). A EU target expressed the aim to create simpler, more flexible EU procurement rules in Brussels (CO, 2015b).

4.2 Government Position towards EU PP Directives

This section indicates the position of the UK towards the EU PP directives. On EU level, the UK started an early influencing campaign already in 2011, followed by a negotiation campaign in 2012 (Wynne, 2013, p. 13). The UK negotiation campaign consisted of extensive negotiations and lobbying in Brussels (CO, 2015a, p. 2). The UK approach towards the negotiations was formulated before the EU Council meetings begun in 2012 (Bennett, 2014a, p. 3). The general approach adopted by the UK government was that the procurement process needed to be simplified. Getting that message across during the policy formation at the EU level was the key goal of the CCS (CCS, 2015, p. 5). Identified priorities of the UK were: deregulation, facilitating opportunities for SMEs, stimulating growth by simplifying the procurement rules, deficit reduction (Wynne, 2013, pp. 5-6). The aim of the UK government was to limit regulation to a minimum because according to the government, contacting authorities know best how to design the procurement process most efficient and effective (Deloitte, 2014, p. 9). The UK government expressed a strong incentive to achieve improvements on these priorities at the European level. In addition, it was the UK government position to prepare for transposition of the new procurement directives, already in mid-2013 (Wynne, 2013, p. 4).

In a briefing provided by the CCS, the CCS addresses a change in attitude of the UK's modus operandi compared to previous procurement approaches. It argues that in the past, the government has often been over-conservative and risk averse with regards to procurement approaches, resulting in lost of value and frustrating suppliers wanting to do business with the government. In addition, the EU public procurement policy did not have a good reputation as the EU was considered to prevent good practice (CCS, 2015, p. 9). The clearly defined European strategy and proactive attitude of the UK government is thus a new approach in an attempt to grant the interest of the UK.

According to Cabinet Officer Matt Wynne, the following changes were UK-inspired and established at EU level:

- “Much simpler process of assessing bidder’s credentials (greater use of supplier self-declarations)
- More freedom for buyers to negotiate with suppliers (relaxation of previous rules)

- Legally exclude suppliers who have a poor track record
- Simplified rules on ‘Dynamic Purchasing Systems’ (which allows new suppliers to join a pre-tendered, electronic framework agreement at any stage during the life of the framework; this is good for procurers as it gives greater access to new suppliers)
- Permit the use of e-procurement as this enables much greater flexibility for the public sector to take advantage of efficient and modern commercial approaches when buying goods and services
- Reduced ‘red tape’ (excessive legislation) on suppliers’ response time
- Legal clarity so that buyers can take into account the relevant skills and experience of individuals when awarding contracts (for consultants, lawyers, architects, etc.)
- Improvement of social and environmental rules (making it explicitly clear that social aspects can now also be taken into account in certain circumstances, in addition to environmental aspects which had previously been allowed)” (Wynne, 2013, pp. 7-10).

Moreover, alterations responsible for freeing up contracting authorities and the ability to use commercial best practice were also attributed to UK negotiation success (CCS, 2015, p. 9).

In addition, according to Peter Bennett (senior policy advisor and member of the CCS Procurement Policy Team), the following advantages of the modified procurement directives are in line with the on-going programme of the UK domestic reform:

- “Allowing a flexible approach towards employee led organisations to enable employees to gain experience of running public services prior to full and open competition
- Reduce lengthy and burdensome procurement processes that add cost to business and barriers to market competition
- Modernise the procurement procedures and provide more flexibility for purchasers to follow the best commercial practice (so that the best possible procurement outcomes can be achieved)
- Support measures to enhance SME access to public procurement (where such measures are non-discriminatory and are consistent with the value for money approach)” (Bennett, 2014b, p. 2).

Moreover, Wynne also listed proposals successfully blocked by the UK because they were considered incompatible with the interest of the UK:

- “National oversight bodies (this would have meant the UK was obliged to set up a new administrative entity and deliver various legal, advisory and training services to buyers and suppliers, it would have been extremely costly and burdensome activity and interfered with the rights to organise these matters independently)
- Extension of the scope of the rules (the UK has restricted the Commission’s proposals to extend the detailed rules regime to cover more types of contract, so the UK can continue to enjoy “lighter-touch” rules for some contracts)
- Market-closing to third countries (the UK has blocked a proposal to make the public procurement rules more protectionist, this helps keep markets open and competitive, in line with UK government policy)
- European Procurement Passport (EPP) (this would have meant UK authorities would have to issue an EPP containing various supplier details, as evidence of their credentials, according to the UK, it was bureaucratic, costly, and unnecessary)
- Mandatory splitting of large contracts into smaller lots (this could have been legally risky for procurers that had good reasons for keeping contracts whole, the UK has constrained it so procurers are still encouraged to split contracts but not obliged to do so)” (Wynne, 2013, p. 11).

Overall, the CCS’s briefing stated: “the UK government view is that the new directives represent a significant improvement of the EU procurement ‘rules’ for both procurers and suppliers” (2015, p. 6). In addition, both contracting authorities and business supported the new procurement rules as they speed up the procurement process and eliminate ‘red tape’ (CCS, 2015, p. 6). The new directives are considered to contribute to growth and reducing deficits (Bennett, 2014b, p. 2). According to the CCS briefing, the procurement directives outcomes were the result of “an excellent negotiating outcome for the UK” (2015, p. 9). In order to make use of the more efficient and flexible procurement procedures as soon as possible, fast transposition was encouraged by the government (CCS, 2015, p. 6). Overall, the new procurement policy is thus as a positive improvement according to the UK government in which the CCS played a significant role.

4.3 The Transposition Process

Although the UK government realized that fast transposition was going to be a challenge (as transposition requires the adoption of several hundreds of pages into national legislation) several activities were taken to prepare for this challenge. Examples of these actions are: “a government policy on consultation, sorting out complex policy choices, impact assessments, regulation drafting and a strategy on training and embedding” (Wynne, 2013, p. 12).

Regular exchange was held between the government and procurement related industries, social partners and other organizations (Bennett, 2014a, p. 3). Although there was little scope in the PPD for member states to exercise discretion, the public consultations focussed on those areas where the UK was able to make policy choices (HFW, 2015, p. 2). Stakeholders were engaged in policy decision by means of a series of discussion papers in 2013 to inform stakeholders on the government view on various policy choices (CO and CCS, 2015). Moreover, the UK consulted stakeholders before transposing the PPD into UK legislation (CCS, 2015, p. 7). The consultation was launched on 19 September 2014 and responses were published on 30 January 2015 (HFW, 2015, p. 2). The results of the consultation affirmed the government position on policy choices allowed by the directive (CO, 2015a, p. 3).

One of the policy positions stakeholders generally agreed on was to adopt a ‘copy-out approach’ (CO, 2015a, p. 5). A ‘copy-out’ approach was taken by the UK, in an attempt to avoid ‘gold-plating’ (Bennett, 2014b, p. 3). By adopting a ‘copy-out approach’ and staying close to the text of the PP directives, it is suggested the UK did not make much use of its discretionary authority.

Several months prior to the adoption of the new public procurement directives in the UK, the CCS made training materials and briefings available to explain the main changes of the new PPD and to assist contracting authorities and procurement practitioners throughout the public sector to prepare for the modifications (CCS, 2015, p. 5). The CCS formulated the aim of the training: “To encourage procurers to feel empowered by the changes to the directives” (2015, p. 9). In June and July 2014, over 200 face-to-face training sessions were given across the UK by 140 Cabinet Office trainers, reaching 6000 procurement personnel (Bennett, 2014b, p. 9). In addition to training materials, the CCS provided access to a free ‘E-learning’ programme and other sources of information on the UK government’s website (CCS,

2015, p. 6). The UK government developed and implemented solid plans for transposition and prepared the public sector by way of intensive communication activities to demonstrate the benefits of the modified PPD (Wynne, 2013, p. 13).

This resulted in the UK being the first to implement the new public procurement directives under the 'Public Contracts Regulations 2015' (PCR 2015) (Piasta, 2015, p. 4). The UK transposed the 2014 EU public procurement directives and replaced the former Public Contracts Regulations of 2006 (Deloitte, 2014, p. 11). The Public Contracts Regulations 2015 were published on 5 February 2015 and came into force on 26 February 2015, considerably before the directives' deadline of 18 April 2016 (HFW, 2015, p. 1).

The UK has transposed the procurement directives by way of three separate Statutory Instruments (SIs) for each of the procurement directives, replacing the former SI on procurement (Bennett, 2014b, p. 3). Most UK procurement legislation is transposed by means of secondary legislation (OECD, 2007, p. 83). Statutory Instruments are a form of secondary (or delegated) legislation "which allow the provisions of an Act of Parliament to be subsequently brought into force or altered without Parliament having to pass a new Act" (House of Commons Information Office, 2008, p. 1).

4.4 Summary

The aim of this chapter has been to answer the sub-question: How has the United Kingdom transposed the public procurement directives? Initially, the creation of the Crown Commercial Service, operating as a central institution representing all government procurement departments, showed a newly adopted attitude of the UK in EU negotiations. The UK was on the forefront expressing their policy priorities. The government had prepared clearly stated policy objectives to negotiate the modifications of the procurement directives. It was the purpose of the UK to create simpler, more flexible EU procurement rules. The Crown Commercial Service achieved various wins during EU negotiations. The resulting EU public procurement directives are considered an excellent negotiation outcome for the UK, in line with the domestic programme. The government expressed the interest to transpose the PPD as soon as possible. UK interest group and stakeholders supported the governments' position on public procurement. Fast transposition enables actors to profit from the

expected benefits of the new PPD (such as: inclusion of SME, flexibility and efficiency). By applying a ‘copy-out approach’ and staying close to the text of the PP directives, it is suggested the UK did not make much use of its discretionary authority. The government developed and carried out solid implementation plans and prepared an extensive number of local authorities and procurement practitioners for the new PPD with use of training materials and briefings. During these intensive communication activities, the benefits of the PPD modifications were demonstrated extensively. The public procurement directives were transposed by means of Statutory Instruments under the name of ‘Public Contracts Regulations 2015’ on the 5th of February 2015. The use of secondary legislative instruments boosted the UK’s fast transposition.

Chapter 5: Case Study the Netherlands

This chapter adopts a similar structure as the previous chapter and is divided into four sections. The first section introduces the Dutch procurement institutional framework. The second section formulates the position of the Dutch government towards the PP directives. Third, the government transposition process and the legal procedure are set out. The last section presents a summary. This chapter sets out to delineate the transposition process of the procurement directives in the Netherlands in order to answer the sub-question: How has the Netherlands thus far transposed the public procurement directives?

5.1 Institutional Setting

Dutch public procurement is characterized by a highly decentralized system with contracting authorities on national, regional, and municipal level responsible for their own procurement; there is no national agency that coordinates all public procurement. The Ministry of Economic Affairs, and specifically the Director-General Energy, Telecom and Competition is responsible for Dutch public procurement law and its execution. Part of the Ministry of Economic Affairs is the Dutch Public Procurement Expertise Centre 'PIANOO' (acronym for '*Professioneel en Innovatief Aanbesteden, Netwerk voor Overheids-opdrachtgevers*'), which has the objective to professionalize procurement and tendering in all government departments and to improve efficiency and compliance with the rules (Deloitte, 2014, p. 13).

A way in which PIANOO attempts to make it accessible for companies to keep track of relevant tenders is by providing an online procurement system 'TenderNed' in which all (pre) announcements of tenders (national and European) must be advertised. TenderNed also offers full digital support for e-procurement. PIANOO also cooperates with the Dutch Authority for Consumers and Markets (ACM) to advise contracting authorities, ACM is tasked with monitoring unfair competition in public procurement and authorized to impose fines on contracting companies (Deloitte, 2014, p. 13).

The current procurement legal framework in the Netherlands is regulated by the '*Aanbestedingswet 2012*' (Public Procurement Act 2012), which regulates the principles from the EU directives and procurement below the thresholds. The Public Procurement Act 2012 entered into force in April 2013. The main policy goal of the

Public Procurement Act 2012 was to reduce transaction costs for tenderers and the main changes included: “promoting the involvement of SME (for example by splitting contracts into smaller parts (if possible) however, contracts may only be combined with a proper reason), the introduction of the Proportionality Guide (as a binding policy between procured contract, choice of procedure and selection criteria), reducing the transaction costs for tenderers with the use of e-procurement supported by TenderNed, proportionality requirements, the standard use of the self-declaration form in which tenders declare to meet certain requirements and tender documents are made available free of charge” (Deloitte, 2014, pp. 12, 40).

In addition to the Public Procurement Act 2012, there are two binding guidelines. The first is the Proportionality Guide, to ensure proportionality between the type and size of contract and the requirements to the procurement process (such as choice of procedure, selection and award criteria) (Deloitte, 2014, p. 12). The second guideline is formulated in the Public Procurement Rules for Public Works 2012 ‘*Aanbestedingsreglement Werken*’ (referred to as ARW 2012). The ARW 2012 adapts the European procedures for procurement below the thresholds within the public works sector (construction and infrastructure services), but with fewer rules (for instance different requirements for preannouncements and deadlines) (Deloitte, 2014, p. 12). The Proportionality Guide and the ARW 2012 follow what is called the ‘apply-or-explain’ principle, which means that contracting authorities are to apply these specific rules unless they are able to motivate why the rules do not apply in a specific procurement process.

The extensive changes brought forward by the Public Procurement Act 2012, Proportionality Guide and ARW 2012 have been implemented in April 2013. According to the Ministry of Economic Affairs, the Dutch regulatory framework (adopted in 2013) already anticipated the new EU procurement directives on many accounts and as a result, a limited number of regulation and new initiatives will be expected with the transposition of the new procurement directives (Deloitte, 2014, p. 25).

5.2 Government Position towards EU PP Directives

This section indicates the position of the Dutch government towards the EU PP directives. The interest of the Dutch government towards its national procurement policy comprises the 2012 policy goals mentioned above. However, preliminary to the

formulation of these policy goals, specific priorities regarding the EU public procurement directives were announced in a speech held at the Conference on Public Procurement on 30 June 2011 by Maxime Verhagen, (at the time) Dutch Minister of Economic Affairs. In this speech, he agrees with (Internal Market and Services) Commissioner Barnier to simplify and modernize EU public procurement rules and to improve the participation of SME in public contracts. Moreover, Verhagen specifically mentioned the desire for cheaper and smarter rules to stimulate growth, innovation and sustainability (Verhagen, 2011). In this speech he stated three proposals:

1. “Continue cutting ‘red tape’ and reduce the administrative burden for companies. Generally, the Dutch Minister suggested refraining from imposing detailed legislation at EU level and to focus instead on effective tools to help purchasers with decision-making. Two examples were given as effective tools: the first tool suggested the introduction of the self-declaration form (as used in the Netherlands) in the text of the European directives. The second tool is the promotion of e-procurement.
2. Making life easier for SME by raising the thresholds. The Minister of Economic affairs advocated a rise of the monetary thresholds as this would ease public contracting for SME and lower the costs of European procurement procedures.
3. Modernising procedures by introducing more flexibility. As an example, the Dutch Minister plead for adopting a professional approach to procurement and increase the expertise of procurement professionals” (Verhagen, 2011).

5.3 The Transposition Process

The Netherlands is implementing the new EU public procurement directives by modifying the current Public Procurement Act 2012 (Raad van State, 2015). The government undertook several activities preceding the transposition process.

An internet consultation was held from April until May 2015 with the aim to collect responses from procurement practitioners on the draft regulation modifying the current Procurement Act 2012 and implementing the EU PPD (PIANOo, 2015). Towards the end of June 2015, the Council of Ministers approved the modifications to the Procurement Act (Overheid.nl). In July 2014, an evaluation of the Public

Procurement Act 2012 was held (Xpert, 2015). Early July 2015, the draft Public Procurement Act was proposed to the Council of State who presented an advice on 11th September 2015, which led to alterations to the draft Act (Raad van State, 2015, p. 1). The Council of State predominantly gave technical suggestions to ensure accurate transposition of the directives (Raad van State, 2015). Mr Kamp, (the current Minister of Economic affairs) presented a draft Act for modifying the Public Procurement Act 2012 to Parliament on 29th of October 2015, this draft Act included the suggested alterations by the Council of State (Tweede Kamer der Staten-Generaal, 2015). Parliament has to approve the draft Act before the Senate has can give a final approval (PIANOo, 2015).

In a policy document presented on 19th of January 2016, the Minister mentions that many of the Dutch procurement interest are represented in the directives, except for the policy interest of raising the monetary thresholds (Kamp, 2016, p. 1). In the same document, the minister answers questions raised by Parliament in response to the proposed Act. The questions were raised by different parties and expressed the concern that the new Procurement Act does not further improve the position of SME (Kamp, 2016, p. 2). In his reaction, the Minister stressed the fact that the proposed Act merely deals with implementation of the EU directives (Kamp, 2016, p. 1). Moreover, he mentioned that the Public Procurement Act 2012 anticipated the changes of the new procurement directives and as these regulations already intended to enhance the position of SME, he suggests to stay close to the text of the Procurement Act of 2012 (Kamp, 2016, pp. 2-3). In support of his argument, he stresses the importance of sturdiness of procurement policy as procurement practitioners have endured many changes to procurement policy recently (Kamp, 2016, p. 4). Contrary to critique raised in Parliament, modifications to the national Public Procurement Act 2012 will not include improvements based on the national evaluation. According to Minister Kamp, the evaluation showed that improvements can be established by better application of the law and therefore does not require improving the law (Kamp, 2016, p. 3). A second draft Act (including some technical changes) was presented to Parliament on the 9th of February 2016 (PIANOo, 2016). It was planned that Parliament would consult again on the draft Act on 11th of February 2016 however, this was postponed and planned in the week of 7th of March 2016 (PIANOo, 2016). With a continuous debate in Parliament, it becomes interesting to see if the transposition will come together in time. Once Parliament approves the Act,

the Senate also has to approve the legislation. It is believed that without further struggle, the Netherlands is able to transpose the EU procurement directives in time.

PIANOo and 'Europe decentralized' organized four practical information seminars planned in January and February 2016 for buyers, legal personnel and project managers working at national, regional and municipal level (PIANOo, 2015). In addition, the website of PIANOo provides information on the modifications of the new directives and is accessible for anyone interested in Dutch procurement.

The following section clarifies which legal instrument was used in the Netherlands to transpose the procurement directives. According to the work of Mastebroek (2003) there are four categories of legal measures used to transpose a directive in the Netherlands: statutes (*wetten in formele zin*), Orders in Council (*algemene maatregelen van bestuur*), Ministerial Orders (*ministriële regelingen*) and other techniques (such as self-regulation, circulars and covenants) (pp. 376-377). From the information on the transposition process it becomes clear that the Netherlands is planning to modify the Public Procurement Act 2012 and transpose the EU procurement directives in a new Public Procurement Act by means of statutory law. According to Mastebroek (2003), statutes probably take the most time because it requires the involvement of advisory boards, the Council of State and Parliament resulting in a lengthy procedure (p. 376). This primary legal instrument takes a more complex legislative procedure in comparison to other legal instruments. The involvement of the Council of state, Parliament and Senate creates a lengthy legislative procedure. Order in Council and Ministerial Orders consume less time because there are fewer actors involved.

5.4 Summary

The objective of this chapter was to answer the sub-question: How has the Netherlands thus far transposed the public procurement directives? Public procurement in the Netherlands proceeds according to a decentralized procurement structure, as public authorities on national, regional and municipal level are responsible for their own procurement. The Netherlands recently reformed Dutch procurement regulation in 2013 by adopting the 'Public Procurement Act 2012'. The Public Procurement Act 2012 anticipated expected changes on EU procurement legislation. On EU level, the Dutch government successfully advocated the adoption

of the self-declaration form and mandatory e-procurement tools into the text of the directives. The Dutch government is a strong advocate for lowering transaction costs and efficient tendering with as little EU legislation as possible. The only Dutch procurement priority not granted by directives, was the raising of the monetary thresholds. In the end, the procurement directives were to a large extent in the interest of the Dutch government. Aside from a speech given by the Dutch Minister of Economic Affairs at the High Level Conference on Public Procurement in 2011, no specific EU negotiation strategy was identified. It is expected that the interest of the Dutch government is to transpose the EU procurement directives into Dutch regulation with as few changes as possible, with no major revision of the current Public Procurement Act 2012.

Chapter 6: Comparative Analysis

The objective of this chapter is to make a comparative analysis of the data in accordance with the analytical framework. This chapter is divided in two sections. The first part makes a comparative analysis to what extent the causal theoretical factors influence the speed of transposition of PPD in the UK and the Netherlands. Table 3 presents the results of this research. The second part reflects on the relative importance of these factors in comparison to each other. The resulting validation for factors of rapid transposition allows an answer to the research question, presented in the conclusion.

6.1 Presence of Causal Factors

EU Negotiation Strategy

According to Börzel (2002), policy uploading is a way in order to keep the cost of policy downloading low. Low implementation costs ease the transposition process and thus enhance the speed of transposition. An indication of policy uploading was traced by comparing whether the sample differed in their approach towards EU negotiations. An active EU negotiation strategy of national interest representation has been defined as an important condition to create a greater fit between government interests and the EU procurement directives (the second selected causal factor of this research).

The UK had a clearly defined EU negotiation strategy with an early influencing campaign in 2011 and lobby campaign in Brussels (Wynne, 2013, p. 13). Towards the EU negotiations, the Crown Commercial Service functioned as a central representative body (CCS, 2015, p. 4). The UK government expressed a strong incentive to achieve improvements on their priorities at the European level. The negotiation strategy and strong incentive to get the interest of the UK across during the policy formation at EU level was different from previous approaches towards procurement negotiations (CCS, 2015, p. 9). The clearly defined European strategy and proactive attitude of the UK government is thus a new approach in an attempt to grant interest of the UK. The outcome of the EU procurement directives is considered a success for the UK, and the results were ascribed to the UK's negotiating efforts (CCS, 2015, p. 6). The creation of the CCS played a significant role in contributing to a strong negotiation position.

Apart from the speech on the High Level Conference on Public Procurement by Maxime Verhagen, (at the time) the Dutch Minister of Economic Affairs, no clear EU negotiation strategy was defined. A speculation could be that the timing of major domestic procurement reforms and the anticipated changes in 2013 might explain the absence of a clearly defined EU strategy towards the negotiations on the EU level, however no evidence was traced for this assumption. Nevertheless, apart from an absent EU negotiation strategy, the anticipated changes of the Dutch government during the regulatory framework adopted in 2013, also kept the costs of implementation low. The Dutch regulatory framework anticipated the 2014 EU procurement directives on many accounts and as a result, a limited number of regulation and new initiatives will be expected with the transposition of the new procurement directives (Deloitte, 2014, p. 25). Also, Minister Kamp stressed the fact that the proposed Act merely deals with implementation of the EU directives, he argued that it is important to stay close to the text of the Procurement Act of 2012 as procurement practitioners had to endure many changes of procurement regulation (Kamp, 2016, pp. 1-4).

In conclusion, whereas the UK had a clearly envisioned negotiating strategy towards Brussels, this was not defined in the Netherlands. The CCS, set up during the year prior to the adoption of the new procurement directives, created a centralized structure and represented the UK in the EU negotiations. In addition, a new strategy was adopted towards the negotiations; instead an over-conservative and risk adverse attitude similar to procurement approaches in the past, the CCS enabled the UK to take on an assertive attitude. The CCS assisted the UK in getting their interest across and was able to block propositions not in their interest. The UK was therefore able to held a successful lobby at EU level. Despite the lack of EU negotiation strategy, the Netherlands was able to express a few policy priorities at the High Level Conference on Public Procurement in 2011. Moreover, the Netherlands succeeded to reduce the costs of implementation by anticipating the modifications of the 2014 Public Procurement.

As a result of a clearly defined EU negotiation strategy of the UK and the important part the CCS played in the successful outcome of the negotiations, the conclusion is drawn that lowering the costs of implementation was a much higher priority for the government of the UK than the Netherlands. The costs of implementation of the Netherlands would already be reduced, as they anticipated the

changes of the procurement modifications. The Dutch case revealed a remarkable situation in which the changes of the procurement directives were anticipated upon.

Fit with Government Interests

In light of the research question this study aims to answer, this section judges to what extent the EU PPD fit with the government interests of the UK and the Netherlands. In order to assess to what extent the government interests are in line with the EU PP directives, the following section recapitulates the modifications the new PPD supposedly bring about. The paragraphs that follow indicate the policy interests per government. In addition to the policy interest, it is also indicated whether the member states had an interest in fast transposition.

The new PPD comprise the following (alleged) improvements: simplifying the rules for bidders and contracting authorities by reducing the administrative burden, increasing the participation of SME in EU procurement by providing the possibility to divide large contracts into smaller bids, gradually obliging e-procurement, clarifying the rules for public procurement exemptions, stimulating Green Procurement, stimulating social and innovative policies, increasing the transparency and creating sound procurement procedures by strengthening the grounds for exclusion and anti-corruption measures (EC DG Internal Market and Services, 2014, p. 8; EC, 2015b).

The following UK policy interests are in accordance with the EU PPD: to simplify and modernise PP legislation, stimulate growth, create more flexibility, permit the use of e-procurement, improve social and environmental rules, cutting red tape and establish deregulation and enhancing the participation of SME (Wynne, 2013, pp. 4-10; Bennett, 2014b, p. 2). In addition, several policy suggestions not in line with the interest of the UK were successfully blocked (Bennett, 2014b, p. 2). The UK government views the new directives as a significant improvement of the EU procurement rules (CCS, 2015, p. 9). The procurement directives are very much in line with the government interests in case of the UK. Overall, it is concluded that the fit with the government interests towards the EU PPD is substantial.

As a result of the good fit with government interests, the UK government expressed a clear interest for fast transposition, in order to make use of the (supposedly) more efficient and flexible procurement procedure as soon as possible (CCS, 2015, p. 6). An elaborate implementation strategy was defined in order reach that goal.

In the case of the Netherlands, Minister Verhagen expressed the Dutch policy priorities towards the EU PPD, in a speech on the High Level Conference on Public Procurement in 2011. Among the policy priorities expressed during this speech and implemented in the procurement directives are the self-declaration form and e-procurement tools (Verhagen, 2011). Another policy priority addressed by the Dutch Minister in this speech was increasing the monetary thresholds (Verhagen, 2011). The new PPD were not able to grant this interest, due to commitments in bilateral and multilateral agreements such as the World Trade Organization (WTO) (EC, 2011). However, as indicated in Chapter 3, the Commission reviews the monetary thresholds every two years. Additionally, Dutch policy priorities towards the EU PPD were also formulated in the policy goals of the Public Procurement Act 2012. Among the Dutch policy priorities in line with the EU PPD are: simplification and modernization of the EU procurement legislation, cutting of red tape, introduction of more flexibility, refraining from imposing detailed legislation, reduction of transaction costs for tenders, enhancement of the involvement of SME and obliging the use of e-procurement (Deloitte, 2014, pp. 12, 40). In a policy document presented on 19th of January 2016, Minister Kamp, expressed that in despite of raising the monetary thresholds, a large majority of policy interests of the Dutch government were reflected in the new EU procurement directives (Kamp, 2016, p. 1). Therefore, it is concluded that in the case of the Netherlands, there was also a substantial fit between the Dutch interests towards procurement policy and the EU procurement directives. An interest to transpose the EU procurement directives faster than the statutory deadline was not defined in the Netherlands.

Both countries had clearly defined national priorities towards PP policy. Both the UK and the Dutch government interest towards EU public procurement policy was to simplify and modernize procurement legislation, permit the use of e-procurement, both member states expressed the interest to cut red tape and enhance the participation of SME. Additionally, both countries advocated to reduce transaction costs, enhance the efficiency of procurement with the minimum amount of legislation possible. As all of these aspects are established in the EU PPD, it is concluded, that in both countries the national interests were in line with the EU public procurement directives and that there is a substantial fit with the government interests in both cases.

As a result of a good fit between the EU directives and UK national interests towards procurement, an explicit interest to transpose the directives before the statutory deadline was identified in the case of the UK. This interest was not expressed in the case of the Netherlands.

Complexity of Legislative Procedure

The UK transposed the procurement directives by way of Statutory Instruments (Bennett, 2014b, p. 3). Statutory Instruments are a form of secondary legislation “which allow the provisions of an Act of Parliament to be subsequently brought into force or altered without Parliament having to pass a new Act” (House of Commons Information Office, 2008, p. 1). The Public Contract Regulations 2015 were thus passed in a limited parliamentary procedure. The choice of primary legal instrument enhanced the speed of transposition.

The Netherlands is transposing the EU procurement directives by modifying the Public Procurement Act 2012 and this legislation is adopted by means of statutory law. Statutory law is a form of primary legislation and requires a full parliamentary procedure requiring the consent and involvement of the Council of Ministers, the Council of State, and the two chambers consisting of Parliament and the Senate (Mastenbroek, 2003, p. 376). This directly inhibited the speed of transposition.

Although the case studies show no indication of exact numbers of actors involved in the policy process, an assessment of the complexity of the legislative procedure can be made based on the information presented above. It is argued, that Statutory Instruments (secondary legislation) in the UK comprise of a more simple procedure than statutory law (primary legislation) in the Netherlands. In the UK, the PCR 2015 were laid before Parliament on the 5th of February 2015 and on the 26th of February 2015 the new legislation came into force. Whereas in the Netherlands, before proposing a draft Act to Parliament, the Council of State was consulted (Council of State’s was requested to give an advice beginning of June 2015), the findings were published on the 11th of October 2015 and laid before Parliament on the 29th of October 2015 (Overheid.nl). After critically assessing the draft act, the Dutch Parliament is expected to agree on the draft Act in the week of 7th of March 2016 (PIANOo, 2016). If everything moves on smoothly the Senate can give its final approval before the deadline of 16th of April 2016.

There were thus fewer actors involved in the UK decision-making procedure

for the transposition of the PPD, than in the Netherlands. Therefore, the Dutch primary legislation is more complicated in comparison to the UK's secondary legislation and the lengthy procedure as a consequence of the choice of legal instrument inhibited the speed of transposition in the Netherlands. It is therefore concluded that the complexity of legislative procedure influenced speedy transposition.

6.2 Importance of Causal Factors

The following section presents a critical evaluation in order to find validation for factors of rapid transposition brought forward by implementation literature. It elaborates on the relative importance of the causal factors in relation to each other.

A EU negotiation strategy is considered an important indicator for creating a good fit with government interests. The UK case has shown that a EU negotiation strategy supported the factor of a good fit between the government interest and the EU directive. The centralized position created by the CCS played an important role in establishing negotiation success. As a result, interest in fast transposition was expressed. A EU negotiation strategy was absent in the Dutch case, however they anticipated the changes of the procurement directives and therefore also established a good policy fit. The ability to anticipate the modifications of the 2014 EU procurement directives for the implementation of national legislation is considered an exceptional circumstance. Based on the UK case, it is considered that EU negotiation strategy does contribute to a good policy fit. In that sense, a EU negotiation strategy could influence the speed of transposition, but it is not the most influential condition for fast transposition.

Good policy fit was seen as the reason why the UK had an interest in fast transposition. As the UK wanted to benefit from the supposed improvements of the PPD as soon as possible, fast transposition was a clearly defined goal by the UK government. It is considered that a good policy fit assists in a smooth transposition process. However, transposition in the Netherlands has shown that a government interest in line with a EU directive does not necessarily enhance transposition speed. Therefore, a good fit between a government interest towards procurement policy and the EU procurement directives is considered as an important, but not the most important condition for enhancing the speed of transposition. Nevertheless, a

negotiation strategy at EU level and a good policy of fit are considered important conditions supporting the interest of fast transposition. Therefore, these factors can enhance the speed of transposition, but are not necessary factors for fast transposition.

As an interest in fast transposition was absent in the case of the Netherlands, this factor is seen as a determinant factor for slower transposition in the Netherlands. In order to create fast transposition, an explicit interest must be present. The reason why the Netherlands did not express this interest could not be traced from the data above. Perhaps the Dutch transposition process takes longer as they want to ensure correct transposition, but this assumption is only suggestive. An interest in fast transposition is therefore considered the most important factor for the speed of transposition in the UK.

Additionally, the use of secondary legal instrument is considered a factor that enhanced the speed of transposition in the UK. The simplicity of the secondary legal instrument and the few actors involved directly enhanced the speed of transposition in the UK.

Table 3: Results

Theoretical factor:	UK:	Netherlands:
1.EU negotiation strategy	The UK had a clearly envisioned strategy towards Brussels. The UK's procurement institution, the Crown Commercial Service (CCS), created a centralized structure and represented the UK in the EU negotiations. The CCS enabled the UK to take on an assertive attitude. The UK held a successful lobby at EU level, ascribed to the efforts of the CCS.	A EU negotiation strategy was not defined in the Netherlands. Nevertheless, despite the absence of a Dutch strategy towards EU negotiations, the costs of policy implementation were kept low as the Dutch regulatory framework of 2012 (adopted in 2013) already anticipated the new EU procurement directives on many accounts.
2. Fit with government interest	Both countries had clearly defined national priorities towards PP policy. As the identified policy priorities are reflected in EU PPD, it is concluded that in both cases the national interests were in line with the EU public procurement directives. There was thus a good fit between government interests and the EU directives in both countries. However, whereas fast transposition was a clearly defined interest for the UK government (as the new PPD were seen as a significant improvement to the current rules), fast transposition was not an expressed interest of the Dutch government.	
3.Complexity of legislative procedure	The use of Statutory Instruments enabled the UK to adopt the PCR 2015 without Parliament having to pass a new Act. The PCR 2015 was passed in a limited parliamentary procedure, this legislative procedure is considered simpler than the legislative procedure in the Netherlands.	The Netherlands is adopting the EU procurement directives by means of statutory law. The use of a primary legal instrument prescribes a full parliamentary procedure and requires the consent of: the Council of Ministers, the Council of State, and the two chambers consisting of Parliament and the Senate. This complex legislative procedure lengthened the transposition process.

Conclusion

The conclusion contains two sections. First, this chapter provides a summary of the research and an answer to the research question. Second, a reflection is made on the implications and limitations of this research and suggestions for future research are discussed.

Summary & Answer to the Research Question

Public procurement covers the process by which national, regional and local governments spend public money on works, goods and services. The EU procurement directives prescribe rules for the awarding of contracts with the aim to ensure competitive tendering, transparency and non-discrimination. EU public procurement directives hold a prominent place in the internal market legislation due to the considerable scope and economic significance of public procurement in the EU. The new EU public procurement directives have been adopted in 2014 and supposedly establish flexible legislation, enhanced inclusion of Small- and Medium-Sized Enterprises and enable the selection of social and Green procurement. Correct, efficient and effective application of EU public procurement rules is a challenge, because procurement comprises complex legislation.

Transposition is the necessary first condition in the policy implementation process and directives require member states to transpose EU policy into national legislation before a statutory deadline and in a complete and correct manner. Implementation and transposition literature include many theories and approaches suggesting different factors that influence the transposition process. This research argues that fast transposition is preferred as transposition delay endangers collective application and enforcement of EU public procurement policy.

This research traced the presence of theoretical factors and assessed their influence on the speed of transposition in comparative case study analysis of the transposition of procurement directives in the United Kingdom and the Netherlands. Whereas the UK moved in the fast lane transposing the public procurement directives long before the final deadline, the Netherlands on the other hand is less fast.

The aim of this research was to answer the following research question: *“Which conditions, following implementation literature, best explain a difference in speed of transposition of EU public procurement directives in the UK and the*

Netherlands?”

This research considered national institutional differences between member states important in order to explain differences in transposition. This research selected the causal factors: *EU negotiation strategy*, *fit with interests of government* and *complexity of legislative procedure* from the goodness of fit and institutional approach as they were expected to enhance the speed of transposition within the national institutional realm.

A EU negotiation strategy was supposed to indicate the incentive of a member state to keep the cost of EU implementation low, easing the transposition process and enhancing the speed of transposition. Assessing to what extent the EU PP directives were in line with national procurement interests operationalized the factor *fit with government interests*. It was believed that a good fit with the interests of government and the policy to be transposed enhances fast transposition. In addition, a government interest in fast transposition was assessed. The *complexity of the legislative procedure* assessed the institutional bodies involved in the legislative process as this directly affects the speed of the legislative process.

The speed of transposition of the procurement directives in the UK was enhanced because an active strategy towards the EU negotiations (in which the Crown Commercial Service acted as a central representative of the UK) created a successful negotiating outcome for the UK. Because of the successful EU negotiation strategy, many UK policy interests were adopted in the procurement directives, keeping the costs of implementation low. As a result, the procurement priorities of the UK were in line with the EU procurement directives, creating a good fit. Because the procurement directives bring about alleged benefits, the UK expressed a clear interest to transpose the directives as soon as possible. Lastly, Statutory Instruments enabled the UK to adopt the Public Contracts Regulations 2015 without having to pass a new act. All these factors contributed to rapid transposition of the procurement directives in case of the UK.

At the time of writing, the Dutch Parliament is taking the final necessary measures for approving a modified Act, transposing the procurement directives. It is planned that Parliament is planning to approve the national legislation (that transposes the EU procurement directives) in the week of 7th March 2016. Subsequently, the Senate must give its consent, completing the legislative process and finalizing the

transposition of the EU procurement directives. Without further delay, it is believed that the Netherlands can transpose the directives on time.

Apart from a speech given by the Dutch Minister of Economic Affairs on the High Level Conference on Public Procurement, no clear EU negotiation strategy was defined. Instead, the Dutch regulatory framework (adopted in 2013) already anticipated the new EU procurement directives on many accounts (keeping the costs of implementation low) and as a result, a limited number of regulation and new initiatives will be expected with the transposition of the new procurement directives.

Despite the fact that the EU procurement directives were in line with the government interest, the Dutch transposition is not characterized as a fast transposition process. It is expected that the Dutch government will transpose the EU procurement directives into Dutch regulation with as few changes as possible, with no major revision of the current Public Procurement Act 2012. At first glance, this is expected to enhance the speed of transposition. However, there was no expressed interest to implement the procurement directives faster than the statutory deadline. Perhaps the Dutch government was more interested in making sure the transposition is correct, rather than rapid. However, this statement remains suggestive. Additionally, the legislative procedure by which the Dutch government is transposing the directives requires the consent of: the Council of Ministers, the Council of State, and the two chambers consisting of Parliament and the Senate. The choice for a statutory legal instrument involved a lengthy legislative procedure inhibiting the speed of transposition.

Based on the results presented in the previous chapter the answer to the research question is threefold: first of all, an expressed interest in fast transposition is considered the most influential determinant for fast transposition. Second, the complexity of the legislative procedure is considered a determinant factor of fast transposition, as it affects the speed of legislative procedure. Although an exact number of actors involved in the legislative process could not be traced, it is argued that this research traced sufficient information to judge the complexity of the legislative procedure. Third, the EU negotiation strategy and goodness of fit factors are considered important factors for the speed of transposition but not necessary factors for fast transposition.

Implications, Limitations and Suggestions for Future research

The biggest result this research has shown is importance of a government interest towards transposition of a EU policy. Inspired by Thomson et al. (2007) a combination was made between the goodness of fit approach and the interest-based explanation, the *fit with government interests* yielded interesting results and it is considered that this factor could be interesting for determining the transposition behaviour in member states. A theoretical improvement offered to this factor is to include a wider perception of a government interests and to include the overall government interest towards the EU policy and towards transposition.

This research has shown that the government interest and the speed of the legislative procedure are important determinants if a member state wants to transpose EU policy on time. Although this research did not contribute to better policy making, this research provided a deeper understanding of transposition speed and revealed the transposition process in practice.

A suggestion for future research could be to explore whether the institutional structure matters for policy uploading and policy implementation. The UK case revealed that CCS played an important role in the EU negotiations and a clearly set strategy and assertive attitude contributed to the negotiation success for the UK. The CCS was responsible for both the negotiation at EU level as for the implementation of the new procurement directives at national level. In the Netherlands, the procurement expertise centre PIANOo is solely responsible for implementation of the procurement directives at national level. Perhaps the Netherlands could improve their interest representation at future negotiations at EU level by authorizing the Dutch Centre for Public Procurement, PIANOo, to take on a centralized role? Future research could investigate whether a centralized representative towards EU negotiation and an assertive attitude could help a member state getting their interest across.

Three empirical limitations are considered. The first limitation of this research is the small N of this research and the problematic effect this has for the generalization of this research. Because of the detailed level of analysis, this research had to limit itself to the study of two case studies. As process tracing is usually used for within cases, this research has attempted to overcome this problem by conducting a comparative research. It was already expected that results of this research could not

be generalized for all members of the EU. However, it is argued that the results of this research allow a better understanding of the transposition process in practice.

Another empirical limitation is formed by the limited number of factors included in this research; merely a few factors were covered in this research. Despite the fact that discretionary authority would result in a strictly legal judgement and this research considered other factors more interesting, discretionary authority could influence the speediness of transposition. Discretionary authority has been briefly touched upon in the literature review and it is (suggestively) present in the case of the UK. As the UK chose to apply a 'copy-out' approach it is implied that the UK made little use of its discretionary authority. However, this this research did not elaborate the level of discretionary authority in either case. A study considering discretionary authority could be an interesting contribution to research on the influence of this factor on the speed of transposition. The work of Carroll (2014) and Steunenberg (2007) could serve as sources of inspiration.

The third limitation is formed by the research method. Process tracing allows detection of in-depth level of analysis and obtains data by considering various data flows. This study confined itself to the study of policy documents and although an extensive part of this research project was devoted to the finding of sources, some information could not be traced. Although other research is confronted with the same struggle to a certain extent, it is argued that this research could have increased its validity by conducting interviews and consulting other data flows. For example, interviews could have revealed the exact number of actors involved in the legislative procedure. Moreover, interviews could have found evidence for the interest of the Dutch government towards fast transposition (or perhaps correct transposition). This research remains suggestive on this account. A complex legislative procedure could take more time but perhaps scores better in terms of correct transposition This raises another suggestion for future research: to what extent is there a link between a complex legislative procedure and the correctness of EU policy implementation?

Future research is encouraged to study the effect of the selected causal factors of this research within a different sample and policy area in order to contribute to the growing body of knowledge on institutions and national conditions responsible for influencing the speed of transposition.

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