



***Explaining Member States' Transposition Performance:
the Case of the Human Trafficking Directive in The
Netherlands, Germany, and The United Kingdom***

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Summary

This study aims to explain what determined the transposition performance of member states in the case of the Human Trafficking Directive, the first binding EU legislation in the area of criminal justice and home affairs since the Lisbon Treaty. Though transposition performance of EU directives has received much attention over the past two decades, the conclusions remain ambiguous and often contradictory. Furthermore, the policy area of criminal justice and home affairs has hitherto received little attention in compliance studies, and thus deserves attention. This study builds on a comprehensive theoretical framework consisting of six independent variables: the 'goodness of fit', institutional veto players, three variables related to domestic politics, and interest groups. The causal relationships are first examined in three extensive country studies of the Netherlands, Germany and the United Kingdom. Next, the main findings are put into comparative analysis in order to draw more general conclusions. The study finds no support for the goodness of fit hypothesis, political ideology, position towards EU integration, or the influence of interest groups. Rather, the analysis points to the degree of (non-ideological) domestic disagreement and the willingness and capacity of formal veto players to use their veto power. A lack of veto players may cause swift transposition despite opposition, but may also lead to more narrow transposition. Meanwhile powerful veto players can cause delay due to their ability to obstruct the transposition process, but may ensure a more accurate transposition in the long run.

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1. INTRODUCTION

Slavery, it is not something that a person would affiliate to modern day Europe. Yet, data tells us that the amount of people that are being exploited in Europe is growing every year, and at the same time, less traffickers end up being convicted (European Commission, 2013-A). Human trafficking is a modern form of slavery. It is a global problem, since victims are being trafficked between countries by organized criminal groups that are doing business on the international level. With an annual combined revenue of €3 billion, it is one of the most lucrative illicit businesses in Europe for organised criminal groups. Therefore, in order to effectively stop this crime, it is necessary to work towards international integration of anti-trafficking legislation into domestic laws (UNODC, 2015).

Recognizing that trafficking is a crime that can only be stopped effectively through international cooperation and the integration of legislation, the European Parliament and the Council accepted a proposal by the Commission for a Directive on preventing and combatting trafficking in human beings (European Union, 2011). The Directive 2011/36/EU established minimum rules at EU level concerning the definition of criminal offences and sanctions in the area of human trafficking, and provided measures aimed at better prevention of this phenomenon, and at improving the protection of victims (European Commission, 2011). The deadline for member states to fully transpose the directive was 6 April 2013. However, according to DG Home Affairs of the European Commission, only 6 out of 27 Member States managed to fully transpose the directive into national law by the end of the deadline (European Commission, 2013-A).

This kind of non-compliance is not rare. Member States often experience difficulty in surviving the deadline (Mastenbroek, 2003; Steunenbergh, 2006; Kaeding, 2006; König & Luetgert, 2008). In fact, Mastenbroek (2003) has found that almost 60 per cent of the directives are transposed too late. Numerous of studies focussing on the compliance of EU Directives have been executed, but unfortunately none gives conclusive answers as to why member states are able to fully comply in time and others are not.

The Human Trafficking Directive was the first EU measure of criminal law nature to be adopted under the Lisbon Treaty (European Commission, 2015-A), and thus the first criminal law measure that was adopted by the ordinary legislative procedure, and the first measure that becomes subject to the full enforcement powers of the Commission and the jurisdiction of the Court of Justice (European Parliament, 2014). Therefore it is an opportunity to examine the

transposition performance of member states in adopting EU legislation in the area of criminal justice, an area that has thus far received little attention in compliance research (Treib, 2008). Building on validated theoretical concepts from existing literature, this study attempts to take a comprehensive approach in order to explain the transposition performance of member states in this relatively under-examined policy area.

1.1. Thesis Statement

This thesis aims to explain what determined the transposition performance of member states during the implementation of the Human Trafficking Directive. This will involve a theory driven comparison of the implementation of the directive in three countries: The Netherlands, Germany and the United Kingdom. The central research question of this thesis is:

“What determines the performance of member states at the transposition stage of the EU Directive on Human Trafficking?”

1.2. Societal and Academic Relevance

1.2.1. Theoretical relevance

This thesis focuses on the factors that explain the transposition performance of member states during the implementation of the Human Trafficking Directive. The transposition of EU directives has been subject to quite some research over the last two decades. However, a considerable number of studies lack empirical and conceptual strengths (Mastenbroek & Kaeding, 2006). This study may give empirical backing to theoretical claims and or may provide new insights that can contribute to the existing body of knowledge of Europeanization and compliance research. Furthermore, a disproportional amount of compliance studies have looked at environmental and social policies (Mastenbroek, 2006; Treib, 2008). This study looks at the transposition directive in the area of criminal justice, the first in its nature to be adopted since the Criminal Justice Pillar was abolished in the Lisbon Treaty, and thus, applies the theoretical concepts of transposition performance onto a previously under-analysed area. The findings of this study may therefore serve as input for future studies into legislation in this policy area.

1.2.2. Societal relevance

Human Trafficking, and other forms of crime, are increasingly becoming cross-border issues that cannot be stopped without international cooperation. The Human Trafficking Directive is an important and comprehensive piece of legislation that makes the fight against human traffickers easier, and provides better support and protection for the victims of the offence. It was the first EU measure of criminal law nature to be adopted under the Lisbon Treaty (European Commission, 2015-A). Now that the transitional period for police and criminal justice policies has officially ended in November 2014, it can be expected that the scrutiny power of the Commission and Court of Justice over member states will be expanded in the upcoming years, and more legislation will follow the Human Trafficking Directive (European Parliament, 2014). By explaining what determined the transposition performance of countries in this area, this study can serve as a lesson for the transposition of future EU legislation, particularly in the area of human trafficking and other topics concerning criminal justice and police cooperation. The findings may offer a better understanding of the transposition phenomenon to policy-makers on both the EU level and national level, and anyone else who is interested in the implementation of future EU directives.

1.3. Thesis Structure

Chapter two will provide the policy background of the Human Trafficking Directive as an introduction to the problem of human trafficking and the international commitments that paved the way for the Human Trafficking Directive. Chapter three provides the research background on EU compliance research, in which the existing literature will be reviewed and show how the field has evolved over time. In chapter four, a theoretical framework based on the existing literature will highlight the most important theoretical concepts that explain transposition performance, and the hypotheses will be formulated. The choice of method and design, the operationalization of the variables, and the reliability and validity of the study, will be discussed in chapter five. The empirical analysis of this study consists of two parts. In chapter six the transposition performance and the role of the independent variables will be analysed into depth for each selected country. In chapter six, the findings from the country studies will be used as input for the second part of the analysis, the comparative analysis, in which the overall explanatory value of the independent variables will be examined when looking across member states. Chapter seven will conclude the findings of this research by giving the answer to the research question, followed by a discussion of the implications and the limitations of this study.

2. POLICY BACKGROUND – THE FIGHT AGAINST HUMAN TRAFFICKING IN THE EU

In this chapter, the policy background of the Human Trafficking Directive will be provided. First the definition of Human Trafficking will be explained. Next, the earlier measures against human trafficking in the EU will be discussed. Finally, the Human Trafficking Directive itself will be discussed into depth.

2.1. What is Human Trafficking?

Human trafficking is the trade in human beings by improper means such as force, fraud or deception, with the aim of exploiting those human beings (UNODC, 2015). The UN estimates that human trafficking is the second-biggest source of illicit profits after the drugs trade. The UN office on Drugs and Crime estimates the numbers of people being trafficked per year at 2.45 million, and estimated that 1.2 million children were victim of Human Trafficking. To or within the EU, the estimated number is up to a several hundred thousand people (mainly women and children) (European Commission, 2015-A).

Trafficking in Human Beings (THB) should not be confused with smuggling of migrants, i.e. the procurement for financial or other material benefit of illegal entry of a person into a State of which that person is not a national or resident. THB is different from irregular migration or the smuggling of irregular migrants in the sense that the person is further exploited in coercive or inhuman conditions once arrived at the destination. Furthermore, smuggling of migrants is always transnational, whereas trafficking in human beings takes place between as well as within national borders. Finally, in smuggling cases, profits are derived from the illegal transportation across the border. In Human Trafficking, the main profit is derived from the exploitation of human beings (European Commission, 2015-A).

Traffickers exploit vulnerable people for financial gain, by tricking or forcing them mainly into prostitution (79% of the cases), or forced labour (18% of the cases, though increasing in some EU countries). Other, less common forms of exploitations are forced begging and forced organ transplantation (European Commission, 2015-B).

Typically, victims are recruited by acquaintances, relatives or criminal gangs that often promise the victim well-paid jobs and a better life. The victims are then transported, either from remote

rural areas to cities or from poor countries to rich countries. The victims are then manipulated and coerced by the traffickers through deception and (the threat of) force. (European Commission, 2015-B). Women and children are particularly affected: women and girls represent 56% of the victims that are forced into economic exploitation and 98% of the victims that are forced into commercial sexual exploitation (Ibid).

Victims are picked because of their vulnerability, due to poverty, marginalisation, economic exclusion, armed conflicts, social and gender inequality, discrimination against ethnic minorities and infringements of children's rights. In many countries the risks of the traffickers getting caught is very low, because there are inadequate laws and policies for the prevention of human trafficking. Finally, there is a demand for cheap labour and prostitution in the richer countries and the urban areas (Ibid).

2.2. The Fight against Human Trafficking in the EU

Over a period of more than 15 years, Human Trafficking has been an important issue on the agenda of the European Union, particularly in the field of Justice and Home Affairs and EU external relations (Council of the EU, 2009). THB has drawn significant political attention, and was subject to a series of Commission Communications, Council Conclusions, and other policy documents (European Commission, 2015-C).

In 1997, the Council adopted a Joint Action to combat trafficking in human beings and sexual exploitation of children. Joint Actions are legally binding acts that are no longer used since the Lisbon Treaty. They laid down operational action by the member states to address a specific issue in the area of Common Foreign and Security Policies. The joint action on trafficking aimed to establish common rules for action against human trafficking in order to contribute to the fight against certain forms of unauthorised immigration and to improve judicial cooperation in criminal matters (EC, 1997). Since the joint statement, the amount of initiatives started growing significantly both on national and regional level. During the Council of Tampere, the European leaders looked at all aspects of Justice and Home Affairs to highlight the priorities that would define their action on EU level, and human trafficking became one of the focus areas for which Member States had to strive for common definitions, criminalisation and sanctions. In addition, the Vienna Action Plan called for additional provisions to further regulate certain aspects of criminal law and prosecution (EC, 2002).

In December 2000, European Commissioner Vitorino signed the United Nations Convention against Transnational Organised Crime on behalf of the European Community. With regards to trafficking, the biggest change was the wider definition of the offence human trafficking in the Palermo Protocol. This definition no longer looked merely at sexual exploitation, but also to other forms of exploitation, such as forced labour (European Commission, 2002).

The first real milestone in the road towards EU cooperation against THB was set though the adoption of the Framework Decision on combating trafficking in human beings on 19 July 2002. The Council recognised the importance of the UN Protocol, and wished to complement it with measures within European Union. Specifically, the framework decision aimed to approximate the laws and regulations of European Union countries in the field of police and judicial cooperation in criminal matters relating to the fight against trafficking in human beings. It meant to implement a framework of common provisions at European level in order to address issues such as criminalisation, sanctions, aggravating circumstances, jurisdiction and extradition (European Commission, 2002).

The Council Conclusions of 8 May 2003 on the Brussels Declaration, can be seen as the first significant step towards a common policy framework that aims to tackle human trafficking on many fronts (Council of the EU, 2009). It aimed at developing European and international co-operation, concrete measures, standards, best practices and mechanisms to prevent and combat trafficking in human beings (European Commission, 2015-D). The Council Conclusions generated a number of follow-up actions, including the setting up of a Commission Experts Group on trafficking in human beings that presented a comprehensive report comprising a total of 132 recommendations in December 2004 (Council of the EU, 2009).

In April 2004, the Directive 2004/81/EC on *the residence permit issued to third-country nationals who are victims of trafficking in human beings or who have been the subject of an action to facilitate illegal immigration, who cooperate with the competent authorities*, was adopted (Council of the EU, 2009). This directive suggests that victims of trafficking will be more willing to cooperate with the authorities if they are offered a residence permit. It also sets out some provisions that are aimed at the recovery of victims, such as special programmes aimed at giving victims a chance to build a normal social life.

The commitment of the EU and Member states was further strengthened under the *2005 Council EU Plan on best practices, standards and procedures for combating and preventing trafficking in human beings*, which set the scope for collective EU action and action by individual EU governments, and set specific actions to be implemented by Member States, the Commission and other EU bodies (Council of the EU, 2009). Action included coordination, collection of data, prevention, reducing demand, investigating and prosecuting, protecting and supporting victims, return and reintegrating victims, and external relations (EC, 2015-E). Additionally, the plan demanded Member States to swiftly transpose the Directive 2004/81/EG that was mentioned earlier.

An increasing number of EU policy documents addressed human trafficking, in particular trafficking in children and women, who are the most affected groups. Examples are the Commission Communication “Towards an EU Strategy on the Rights of the Child” (2006), the EU Guidelines on the Rights of the Child (2007), The Commission Communication “A Special Place for Children in the EU’s External Action” (2008), the Conclusions on children in development and humanitarian assistance (2008), the EU Guidelines on Women (2008) and the report on child trafficking in the EU (2009). All recognise THB as a great violation of human rights, and the importance of making commitments and implementing effective measures to fight these forms of exploitations adequately. The Commission's approach to trafficking begins from a gender and human rights perspective and focuses on prevention, prosecution of criminals and protection of victims. It places the rights of the victims in the centre and takes into account additional challenges for specific groups, such as women and children, as well as individuals discriminated on any grounds, such as minorities and indigenous groups (Council of the EU, 2009: 5).

The Lisbon Treaty had a significant influence on the fight against human trafficking in the EU. Until the Treaty of Lisbon came into force in December 2009, the EU had the so-called three ‘pillars’. These pillars entailed clusters of policy areas, which had their own decision-making procedure. The fight against human trafficking was part of the third pillar, which entailed the policies in the area of justice and interior policies. In the second and third pillar, the key role in the decision-making was exclusive to the Council. The Commission and the European Parliament had no decisive role. Decision-making was based on unanimity, so that every country had the right to veto and block a decision (Europa NU, 2015)

The treaty of Lisbon abolished the pillar structure and marked the finalisation of the transition from the European Community to the European Union. The treaty consolidated all interior policy issues that formerly belonged to the third pillar into a single section of the treaty of the

EU, hence bringing free movement, immigration, and police and judicial cooperation policies together under a single set of decision-making arrangements, although with a five year transition period for police and judicial cooperation on criminal matters (Hix & Hoyland, 2011).

Another important change by the Lisbon Treaty is the reform of the decision-making procedures. There are no longer special decision-making procedures for each of the three policy areas. Now, almost all policy-making follows the ordinary legislative procedure, which relies on the assent of Parliament and the Council. The Commission proposes policy initiatives, and decisions are made under qualified majority voting. The only legislation that still requires the intergovernmental decision-making procedure are policies in the area of CSFP (European NU, 2015).

Article 83 of the Treaty of the Functioning of the EU lays down the possibility for the European Parliament and the Council to adopt directives by qualified majority voting in accordance with the ordinary legislative procedure. It may now establish binding minimum rules concerning the definition of criminal offences and sanctions in the areas of justice and home affairs, particularly serious crimes with a cross-border dimension, resulting from the nature or impact of such offences and the need to combat them on a common basis (European Union, 2012). As a consequence, the Lisbon Treaty has made possible stronger EU action against human trafficking.

2.3. EU Directive on Trafficking in Human Beings

After the Lisbon Treaty had opened up new possibilities to take stronger action against human trafficking, Directive 2011/36/EU on preventing and combatting THB and protecting its victims was adopted. The Directive is the first act at EU level to address human trafficking in a comprehensive and integrated way, and is the first EU measure of criminal law nature to be adopted under the Lisbon Treaty (European Commission, 2015-A). The Treaty expanded the exercise of enforcements powers of the Commission, and the judicial scrutiny performed by the Court of Justice over Member States' implementation of EU criminal justice law (European Parliament, 2014). As a consequence, member states that failed to comply with the Human Trafficking Directive can be subjected to an infringement procedure. This was hitherto not possible for earlier measures, and it is therefore an important step for the fight against trafficking in the European Union. The Human Trafficking Directive focuses equally on the protection of victims, the prosecution of traffickers and the prevention of the phenomenon. (Staff Working Document, 2013). The directive harmonises the definition of the crime and the penalties. Furthermore, it sets the provisions for protection, assistance and the support of victims. Lastly, provisions are set aimed at better prevention of the crime, better monitoring and

better evaluation of efforts (EC, 2015 actions).

2.3.1. Requirements of the Human Trafficking Directive

The main points of the new directive can be divided into three categories: (1) criminal law and prosecution, (2) victim protection and support, and (3) prevention and monitoring.

The *measures focusing on criminal law and prosecution* (articles 1-10) are rules that require member states to make tougher criminal laws in order to make prosecution of traffickers easier. These provisions require formal implementation in the legislation of the Member States. They are formulated in such a way that it does not leave much room for interpretation to the member state governments.

These are:

- An EU-wide definition of the crime and maximum penalties for offences
- Making punishable the incitement, aiding and abetting, and attempt of offence
- Liability of legal persons
- Non-prosecution or non-application of penalties to the victims
- Possibility to prosecute EU nationals for crimes committed in other countries (extraterritorial jurisdiction).

Regarding the second category, *the provisions focusing on protection and support* (articles 11 - 17), are mainly aimed at setting up national mechanisms for identifying and assisting victims early on, based on cooperation between law enforcement and civil society bodies. Furthermore, it urges Member States to take measures to provide victims with the proper support, such as shelter, medical and psychological assistance, and legal counsel. The provisions in this category also require Member States to give special attention to child victims and other vulnerable groups. Finally, article 17 asks Member States to ensure that victims of trafficking in human beings have access to existing schemes of compensation. These provisions aimed at protection and assistance are purposely formulated in a way that allow discretion for Member States to implement the scope of provisions into national law in the way they find it suitable, as long as they are able to justify the taken measures within their legal framework (European Union, 2011).

The third category of provisions is aimed at establishing national measures that focus on prevention and ask for a national rapporteur on human trafficking or equivalent mechanisms. These provisions require merely practical implementation. For example, for prevention of human trafficking, member states are asked to promote the training for officials that are likely to

come into contact with the victims. Furthermore it asks Member States to take action through information and awareness campaigns, in order to reduce the risk of people, especially children, to become victims of human trafficking. Finally it asks Member States to take effective measures to discourage and reduce the demand that fosters all forms of exploitation related to trafficking in human beings. This can be done through education and training, but the directive also asks Member States to 'consider taking measures to establish as a criminal offence the use of services which are the objects of exploitation with the knowledge that the person is a victim of an offence'. With the exception of the latter, these provisions insist mainly on practical implementation within the existing policy framework of the Member States and leave much discretion on how the member state governments want to implement these provisions. Only the last mentioned provision, aimed at punishing the customers, require formal legal measures. However, it asks Member States merely to 'consider' taking appropriate measures. So it gives a lot of discretion to Member States and governments can decide for themselves if they want to commit to this provision (Ibid).

Article 19 demands that "Member States shall take the necessary measures to establish national rapporteurs or equivalent mechanisms. The tasks of such mechanisms should include "the carrying out of assessments of trends in trafficking in human beings, the measuring of results of anti-trafficking actions, including the gathering of statistics in close cooperation with relevant civil society organisations active in this field, and reporting."8 This provision requires no formal legislation, and leave discretion as to how Member States will take action, as long as they comply to the demands. They can appoint a special rapporteur or give the responsibility to existing departments (Ibid).

3. RESEARCH BACKGROUND - EU COMPLIANCE LITERATURE

This study aims to find out what factors have determined member states' performance in transposing the Human Trafficking Directive. Transposition of EU Directives has been subject to a lot of research in the field of European integration (e.g. Dimtrova & Steunenberg, 2000; Haverland, 2000; Mastenbroek, 2003; Steunenberg, Kaeding, 2006; Kaeding & Mastenbroek, 2008; König & Luetgert, 2008). Although the amount of studies is extensive, the scope of the studies and the methods applied vary a lot, which has resulted in very divergent outcomes over the years. In this section the existing literature that has focused on transposition will be reviewed, and the most important developments over the years will be described. The development of this particular field of research can be split into three "waves" (Mastenbroek, 2006; Treib, 2008), which will be discussed in separate paragraphs.

3.1. The first "wave" of compliance research

Studies on European integration have long focussed on issues of policy formation and decision making, therefore neglecting the question of how these policies were being put into practice (Treib, 2008). Although academic interest for implementation in the EU context already existed in the late 1980's, the European Commission did not start prioritising it until the early 1990's, when the Single Market Programme came into work (Mastenbroek, 2006). The Single Market Programme also acted as a stepping-stone in the academic field towards research focussing on implementation in the EU context (Treib, 2008: 7). The Single Market Programme comprised some 300 legislative measures, mostly directives, which each Member State had to transpose into national legislation. Consistent implementation of this legislation was seen as a precondition for the completion and smoothing function of a single European-wide market (Treib, 2008:7). Although the progress at the legislative stage was impressive, the compliance with the actual programme turned out to be rather poor. This gave rise to the first generation of EU compliance research, or "first wave" (Mastenbroek, 2006; Treib, 2008), when researchers of various backgrounds have tried to find explanations for non-compliance in European Union (Mastenbroek, 2006).

In her 2006 article "EU Compliance: Still a 'Black Hole'?" Ellen Mastenbroek reviewed two decades of EU compliance research. She starts out with Krislov, Ehlermann and Weiler (1986: in Mastenbroek, 2006: 1103), who were the first to draw attention to the growing and acute problem of non-compliance. The first empirical study was presented by Siedentopf and Ziller

(1988: in Mastenbroek, 2006: 1104), who analysed the implementation of seventeen directives in the twelve member states. These studies set the tone for further research (Ibid).

In the early days of scholarship on EU compliance, the research was very variegated (Mastenbroek, 2006; Treib 2006). This 'first wave' lacked a strong theoretical framework, combining insights from implementation research, international relations theory, and legal studies. This literature portrayed compliance as a non-political issue, where governments are sometimes not able to live up to the demands of EU policy, due to legal or administrative reasons (Mastenbroek, 2006). Meanwhile, they also absorbed some of the insights of the bottom-up camp, stressing the importance of involving relevant domestic actors such as parliaments, interest groups or subnational entities in the preparation of the countries' negotiation position and the national coordination of the implementation process (Treib, 2008: 8).

The lack of a political conceptualisation of the implementation process may be explained by the disciplinary backgrounds of the scholars that were involved in this field of study, who came mostly from a legal or administrative background (Ibid). Legal variables may point to the national constitutional characteristics, the complexity and poor quality of directives, the range and complexity of existing national laws, and the national culture. For administrative explanations, some scholars have referred to 'Chinese Walls' between preparation and implementation in many member states and ministries. Others have pointed to the lack of resources, internal co-ordination problems, inefficiency of domestic institutions, and corporatism (Mastenbroek, 2006: 1104-1108)

Some of the early 'a-political' compliance literature claimed that implementation failure and non-compliance with EU environmental policies was a "southern problem", arguing that the southern states have specific administrative features that make them more incapable of efficiently and effectively implementing EU policies (Pridham, 1996; Borzel, 2000). According to Pridham (1996) this could to some extent be justified, but it was also exaggerated. Pridham argues that a view that poses a North/South dichotomy ignores general problems with implementation problems, and the differences among the southern European States themselves. Finally, Börzel (2000) showed that there is no significant variation in compliance at all, between Northern and Southern states.

Although this 'first wave' of compliance research did not get much empirical support, the influence of these scholarships have extended well into the 1990s and beyond (Mastenbroek, 2006).

3.2. The second wave: goodness of fit and institutional veto players

In the late 1990s, a 'second wave' of scholars started analysing the "Europeanisation" of domestic political systems (Treib, 2008: 8). These studies dealt with the impact of membership of the European Union on domestic phenomena such as parliaments, party systems, state-society relationships, territorial state structures, or democratic structures of government. Within the context of implementation, scholars looked at the implementation of European policies and the impact on the domestic level.

This 'second wave' of compliance research pointed mainly to the 'goodness of fit' hypothesis, which gained popularity in the late 1990s, when compliance research took on a more theoretical character (Mastenbroek, 2006). From this perspective, differential impact of the EU on member states is explained by differences in the degree of fit between European policy requirements and existing institutions on national level. This new idea moved the focus from administrative and procedural efficiency to the degree of compatibility between EU policies and domestic structures (Treib, 2008: 8). The idea of institutional goodness of fit is rooted in neo-institutionalist theory, which assumes that institutions do not automatically adapt to exogenous pressure, but resist change despite a changing environment (Knill & Lenschow, 1998). The stickiness of domestic administrative traditions and routines pose obstacles to reforms aiming at altering these arrangements, and can therefore seriously hamper the legal implementation of EU policies on the domestic level. (Treib, 2008: 8).

Though the misfit hypothesis has a strong theoretical character (Mastenbroek, 2006), the results of empirical studies have often turned out rather disappointing and insufficient to explain non-compliance, already when the hypothesis was first coined as an explanation for non-compliance (Knill & Lenschow, 1998). Various qualitative studies, such as Haverland (2000), and Falkner et al (2005), found that countries had a bad transposition performance despite having a almost perfect fit, whereas others had a high degree of misfit, but implemented the policies timely and correctly. As a result, scholars began to look for explanations within the institutional and political situations of member states. For instance, Haverland (2000) suggested that the pace and quality of implementation is explained by the number of institutional *veto points* that national governments have to face when imposing European provisions on their constituencies.

3.3. The third wave: domestic politics and administrative capabilities

Third-wave scholars began to further explore factors at the sectoral as well as the country level that could explain the rather incongruous empirical findings. In qualitative research this led in particular to the discovery of domestic policy as an important indicator for determining the speed and correctness of legal adaptation of European Directives (Treib, 2008: 10). For example, Treib (2003) looked into the role of domestic party politics as an explanation for transposition pace and found empirical evidence that domestic party preferences are much stronger determinant for transposition performance than the goodness of fit.

The second significant development during the third wave is the growing amount of quantitative studies in the compliance research. More and more scholars started to analyse data on the commission's infringement proceedings against member states (Mbaye, 2001; Börzel, 2001, 2003; Tallberg, 2002; Sverdrup, 2004; Beach, 2005; Perkins and Neumayer, 2007: cited in Treib, 2008) and on the transposition measures member states officially notified to the Commission (Lampinen and Uusikylä, 1998; Bergman, 2000; Giuliani, 2003; Borghetto et al., 2006; Berglund et al., 2006; Kaeding 2006, 2007, 2008; Haverland and Romeijn, 2007; Linos, 2007; Toshkov, 2007: cited in Treib, 2008). These quantitative studies showed a generally strong support for the impact of administrative capabilities such as administrative capacities and the administrative experience with transposing EU law (Toshkov, 2010, 2011; Treib, 2008). According to Toshkov (2011), we can be pretty certain that administrative efficiency and the strength of domestic cabinet and EU co-ordination have a positive influence on compliance, or at least not a negative influence. He refers to many (quantitative) studies that provide empirical evidence to support this assumption. Administrative efficiency has been shown to reduce non-transposition, improve implementation performance, and decrease infringement numbers and rates (Ibid).

As a consequence, the 'Third Wave of compliance literature shows two divergent developments. On the one hand, qualitative scholars increasingly stressed the importance of the political character of transposition, in which domestic preferences may have a decisive impact on transposition outcomes, supporting insights of the enforcement approach in compliance research. On the other hand, quantitative research pointed mainly towards the management approach, highlighting the importance of efficient as well as co-ordinated administration with highly skilled personnel (Treib, 2008).

Evidently, these divergent findings give an unclear picture as to what explains transposition

outcomes. As a result, Dimitrova and Steunenberg (2000) propose a more policy specific approach, saying that the factors and actors that influence transposition varies between individual cases. Some policies are highly politicised, whereas others are more a bureaucratic affair. Different directives require different type of legal instruments, and the type of legal instrument that is used determines which set of actors is involved. The enactment of a piece of parliamentary legislation usually involves a lot more domestic actors (ministries, political parties, interest groups) than a ministerial decree (only the ministry). This policy-specific approach has also found empirical support in large-N data analysis (Steunenberg and Rhinard, 2010: in Treib, 2008). This suggests that the varying transposition performance across cases is caused by the different legal requirements and national or sectoral traditions concerning the type of legal instrument to be chosen for transposition (Treib, 2008).

4. THEORETICAL FRAMEWORK

As has become clear from the literature that has been reviewed in the former section, there is still no definite answer as to what determines the performance of member states in transposing EU directives the most. The amount of research that has been done has been quite extensive, but the results are almost never the same. This section highlights the main factors that have been discussed in the literature review, and which of those could explain the transposition performance in the case of the Human Trafficking Directive. The theoretical concepts will be discussed in the following order: goodness of fit, domestic politics, institutional veto players and finally, interest groups. For each of these variables it will be argued why they are relevant for this study, and a corresponding hypothesis will be formulated. Finally, a causal model will be displayed, which will serve as the analytical framework for the research analysis.

4.1. The Goodness of Fit

As has become clear from the literature review, the 'Goodness of Fit' has received a lot of attention in compliance literature. According to the goodness of fit hypothesis, compliance relies on the degree of fit between the policy goals enshrined in EU legislation and the pre-existing domestic policy legacies (Treib, 2008: p. 23). The original idea behind this concept is that fitting policies would be implemented without any problems, whereas unfitting policies would lead to problematic transposition with long delays and lower quality (Ibid).

Different studies have shown empirical evidence in support of the goodness of fit hypothesis. The research synthesis by Angelova et al. (2012: in Treib, 2008) concluded that goodness of fit is overall a good predictor of transposition performance. Some qualitative studies have also found empirical evidence for the goodness of fit argument (e.g. Bailey, 2002; Dimitrova and Rhinard, 2005; van der Vleuten, 2005; Di Lucia and Kronsell, 2010; Siegel, 2011: cited in Treib, 2008).

However, not all studies come with similar results. In fact, the results of some qualitative studies have often turned out rather disappointing (Mastenbroek, 2006: Treib, 2008), and the argument already transpired under the first empirical studies that considered the goodness of fit as a determinant for compliance. For example, Knill & Lenschow (1997) found that only three out of 8 cases confirmed the hypothesis, and strong delay was found in a directive that had almost a 'perfect fit'. Other qualitative studies have also argued that the goodness of fit hypothesis was insufficient for predicting transposition performance (Haverland, 2000; Treib, 2003), and some

even questioned the relevance of the goodness of fit argument altogether (e.g. Héritier et al., 2000 in Mastebroek, 2006; Mastebroek and Van der Keulen, 2006).

In contrast to the qualitative studies, quantitative analyses were generally supportive of the misfit hypothesis, but Treib (2014: p. 24) argues that the indicators that are used to measure misfit in large-N studies are very limited and often have little to do with the original concept of the goodness of fit. Therefore these limitations should be taken into account.

The limitations of the 'goodness-of-fit' approach show that an exclusive focus on goodness of fit, may not be sufficient in explaining non-compliance. The idea that the speed and quality of transposition can be explained by the goodness of fit is too static to capture the complicated processes playing on the domestic level (Falkner et al 2007; Treib, 2008). However, in a way, the goodness of fit literature had already implicitly advocated the need for auxiliary variables (Mastebroek, 2006). For example, Knill & Lenschow (In Mastebroek, 2006: 10) included as mediating variables the institutional embeddedness, degree of domestic support, policy salience, and supra- and international pressures in their analysis (Ibid). Furthermore in addition to legal fit, Duina (1997) stresses the importance of the organisation of interest groups. Strong interest groups will oppose a directive if a major reorganisation of interest is demanded on domestic institutions. Conversely, strong interest groups will support the implementation of a directive if it is consistent with the organisation of interest groups of nation states. Similarly, Börzel (2003) argued that non-compliance is most likely if there is a significant 'misfit' between the EU policy and a corresponding national policy. However, these misfits do not necessarily lead to non-compliance. The mobilisation of domestic actors pressurising public authorities to bear the costs may improve the level of compliance. Bailey (2002) argued that although veto points are important during transposition, national resistance is often prompted by poor policy fit during both legal and practical implementation.

Despite its known limitations, the goodness of fit is considered as a possible determinant for transposition performance of the Human Trafficking Directive. It is not viewed as the only possible explanation, but will be considered as one of the factors in the analytical framework of this study. The directive imposes a wide variety of provisions on the member states, including specific requirements in the criminal code, but also national practices for the protection of victims. The pre-directive national practices might be different across states. It is therefore necessary to take into consideration the goodness of fit, i.e. compatibility of the provisions in the directive with the existing national measures, and see whether this had an effect on the transposition performance.

Therefore, the first hypothesis is:

H1. *“The higher the goodness of fit, the higher the probability of full and timely transposition.”*

4.2. Domestic politics

The third wave of compliance research saw increasing attention for the importance of domestic politics in determining the timeliness and correctness of the transposition of EU directives. Treib (2003: p.3) argued that the goodness of fit hypothesis only explains a small proportion of the observed adaptation patterns. Instead, he used a more actor-centred view, and argued that domestic political processes have a logic of their own, and are crucial in explaining the transposition of directives.

The idea is that the speed and correctness of transposition of EU directives depends on how much the directive is in line with the political preferences of the government parties. If the directive is in line with their party political preferences, the governments may be willing to accept far-reaching reforms that deviate heavily from the status quo. Similarly, governments may struggle with transposing minor adaptations if it goes against the core of their political ideologies (Treib, 2008: p. 10).

Resistance against a directive and its transposition can also vary within government coalitions. When partisan preferences cause resistance against the transposition of a directive, this may lead to intra-coalition disputes. Since all the parties within the government have a veto power over government decisions, disagreement between coalition partners can cause enduring conflict within a government. This does not only lead to transposition delays, it can also hamper the correctness of the transposition (Treib, 2003: p14).

The studies that uncovered domestic party preferences as an important contributing factor were mainly focussed on social policy directives (e.g. Treib, 2003; Falkner, 2005) or environmental (e.g. Bahr, 2006). Treib's 2003 study showed that that left-winged governments are more willing to transpose the social policy directives because they are in line with their political core ideology. Socialist parties were much more in favour of state intervention in labour market than Neo-liberal parties (p. 22).

As Treib also concludes, the argument that party ideologies matter for transposition is therefore very sector-specific and they may not explain very well the transposition of less politicised

legislation. Whereas social or environmental policies clearly fall within the preferences of left-wing politics, it is less straightforward when looking at the Human Trafficking Directive. Both sides of the left-right dimension might want more far reaching measures against human trafficking. The directive falls within the area of criminal law and takes a human rights approach. Some of the provisions in the directive are focussed on tougher penalties for traffickers, whereas others are focussed more on the support of victims. Although parties may have specific interest in different aspects of the directive, it is assumed that all political parties have an interest in defending the fundamental human rights, and that party preferences will not have played a significant role in the transposition process of the Human Trafficking Directive.

Since the Human Trafficking Directive cannot be associated to a specific political ideological preference, it is not expected that political ideologies of the government parties will have had a significant influence. Therefore the third hypothesis is:

H2. Domestic party ideologies have no significant influence on the speed and correctness of the transposition.

Some studies have demonstrated that government positions toward European integration have an effect on transposition time (e.g. Jensen, 2007; Toshkov, 2007, 2008). For example, Toshkov's 2008 study demonstrated that new member states from Central and Eastern Europe were more likely to transpose the Acquis on time if they were governed by pro-European governments. This suggests that it is important to consider the government parties' positions toward European integration as a possible determinant for transposition performance. The fourth hypothesis is therefore formulated as:

H3. "The more pro-European government parties are, the higher the probability of full and timely transposition".

Domestic political conflict however, does not always have to result from incompatible ideologies. Even in cases where the directive is in line with domestic party preferences, the transposition of a directive can still cause significant domestic political conflict. Bahr (2006) examined the implementation of the Integrated Pollution Prevention and Control Directive (IPPC) in Ireland and Germany, and showed that the transposition process was heavily influenced by political conflict in both countries. Interestingly, the political conflict in Ireland did not result from resistance against the directive. In fact, only one 'advocacy coalition' could be identified, as all involved actors were in support of the directive and its content. However, the

problem of waste disposal provoked major political conflict because the parties could not agree as to how the problem would be resolved, or what political institutions would be made responsible. As a result, Ireland ended up being non-compliant.

This study by Bahr suggests that political process can still influence the transposition performance, even when domestic preferences are in line with the directive. Intra-coalition disputes can also be caused by disagreement about the way the directive should be implemented. These discussions have a more technical nature and do not have to be influenced by a political ideology. Therefore, the importance of this aspect of the political process will be considered for the Human Trafficking Directive.

For the fourth hypothesis, the causal relationship is assumed as follows:

H4. *“The higher the agreement within the government as to how to the directive should be transposed, the higher the probability of timely and correct transposition”.*

4.3. Veto Players

In addition to the goodness of fit, the second wave of compliance research has brought forward the veto player hypothesis. Based on the original veto player argument developed by Tsebelis (1995, 2000), the logic behind the veto player argument is that the more the Member-State governments rely on the consent of other institutional players (e.g. the national parliament), the more difficult it becomes to transpose directives correctly and in a decent amount of time. Delays, according to this argument, reflect the domestic opposition to the implementation of the directive (Steunenberg, 2006). Veto players can formally or informally block decisions. If there are many actors involved in the implementation, the chance will be higher that there will be opposing views, which may cause the (temporary) blockade of a decision (Steunenberg & Kaeding). Resolving deadlocks takes time since it may require the redefinition of the issues at stake, creating new problems to other, parallel processes. For this reason, governments that must satisfy many coalition partners will not act as decisively or efficiently (Kaeding, 2006).

The delaying effect of veto players has been examined in various studies, using both quantitative and qualitative approaches. Haverland’s case study on the implementation of the Packaging Waste Directive in the United Kingdom, Germany and The Netherlands (2000) revealed that the goodness of fit on its own is insufficient in order to explain compliance and instead stresses the

importance of institutional veto points as the most important determinant for compliance. Institutional veto points refer to “the amount of stages in the decision-making process where agreement is *legally* required for policy change” (Haverland, 2000: 85). His analysis shows that despite high legal fit in Germany, the transposition of the Packaging Waste Directive was delayed significantly because the Bundesrat was able to block the government’s proposal. Despite a lower fit than Germany, United Kingdom and The Netherlands were able to implement the directive relatively timely and properly, because they were unconstrained by institutional veto points. In sum, Haverland’s case study suggests that veto points tend to shape the timing and quality of transposition, regardless of the goodness of fit.

Other case studies have found no delaying effects for veto players (Falkner et al, 2005; Falkner, Hartlapp & Treib 2007: in Treib, 2008). In their large-scale qualitative study on the transposition, enforcement and application of six EU labour law directives in 15 member states, Falkner et al (2007) point out that the explanatory power of the veto argument is weak at most. They show that, when looking at the influence of veto players on the average delay of countries, there is only a weak relationship. They conclude that the veto player is not wrong, but the world itself is more complicated than the veto player hypothesis claims it to be.

The argument of veto players has also been taken up in a variety of quantitative studies. For example Mbaye (2001), who has taken veto players as a variable in a quantitative analysis using count data on infringements for 12 member states between 1972 and 1993. However, Mbaye found no significant relationship with non-compliance (p. 274). Other quantitative studies came with similar results (e.g. Borghetto et al, 2006; Börzel et al, 2010; Sprungk, 2013: cited in Treib, 2008). However, some quantitative studies found empirical evidence in support of the veto player hypothesis. For example, Angelova et al (2012: in Treib 2014) analysed 37 articles, and their synthesis confirmed that “institutional decision-making capacity”, which included the number of veto players and other related concepts such as federalism, is a strong predictor of transposition performance. Other quantitative studies have also found significant effects of the number of veto players, (e.g. Lampinen and Uusikylä, 1998; Giuliani, 2003; Kaeding, 2006, 2007, 2008; Linos, 2007; Perkins and Neumayer, 2007; Di Lucia and Kronsell, 2010; and Börzel et al., 2012: cited in Treib, 2008).

Despite the fact that it can be argued that the number of veto players may not be the only predictor for transposition performance, the amount of evidence in support of the argument suggests that it is nevertheless an important variable to consider in analysing the transposition of the Human Trafficking Directive. Every individual case is different and it could very well be

that the veto players have had a significant effect on transposition performance in the case of the Human Trafficking Directive.

Therefore the fifth hypothesis is formulated as follows:

H5: *“The higher the number of veto players, the lower the probability of full and timely transposition”.*

4.4. Interest groups

Some scholars have identified the impact of interest groups as a key determinant for transposition performance. However, the studies that have examined the influence of interest groups disagree on whether the impact of interest groups is positive or negative for the transposition performance (Treib, 2008). Some qualitative studies showed that interest groups whose members will profit from the EU legislation, can help overcome the resistance of unwilling governments and administrations through lobbying, naming and shaming, litigation, and filing complaints to the European Court of Justice (e.g. Börzel 2000, 2003, 2006; Van der Vleuten, 2005; Panke, 2007; Slepcevic, 2009: cited in Treib, 2008). Conversely, interest groups who stand negatively towards the consequences of a directive will attempt to hamper the transposition process (Risse et al., 2001; Héritier, 2001; Héritier and Knill, 2001; Treib, 2004; Falkner et al, 2005: cited in Treib, 2008).

The studies mentioned above are all focused on either environmental or social policy directives. The organisations that have an interest in these types of policies are both abundant and resourceful. For the Human Trafficking Directive it is interesting to consider if NGO’s have had a significant influence during the transposition of the directive. It is assumed that the societal groups that had a particular interest in this directive were mainly human rights organisations and organisations with a focus on human trafficking, sexual exploitation of women and children, and they would most likely be in favour of proper and timely implementation of the Directive. The preamble of the Directive also specifically asks Member States to *“encourage and work closely with civil society organisations, including recognised and active non-governmental organisations in this field working with trafficked persons, in particular in policy- making initiatives, information and awareness-raising campaigns, research and education programmes and in training, as well as in monitoring and evaluating the impact of anti-trafficking measures”* (European Union, 2011).

Societal groups will most likely have been in favour of a timely and full transposition of the directive, or may have contributed to some of the provisions regarding assistance, protection and prevention. Societal groups may have pressurised the member states into compliance through lobbying, naming and shaming, litigation, and filing complaints. Therefore, the sixth hypothesis is:

H6. *“The higher the involvement of interest groups that are in support of the directive, the higher the probability of full and timely transposition”*

4.5. Causal model

The model below illustrates the causal relationships between the independent variables with the dependent variables, as mentioned in the hypotheses. On the left, the independent variables are displayed. The independent variables are connected to the dependent variable with arrows, and a minus, plus or zero indicates whether the variable has a respectively positive, negative or no relationship with the dependent variable.

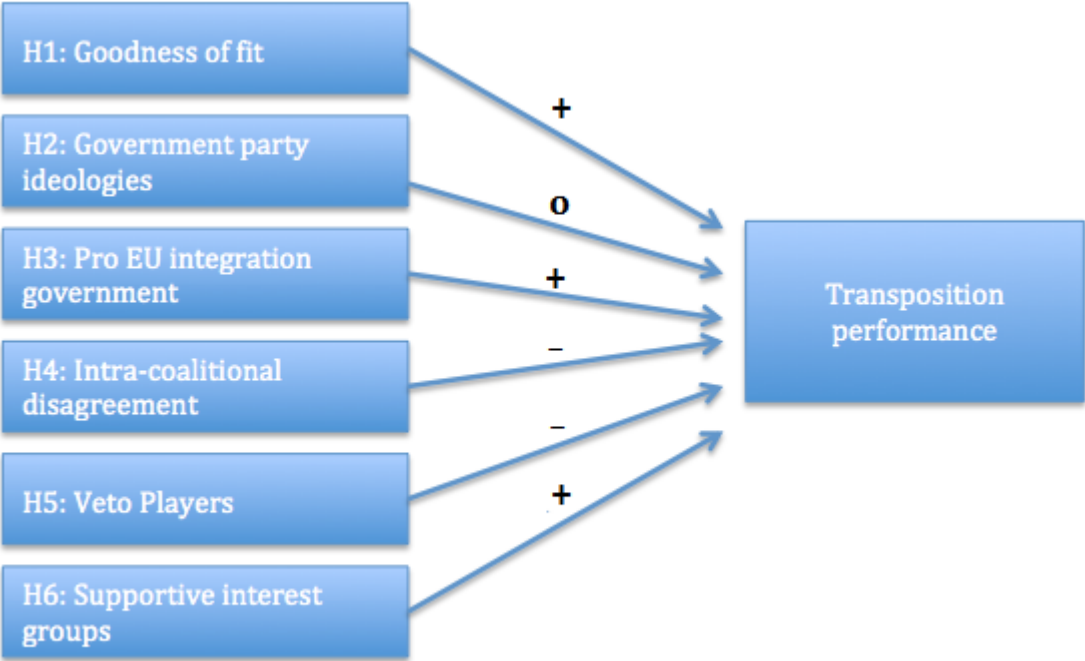


Figure 1: Causal model

5. RESEARCH DESIGN

This chapter will provide the research design of this study. In the first paragraph, the motivation for the research strategy and choice of method will be discussed, followed by the motivation for the case selection. The following paragraph will deal with the operationalisation for the variables. The chapter will close off with the discussion about the reliability and validity of the research

5.1. Qualitative or quantitative?

As has been mentioned in the literature review, the research on EU compliance and more specifically on transposition delays has been extensive over the last two decades. Research has been done both qualitatively and quantitatively, and scholars have until today not come to any conclusive results. The results from qualitative and quantitative studies each draw a different picture of the compliance issue, and have also focussed on different factors. Each of the methods has their own strengths and weaknesses. Those doing explanatory work have generally preferred qualitative over quantitative methods (Mastenbroek, 2006: p. 12). Qualitative designs, such as comparative case studies, allow the researchers to make a detailed assessment of the member states' transposition performance, but have as their weakness the lack of external validity due to their small N-size.

Since the third wave, from the year 2000 onwards, the field has seen a remarkable increase in the popularity of quantitative approaches (Treib, 2008). In comparison to the qualitative designs, quantitative research has at its advantage a strong external validity because of the typically big N-size. However, the reliability of the results can often be questioned, as variables are measured in a more simplistic way, often neglecting important aspects and the underlying processes. Especially with regards to the measurement of transposition performance, the large-N studies rely on indirect measures of transposition performance, which raises issues of measurement validity (Ibid). Most of these studies rest on information about domestic transposition measures drawn from the official Celex/EUR-Lex databases, which is often complemented with data from domestic legal databases. However, these fail to scrutinise the completeness and substantive correctness of transposition. The goal of this research is to explain both speed and correctness of the human trafficking directive, hence a small-N, in depth approach will ensure that the measures are more likely to be valid (Treib, 2008)

Moreover, this study examines the transposition performance of member states specifically in the case of the Human Trafficking Directive. Since a quantitative analysis would only lead to a maximum of 28 cases, i.e. the studying of 28 member states at maximum, it would lose its main advantage. As discussed, the main strength of the quantitative studies is their external validity, but with an N-sample of only 28, that argument would no longer hold. Therefore, a quantitative approach would not be suitable for this specific study.

A qualitative comparison of how countries have transposed the directive corresponds much better with the goal of this research. The chosen mode of comparison for this study is cross-sectional because the examined variation is spatial, that is, there is variation across cases at the same time period. This study looks at the difference between EU member states. Cross-sectional comparisons are widespread for a number of reasons. They are useful for comparing countries within a certain geographical area. The likelihood of finding similar control variables is high because they share certain historical, cultural and geographical characteristics (Lijphart 1971, in Blatter & Haverland, 2012).

The chosen qualitative approach for this study is the co-variational analysis. This approach presents empirical evidence of the co-variation between an independent variable X (e.g. veto points) and the dependent variable Y (transposition performance) to infer causality. The co-variational design is strongly linked to research goals that want to determine whether a certain factor or indicator has an impact on the dependent variable. It can therefore be labelled as an X-centered design (Blatter & Haverland, 2012: 36). Since this study is also mainly focussed on the impact of the independent variables, the co-variational design is the logical choice for this study.

5.1.2. Method and data collection

Nowadays, information provided by governments, political parties, journalists and non-governmental organisations, is widely available online. The material can provide ample of insights in the legislative process. A content analysis of existing material will provide a careful, detailed, systematic examination and interpretation of the material in effort to identify patterns. Relevant information can be obtained from policy documents, rapports, parliamentary minutes, action plans, news articles, correspondence, press releases, et cetera. This type of information can be obtained from the websites of for instance the European Union institutions, the member states governments, political parties, NGO's, national news websites. The empirical data will be systematically analysed in line with the operationalisation of the variables in order to accurately

assess the causal relationships. All claims made in this study are based on objective information and will be properly referred to.

5.1.3. Case selection

First, it has to be decided how many cases would need to be examined. The amount of cases selected for this study is three countries. This amount ensures that the findings can be better generalised to other countries than if it would focus on just one or two countries. Meanwhile it still allows for intensive study of the indicators that are used for measuring the causal relationship.

The selection of appropriate cases (Member States) is crucial, because the validity of the claimed causal relationship of the selected variables is largely dependent on the properties of the selected cases. The first criterion is that the cases should not be selected randomly, because the cases may not vary in the independent variable of interest, or it may result in a situation in which the cases vary on the variables for which control is sought (Blatter & Haverland, 2012). In order to prevent these problems, the cases should be selected as follows: first, choose cases that vary with regard to the independent variable. Second, these cases must be similar with regard to the control variables.

For this study, the transposition performance of the Netherlands, Germany, and the United Kingdom are being examined. It is assumed that these countries will have different scores with regards to the independent variables, because each has a different type of domestic political system. Arend Lijphart (1999) makes a distinction between political systems based on two dimensions. The first is the executive-parties dimension, which refers to how easy it is for a single party to take complete control of the government. The second is the federal-unitary dimension. The Dutch government is a unitary state with a consensus democracy. Germany is also a consensus democracy, but has a federal system. Finally, the United Kingdom is a unitary state with a majoritarian, or “Westminster” democracy. The way politics is driven and legislation is made is very different in each of these countries. In addition, the way NGO’s operate and are able to influence legislation is different across countries. Therefore it is reasonable to expect that the independent variables will show sufficient variation.

Secondly, these cases are very similar with regard to the control variables. Since the selected countries are all developed, western European countries, it is assumed that these four countries will score similarly on the control variables. The control variables are administrative capacity

and administrative experience with transposing EU law. For measuring administrative capacity, the World Governance Indicators of the World Bank have been used (World Bank, 2015). These report on six broad dimensions of governance for 215 countries over the period 1996-2013: voice and accountability, political stability and absence of violence, government effectiveness, regulatory control, rule of law, and control of corruption. Germany, Netherlands and the United Kingdom all score similarly high, i.e. they are in the upper 75-99 percentile range, in comparison with for instance Italy and Greece, who score considerably lower (Ibid). Furthermore, all have been in the EU since its creation in 1949, so are very well integrated in the EU and have experience with the transposition of directives, therefore the administrative experience with transposing EU law is also highly similar.

Control Variable	The Netherlands	Germany	United Kingdom
Administrative capacity	High	High	High
Administrative experience with transposition	High	High	High

Table 1: Control variables

5.2. Operationalisation

In this part, the independent variables that have been discussed in the theoretical framework shall be further operationalised in order to effectively assess the variation between the cases. For each of the variables, the first step is to narrow down the definitions. Next, the indicators for the variables will be given, which will be used to measure the variable.

5.2.1. Transposition performance

Transposition performance can be defined as “*the degree of timeliness and correctness of the transposition of EU legislation into national law*”. Transposition speed can be measured by simply looking at the amount of time it takes a member State government to transpose the directive into national law. This is measured by looking at the official notifications by the member state governments to the Commissions, and at the coming into force of the national

implementation measures, which are provided on EUR-Lex. The official deadline is used as a reference as to whether a country is on time or delayed. However, transposition notifications to the Commission do not necessarily say much about the correctness of the transposition. Member state governments might notify transposition to the Commission, but may not have fully transposed the provisions of the directive. As the Commission states on EUR-Lex, *“The member states bear sole responsibility for all information on this site provided by them on the transposition of EU law into national law. This does not, however, prejudice the results of the verification by the Commission of the completeness and correctness of the transposition of EU law into national law as formally notified to it by the member states”* (EUR-Lex, 2015). Therefore it is also important to look at the quality of the transposition. At the time this study was conducted, the Commission had not yet reviewed the correctness of transposition performance of the Member States. The transposition performance is therefore assessed independently by looking at the correspondence between the required action in the directive and the action taken by governments at the moment of formal notification of member states to the Commission.

5.2.2. The goodness of fit

The Goodness of fit is defined as *“the compatibility of the EU legislation with the national institutional framework of a Member State”*. The higher the compatibility with national institutions, the easier it will be for national governments to transpose the directive in a timely matter (Kaeding, 2006).

For measuring the Goodness of Fit, mostly earlier works are emulated, such as Knill & Lenschow (1998) and Treib (2003). In these studies, the distinction is made between high fit, moderate fit and low fit. High fit indicates that the EU requirements can rely fully on existing provisions in existing institutional arrangements at the domestic level and requires no new formal arrangements. Moderate fit means that modification is needed in the existing laws or policies, but can be done so within the existing framework. A low fit between EU requirements and existing national arrangements implies specifically that the Member States have to create completely new arrangements that do not fit within the existing legal framework. To measure the goodness of fit, it will be determined for the most important provisions of the directive what kind of action was needed from the government and in which of the categories (high, moderate, or low) it belongs to.

As has been mentioned, the rationale for the “goodness of fit” hypothesis, is the lower the fit between the EU requirements and the existing institutional arrangements at the national level, the higher the costs of adaptation for the member state government, and the worse the implementation performance. If the goodness of fit is high, adaptation pressure will be low and this will lead to higher transposition performance.

In addition, I argue that adaptation pressure can be further induced or reduced by the degree of discretion that the directive allows governments as to how they implement the specific provisions. The Human Trafficking Directive has many different provisions focusing on different areas of the issue. The directive can be divided into essentially three categories, criminal law and prosecution, protection and assistance, and monitoring and prevention. As I have explained in chapter two, the three categories demand different kinds of actions from the member state governments. The first category, the measures on criminal law and prosecution, impose very specific legal formalisation and give almost no space for own interpretation, i.e. discretion. The victim support provisions require almost no formal adaptation, and have high discretion. The last category asks merely for practical implementation within the existing arrangements, these provisions are formulated in such a way that member states have a lot of discretion as to how they want to implement these requirements.

In sum, the adaptation pressure variable looks at the combination of two variables: goodness of fit and degree of discretion. First step is to measure the compatibility between policy measures imposed by the directive and existing policy measures on the domestic level. Second the degree of discretion that the directive allows member states is added to determine the overall adaptation pressure.

5.2.3. Domestic politics

Domestic politics refers to all the aspects of the political process that could impact the transposition performance. This very wide definition is chosen on purpose because domestic political processes are very complex and case-specific, and therefore difficult to standardise into a rigid analytical framework. Therefore the scope in this research is purposely kept as open as possible.

However, when analysing the impact of domestic politics in each country, special attention is given to the so-called ‘partisan effect’, which refers to the impact of government ideological positions on transposition outcomes. For the assessment of the political parties’ position within this political spectrum, the so-called “EU profiler” can be used. The EU profiler is a Europe-wide

voting advice application, set up by a consortium of research institutions from across Europe. It accumulated the data from nearly 300 political parties representing 34 different countries and regions in Europe (European University Institute, 2015).

The EU profiler holds a record of the positions held by political parties on 30 issues (European University Institute, 2015), and puts the political positions of the parties on a two-dimensional map along two axes: Socioeconomic Left-Socioeconomic Right and pro EU integration – Anti EU Integration, resulting in figure 2 below.

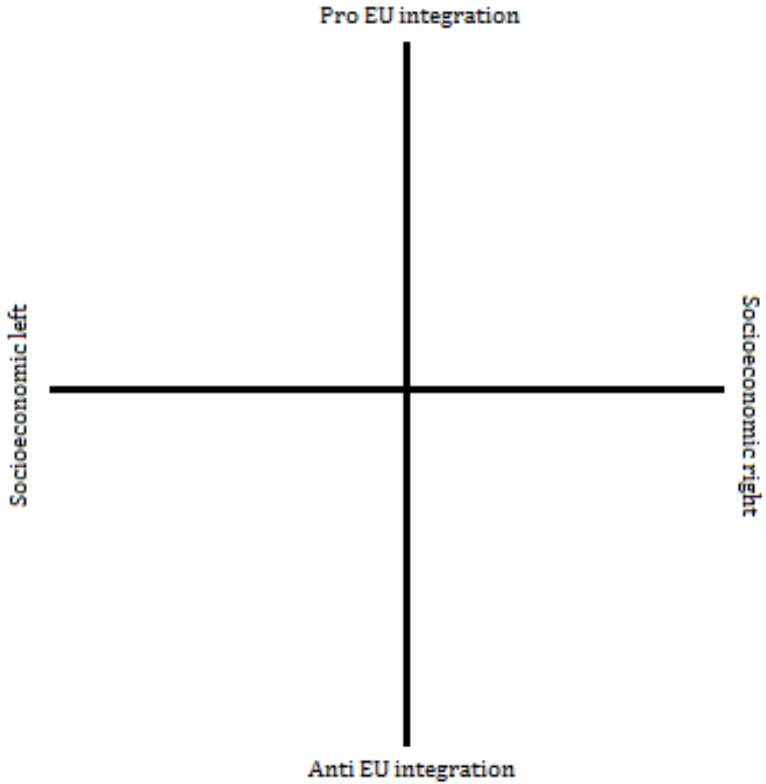


Figure 2: The European Political Spectrum.

The horizontal line refers to the *socio-economic issue*. This is based on the political party’s position with respect to the issue of state intervention in the free-market economy in order to protect the working class and bring about more social equality. (Slomp, 2000: 101-104). Parties on the ‘left’ of the socioeconomic scale have a favour of a strong, well funded state that provides extensive programmes and welfare that are paid for by tax revenue. Parties on the right are in favour of a reduced role for the state in everyday life, and want lower taxes. A second distinction between parties can be made with regards to their position towards EU integration, which is displayed as the vertical axis in figure two. Parties that are pro EU integration see the benefit of

a politically and economically closer European Union, giving more power to the EU. Anti-EU integration parties see value in preserving strong state sovereignty and less power for the EU (European University Institute, 2015).

This “political compass” can be used as an analysing tool in order to assess whether there are significant differences between government parties, and if patterns can be recognised that suggest that domestic preferences and position towards EU integration have an influence on the transposition performance.

Second, in order to test the fourth hypothesis, attention is given to non-ideological intra-governmental disagreement, which refers to the discussions about how the directive should be transposed into national law, for instance when a directive allows for discretion but there is disagreement as to how far-reaching the national measures should be.

5.2.4. Institutional veto players

An institutional veto player is defined as “*any player who has the formal power to block the adoption of a policy*”. The more a Member-State government relies on the assent of other institutional players (e.g. national parliament), the more difficult it becomes to transpose directives effectively. A veto player is measured as anyone who has the formal power to block the adoption of a policy. An *institutional player* will not count as a veto player unless it has *formal* veto power. With respect to bicameralism, there are countries where the upper chamber has only a power of delay, and cannot be counted as an institutional veto player. In most cases, the upper house does not have the power to veto legislation (Tsebelis, 1999). In West Europe, the only upper house that has veto powers is Germany’s Bundesrat (Ibid). The head of state has no veto powers in the countries selected for this study. Two institutional veto players with different political compositions should be counted as two distinct players. The ideological distance varies as a function of the composition of the chambers. If this composition is identical, for example between upper house and lower house, the two veto players are identical and should be counted as only one. Tsebelis (1995) calls this last statement the *absorption rule* and this will be applied when counting veto players.

5.2.5. Interest Groups

Interest groups are defined as any group of people who have a common cause and actively seek to influence public policy. There are many different things that interest groups can do to influence politics and legislation. In this study, a distinction is made between direct influence and indirect influence. This resembles what Beyers (2004) calls ‘voice and access’. Direct influence, or ‘access’ refers to exchange of policy-relevant information with public officials through formal or informal networks. The relevant information can be obtained from official documents and government websites, as well as from publications from the interest groups themselves. Indirect influence or ‘voice’ refers to public political strategies, such as media campaigns, protest, public statements, litigation, etc. The information can be obtained from interest groups’ websites, press releases, and newspaper articles. Interest groups may also combine direct and indirect strategies to influence policy making. The distinction between direct and indirect does not mean that it is assumed that one leads to more influence than the other. The indicators are summarised in the table below.

Type of influence	Indicators
Indirect (access)	
	Existence of cross-sectoral networks
	Knowledge exchange
	Co-decision with interest groups in policy making
Voice	
	Media campaigns
	Press releases
	Public statements
	Litigation
	Petitions

Table 2: operationalisation for interest group involvement

5.3. Reliability and Validity

In order to ensure reliability, the variables have been given precise definitions and measurement indicators in the operationalisation section. These precise definitions and concrete indicators make sure that the variables are being measured precisely and consistently throughout the research. Furthermore, each of the countries studied will be analysed according to the same structure to make sure that the comparisons are fair and reliable.

The internal validity comprises the degree to which causal inferences can be drawn between the independent variables and the dependent variable, and the degree to which indicators measure what needs to be measured (measurement validity) (Blatter & Haverland, 2012; Van Thiel, 2007). This is ensured firstly by the strong theoretical basis of the concepts that are being used to analyse the phenomenon. The variables that have been selected are drawn from existing literature and studies that have been validated in previous research. Furthermore, these concepts have been defined and operationalised in order to increase measurement validity. Second, the case selection also increases the internal validity. As has been mentioned, the countries have been selected because their different democratic systems would expect variation on the independent variables. In addition, since these countries are relatively similar in terms of the control variables, and the causal relationship between the independent variables and the dependent variable can be measured without interference. Third, focussing on only a few cases allows for context-sensitive measurement, which increases the measurement validity. Finally, this study took into account relatively many variables that could theoretically explain the studied phenomenon. This wide scope ensures that the study is not too much focussed on just one or two aspects, and ignoring others.

External validity comprises the generalisability of the research findings to other cases, or timeframes (Van Thiel, 2007). This is difficult, because generalisability is the main weakness of small-N research. The strength of small-N research is in the detailed assessment of the causal relationships. However, the cases that have been selected represent three ideal types of democratic systems, which may strengthen generalisability. Furthermore, this is one of the first attempts at explaining transposition performance in the area of criminal justice and home affairs. Follow-up studies could re-test the findings of this study at any time. The strong operationalisations and the use of objective and openly available information will ensure that the research is replicable.

5. COUNTRY STUDIES

This chapter sets out the first part of the analysis, the country studies. In this part, the countries will be studied in great detail. Each of the variables will be measured separately and for each individual country. Each country study will close off with a summary of the most important findings. The findings in this chapter will serve as input for the comparative analysis in chapter six.

5.1. The Netherlands

5.1.1. Transposition performance of The Netherlands

The Netherlands fully transposed the Human Trafficking Directive on 5 November 2013, seven months after the official deadline had passed. Since The Netherlands was unable to transpose the Directive before the deadline of 6 April 2013, the government was given a formal notice for its infringement by the European Commission on 29 May 2013 (European Commission, 2013-D).

However, considering the correctness, the Netherlands has done very well. As can be seen in the table below, the Netherlands complies with all of the most important provisions in the Directive. The Ministry of Justice released a transposition table of all the actions the government would take for each of the provisions and their sub paragraphs (Tweede Kamer, 2012-B). It carefully set out the needed actions or whether it already complies. Thus, despite being too late, the Netherlands did in the end manage to transpose the directive saliently into Dutch law and actions.

Directive Provision	Needed national measures	Compliance
Criminal law and prosecution		
Definition of exploitation	<ul style="list-style-type: none"> • Change age of consent • Add new forms of exploitation 	Yes
Sanctions	<ul style="list-style-type: none"> • Modify definition of aggravating circumstances. 	Yes
Jurisdiction	<ul style="list-style-type: none"> • Change existing measures to unconditional jurisdiction 	Yes
Non-Prosecution of victims	<ul style="list-style-type: none"> • Rights of victim are already protected by 	Yes

	law	
Assistance and support		
Victim support	<ul style="list-style-type: none"> Fits within the existing framework 	Yes
Compensation	<ul style="list-style-type: none"> Already complies 	Yes
Prevention		
Legal enforcement demand side	<ul style="list-style-type: none"> Make punishable customers of services which are object of exploitation 	Yes (No changes in legislation, but no obligation to comply)
Awareness campaigns	<ul style="list-style-type: none"> Already complies 	Yes
Other		
National Rapporteur	<ul style="list-style-type: none"> Already complies 	Yes. Rapporteur formally established by law

Table 3: Quality of transposition in the Netherlands

5.1.2. Goodness of fit in The Netherlands

The Netherlands was already tied to earlier international commitments aiming at the eradication and prevention of Human Trafficking, such as the framework decision 2002/629/JBZ, the convention of the Council of Europe of 2005, and the Palermo Protocol of the United Nations of 2000. The EU Directive mostly continued the work that had been achieved through these earlier commitments. Since the Netherlands was already tied to these commitments, the legislative impact of the Human Trafficking Directive was limited. In cases where the directive led to implementation it has been done so through changes in existing Dutch legal and policy framework. Therefore, the goodness of fit altogether was quite high.

As can be seen in table 4, for none of the provisions the goodness of fit was low. All of the legislative measures could be made within the Dutch existing legal and policy framework (Tweede Kamer, 2012-A,C,D; Ministerie van Justitie, 2012; Eerste Kamer, 2013-A,B; Nationaal Rapporteur, 2013). Only a few of the required provisions can be seen as having moderate goodness of fit, i.e. ‘modification needed in criminal code or existing national policy’. Most moderate changes applied to the provisions in criminal law and prosecution, such as the need for a wider definition of the offence in the Dutch Criminal Code (Nationaal Rapporteur, 2013). In order to comply with the directive, the government needed to include two new forms of exploitation, namely forced begging and the exploitation of criminal activity (criminal exploitation). The new proposal explicitly stated these forms of forced labour and service delivery into article 273f of the criminal code (Tweede Kamer, A, B). Furthermore, the position of vulnerable persons had to be given a formal definition, and the formulation of aggravating circumstances, leading to higher penalties, had to be changed. Another important necessary

modification in the criminal code is that trafficking crimes committed against children will always lead to higher penalties, also when the child is sixteen or seventeen, while before 16 years or older was the legal adult age (Nationaal Rapporteur, 2013; T. For the requirement of extraterritorial jurisdiction, the existing legislation did not go as far as the directive demanded and required adaptation (Tweede Kamer, 2012-A). As has been said in the second chapter, these provisions don't leave a lot of room for interpretation, and thus the total adaptation pressure was moderate (see table 4).

Directive Provision	Required action	Goodness of fit	Discretion
Criminal law and prosecution			
Definition of exploitation	<ul style="list-style-type: none"> • Change age of consent • Add new forms of exploitation 	Moderate	Low
Sanctions	<ul style="list-style-type: none"> • Modify definition of aggravating circumstances. 	Moderate	Low
Jurisdiction	<ul style="list-style-type: none"> • Change existing measures to unconditional jurisdiction 	Moderate	Low
Non-Prosecution of victims	<ul style="list-style-type: none"> • Rights of victim are already protected by law 	High	High
Assistance and support			
Victim support	<ul style="list-style-type: none"> • Fits within the existing framework 	High	High
Compensation	<ul style="list-style-type: none"> • Already complies 	High	High
Prevention			
Legal enforcement demand side	<ul style="list-style-type: none"> • Make punishable customers by law 	Moderate	High
Awareness campaigns	<ul style="list-style-type: none"> • Already complies 	High	High
Other			
National Rapporteur	<ul style="list-style-type: none"> • Already complies 	High	High

Table 4: Goodness of Fit in the Netherlands

In the area of assistance and support of victims, The Netherlands already met most of the requirements in the EU Directive, and if measures had to be taken, they could be applied within the existing measures (Tweede Kamer, 2012-A, C, D; Eerste Kamer, 2013, A). For example, the B9 regulation of the Dutch Aliens Act of 2000 offers victims or presumed victims of trafficking a three months reflection period, during which they can decide whether or not to cooperate in criminal proceedings (European Commission, 2015-F) Those (presumed) victims that are foreign nationals are allowed to be granted a residence permit for a period of one year (renewable for up to three years) during the investigation and prosecution period if they decide to cooperate in the criminal proceedings. A new description of target groups was inserted in

2009 in order to ensure that the regulation applies equally to the victims of sexual exploitation and to other forms of exploitation (Ibid). Since The Netherlands complied to these provisions already in practice, and the discretion was high, the total adaptation pressure was low.

For the prevention of trafficking, Article 18 of the Directive requires member states to make efforts in the area of awareness raising (Directive, article). The Netherlands already made considerable efforts in this area, both among the general public and in respect of vulnerable groups (European Commission, 2015-F; Nationaal Rapporteur, 2013; Tweede Kamer, 2012-A,B). For the discouragement of demand, the Netherlands had no explicit measures to establish as a criminal offense the use of services that are the objects of exploitation (Nationaal Rapporteur, 2013; Tweede Kamer, 2012; A,B). However, the Justice Minister explained that the Criminal Code contained a clause that establishes as a criminal offense the use of a prostitute that is victim of trafficking. The punishment of customers could be done separately through a change in legislation that goes outside the implementation of the directive (Tweede Kamer, 2012; A,B). Since this provision demanded a change in legislation, the goodness of fit for this specific measure is considered as moderate. However, the implementation was not made mandatory by the Directive. Finally, the Directive requires each Member State to establish an National Rapporteur or an equivalent mechanism. The Netherlands has had an independent National Rapporteur THB since 2000 (European Commission, 2015-F; Nationaal Rapporteur Mensenhandel, 2013). As can be seen in table below, the overall adaptation pressure was low, because these provisions had a good match with national measures, and allowed a lot of discretion for implementation.

Category of provision	Goodness of Fit	Degree of discretion	Adaptation Pressure
Criminal law and prosecution	Moderate	Low	Moderate
Assistance and protection	High	High	Low
Prevention and monitoring	High	High	Low
Total	High	Moderate	Low-Moderate

Table 5: Summarising table for Goodness of Fit and adaptation pressure in the Netherlands

Looking at table 5, it can be concluded that the goodness of fit in the Netherlands was high, and the adaptation pressure was low to moderate depending on the discretion of the provisions. The adaptation pressure was highest for the provisions of the Directive that demanded for specific

legal requirements for criminal law and prosecution, and thus also required to pass the legislative procedure. Adaptation pressure was lower in the areas in which the countries were allowed discretion, notably the measures focusing on or the assistance and protection of victims. Therefore, provisions that required minimum standards in the criminal code and had to be formally approved by parliament imposed the most adaptation pressure in The Netherlands. However, since these changes could be made within the Dutch existing legal framework, the adaptation pressure was only moderate.

5.1.3. Political preferences in The Netherlands

The Netherlands has a very low election threshold (legally none, in reality only 0,67 percent), and one of the lowest in Europe. This low election threshold means that small parties have a relatively good chance of getting into the parliament, and bigger parties have almost no chance of getting a majority of the votes. Because of its fragmented constellation, the Dutch political system has known a long tradition of consensus-based politics with coalition governments (Parlement, 2015-A). This means that it is never unlikely that two, three, or more political parties, with divergent political ideologies, have to form a cabinet and have to find compromises in order to make policies. Furthermore, societal groups and corporations are often invited to the table during policy preparation. As a consequence, this system, called “Polder Model” in Dutch, has very broad political support, but typically restrains the policy making process due to its struggles in finding compromises (Parlement, 2015-B).

At the time that the Directive was formally entered into force on 15 April 2011, a minority government (52 seats out 150) was in place, which consisted of the Liberals (VVD) and the Christian Democrats (CDA). In order to have a majority in the parliament for new policies, the cabinet got its support from the informal partnership (Dutch: *gedoogsteun*) with the far right-winged anti-immigration Party For Freedom (PVV) since 10 October 2010 (Parlement, 2015-C). After consulting the EU profiler, the positions of the two government parties can be put in the political spectrum, as is displayed in the figure 3. As can be seen in the figure, the government parties VVD and CDA have approximately the same political preference on both dimensions.

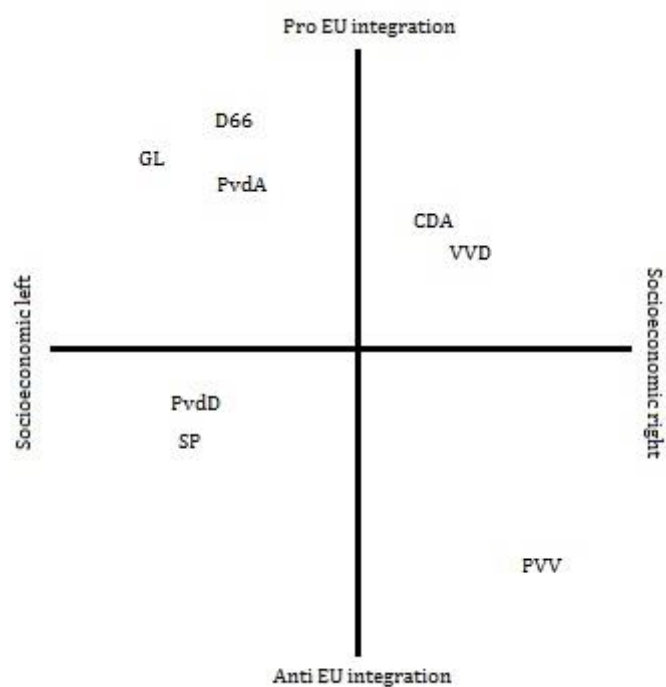


Figure 3: Political spectrum for the Netherlands

The partnership with the PVV came under threat during the negotiations on new austerity measures in order to comply with the Stability- and Growth Pact by the EU. At 21 April 2011, not even a week after the EU Directive came into force, the PVV walked out of the negotiations and the government resigned shortly afterwards (Parlement, 2015-C). The cabinet continued as “demissionary” until new elections would be held. When a cabinet becomes demissionary, the First Chamber decides which law proposals attain the status of ‘controversial’. The proposals that are declared controversial are the ones that are reasonably expected to have a different outcome under a different cabinet. The First Chamber decided on 8 May 2012 that no law proposal would be declared controversial (Eerste Kamer, 2015). The Second Chamber published a list of controversial items on 5 June 2012, however none of them were related to the EU Human Trafficking Directive (Tweede Kamer, 2012-F).

During this time, on 18 June 2012, a law proposal for the transposition of the Directive made it into the Second Chamber. This means that, de facto, the law was not proposed by a government. As can also be seen in the bill, it was not signed by a name, but simply as Minister of Justice. As the report by the Commission of 1 October 2012 states, the Chamber unanimously supported the proposed legislation (Tweede Kamer, 2012-D).

Despite the broad support for the bill in the parliament, it would take until 2 April 2013, four days before the official transposition deadline, before the proposal was accepted in the Second Chamber. Since the bill still had to pass through the First Chamber, it meant that The Netherlands was unable to transpose the bill in time, and was given a formal notice for its infringement by the European Commission on 29 May 2013 (European Commission, 2013-D). In the Minister's letter to the First Chamber, he notes that all the parties were positive about the bill, and takes the opportunity to answer some questions (Eerste Kamer, 2012-A). This is confirmed in the minutes of the sitting on 5 November 2013 (Eerste Kamer, 2013-C,D). The bill was accepted in the First Chamber on six November without any further complications or changes, and entered into force 15 November 2013 (Minister van Justitie, 2013).

In sum, the political alignment suggests that party preferences did not have a very big role for The Netherlands being too late, nor does anything suggest that there was an intra-coalitional dispute about how the directive should be implemented, as most parties were strongly in favour of implementing the directive. The process seems to have been delayed by the politically instable period, starting with the austerity crisis and the resignation of the cabinet, which can explain why the bill was proposed over a year after the directive entered into force. Furthermore, because of the demissionary period, new elections and the formation of a new cabinet, the deadline had already passed when the bill was approved in the Second Chamber and still had to await approval of the First Chamber.

5.1.4. Veto Players in The Netherlands

The Dutch monarch, although officially the head of state, has no real political power and can therefore not block any legislation. The parliament consists of two chambers. The Lower House, or Second Chamber, consists of 150 members and is elected every four years in a direct national election. The Second Chamber approves the budgets and has the right of the legal initiative, the right of submitting amendments, the right to start its own inquiries, and the right of interpellation. The Dutch Senate, or First Chamber (Dutch: Tweede Kamer) consists of 75 members who approve or reject all laws of the Netherlands without the right of amendment (Parlement, 2015-D, E).

The Dutch political system gives a lot of freedom to the government, as long as it gets the support of the majority of the parliament. Since all legislation needs the formal approval of the Second Chamber, the Second Chamber of Parliament can be seen as an institutional veto player.

Regarding the First Chamber, it is a bit more complicated. Although the First Chamber does have the right to reject laws, Tsebelis (1995:310) argues that the Dutch First Chamber is not a real veto player because it is congruent with the Second Chamber. A new cabinet will normally form a majority in both chambers, and normally if a proposal is accepted in the Second Chamber, the parties will do the same in the First Chamber. However, if the government has no majority in the First Chamber, parties in the First Chamber may use the right to reject proposals if it is not congruent with the Second Chamber.

The Human Trafficking bill was an interesting case, because the bill was proposed by a demissionary cabinet, and therefore had no majority in either of the parliamentary chambers. Although the First and Second Chamber both had the formal power to block legislation, they never really threatened the transposition process. The bill had broad support under all parties the Second Chamber (Tweede Kamer, 2012-D), and since these parties are congruent in both chambers, the First Chamber did not really pose a threat. Therefore, the 'absorption rule' is applied (Tsebelis, 1995), and First Chamber does not count as a veto player.

In sum, the proposal was able to pass both chambers very smoothly, without any form of obstruction, and therefore Veto Players cannot explain the delay of the Netherlands. Although the bill needed the formal approval of both chambers, it was not the main cause of the delay of the Directive. Taking into account the political instability and change of government in 2012, it seems more likely that the delay is caused by these circumstances.

5.1.5. Interest groups

In 2008, the Dutch Ministry of Justice set up a National Taskforce against human trafficking. The taskforce is a co-operation between the Dutch public prosecutor, the national police department, municipalities, border control, immigration office, asylum centres and societal actors. The goal of the Task Force is to fight human trafficking in an integral way, enabling actors to participate and contribute with their own expertise and instruments. The decree that first appointed the Task Force in 2008 for a period of three years, mentions that the Task Force will work together closely with societal actors such as the Human Trafficking Coordination Centre (Ministerie van Justitie, 2008)

The Human Trafficking Coordination Centre (Comensha) is an NGO that reports about human trafficking trends, coordinates the care and assistance of victims. It informs and advises governments and partners (Comensha, 2015). After the Task Force was continued for a second

term (2011-2014), Comensha was appointed as an official partner within the Task Force (Task Force Mensenhandel, 2011). Thanks to its participation in the Task Force, Comensha is able to address problems regarding the care and assistance of victims.

So far, Comensha is the only NGO participating officially in the Task Force. However, Comensha works closely together with other NGO's focusing on trafficking, and Comensha can conduct their interests to the Task Force. The government also has regular meetings with Comensha, shelters and other NGO's (Eerste Kamer, 2013-B). No NGO's active in the Netherlands have released a public statement or have filed a complaint through court, so societal actors did not pressurise the government into compliance indirectly. Furthermore, though official policy documents such as the minister's correspondence and minutes from parliamentary meetings do mention Comensha, they do not suggest that Comensha or other interest groups were involved in the legal transposition in the Netherlands, either positively or negatively. Regarding the categories that needed mostly practical implementation stage (assistance, protection, prevention and monitoring), an important role is appointed to Comensha and other organisations such as shelters (Tweede Kamer, 2012-A), but not necessarily during the transposition stage.

The National Task Force against human trafficking suggests that NGO's stand in close contact with Dutch policy makers and therefore have the access to formally or informally influence the content of the legislation. However, there is no empirical evidence that can prove that interest groups could formally influence the legislation during the transposition stage. This does not mean that they did not have an impact on the transposition performance 'behind the scenes', but simply that it is not noticeable with the available information.

In sum, interest groups are involved in the implementation of directive and the fight against human trafficking as a whole, especially with regards to the practical implementation. However, their involvement in the transposition stage of the national implementation of the Human Trafficking Directive could not be proven. The absence of evidence means that causal relationship between interest groups involvement and the transposition performance cannot be properly measured. Therefore causal relationship could not be tested in the case of the Netherlands.

5.1.6. Conclusion

Despite the fact that The Netherlands had a high goodness of fit, the Dutch government failed to transpose the EU Directive in time, and received a formal notice by the Commission. The one veto player, the national parliament, did not actually oppose the legislation, but its approval was still needed for the legislation to pass. However, the government was not able to propose any legislation to the parliament in time, mainly because the austerity measures imposed by the Stability and Growth Pact had the priority over all other legislation, also after the First Rutte Cabinet went demissionary. Furthermore, the new elections and change of cabinet in November 2012 made that many proposals were postponed because of other priorities until the new cabinet and parliament came into office. The delay was therefore not caused by political disagreement based on ideology or by opposing veto players, but more because of a time of political instability.

Independent variable	Score	Transposition performance
Goodness of Fit	High	Delayed, High correctness
Amount of Veto Players	1 (did not use blocking power, but were necessary to pass legislation)	
Interest groups involvement	<ul style="list-style-type: none"> • Voice: no • Access: yes (but no evidence of influence) 	
Domestic politics	<ul style="list-style-type: none"> • Similar ideologies government parties • Similar view on content 	

Table 6: Summarising table for the analysis of the Netherlands

5.2. Germany

5.2.1. Transposition performance of Germany

Germany has had a lot of trouble transposing the Human Trafficking Directive. The Merkel II cabinet was unable to transpose the Directive, and the transposition had to wait until the next legislative period. Table 7 shows how insufficient the transposition of the government was. As will be discussed later in this chapter, this narrow interpretation was also the reason why the bill was blocked in the Bundesrat. A new bill is still in progress, but by May 2015, when the Bill was last discussed, the Directive had still not been transposed (Deutscher Bundestag, 2015). Thus, Germany was extremely late, and since it has not been transposed at all, also incorrect.

Directive Provision	Needed national measures	Compliance
Criminal law and prosecution		
Definition of exploitation	<ul style="list-style-type: none"> • Add new forms of exploitation in criminal code • Change age of consent 	<ul style="list-style-type: none"> • Yes
Sanctions	<ul style="list-style-type: none"> • Penalties for offense of max 5 years • Penalties of max 10 years for aggravating circumstances 	<ul style="list-style-type: none"> • No
Jurisdiction	<ul style="list-style-type: none"> • Change existing measures to unconditional jurisdiction 	<ul style="list-style-type: none"> • No
Non-Prosecution of victims	<ul style="list-style-type: none"> • Rights of victim are already protected by law 	<ul style="list-style-type: none"> • Yes
Assistance and support		
Victim support	<ul style="list-style-type: none"> • Make unconditional of victim's willingness to cooperate 	<ul style="list-style-type: none"> • No
Compensation	<ul style="list-style-type: none"> • Already has scheme, but doesn't work well. Need to make easier 	<ul style="list-style-type: none"> • Yes (no changes, but not obligatory)
Prevention and monitoring		
Legal enforcement demand side	<ul style="list-style-type: none"> • Make punishable customers of services which are object of exploitation 	<ul style="list-style-type: none"> • Yes (No changes, but not obligatory)
Awareness campaigns	<ul style="list-style-type: none"> • Already complies 	<ul style="list-style-type: none"> • Yes
National Rapporteur	<ul style="list-style-type: none"> • Appoint a rapporteur 	<ul style="list-style-type: none"> • No

Table 7: Quality of transposition in Germany's Bill before Bundesrat's veto in 2013.

5.2.2. Goodness of fit in Germany

Germany was tied to all of the previously mentioned international commitments, most notably the UN Palermo Protocol, the European Union Framework Decision THB 2002, The EU Directive 2004/81/EC and the Convention of the Council of Europe in 2005. Therefore, the directive entailed only minor implementation requirements in terms of criminal law and otherwise German law already satisfied the requirements of the directive (European Commission, 2015-G).

As a result of these earlier steps, none of the provisions in the directive had a low goodness of fit, because it did not require Germany to make completely new legal arrangements that did not fit within the existing legal framework.

The German legislation regarding human trafficking dated back to the amendment to the Criminal Code in 2005, when other forms of exploitation other than sexual exploitation were recognised. In addition, since 1997, Germany had a separate Transplant Act, which was amended in 2001 and prohibits trade in tissues and organs. Although these measures gave a good starting point for transposition of the human trafficking directive, the definition of the offence in the contemporary German legislation did not yet include the exploitation of criminal acts and forced begging. Furthermore, human trafficking for the purposes of organ trading also had to be incorporated explicitly into the German criminal code in order to meet the requirements of the Directive (Ibid). In addition, the German criminal code had to be adapted to change the age of consent from the age of 16 to the age of 18, and in order to adequately sanction offenders who exploit under aggravating circumstances (Bundesrat, 2013). The German law regulates the non-prosecution of victims under the Code of Criminal Procedure (KoK, 2011). Finally, the extraterritorial jurisdiction did not yet conform to the Directive (Deutsches Institut für Menschenrechte, 2013). The provisions regarding criminal law and prosecution required the most formal changes to Germany, however these requirements only demanded for amendments in existing legislation, and thus the goodness of fit can be defined as moderate. Since these provisions offered little discretion to member states, the adaptation pressure could also be defined as moderate.

Directive Provision	Needed national measures	Goodness of Fit	Discretion
Criminal law and prosecution			
Definition of exploitation	<ul style="list-style-type: none"> • Add new forms of • Change age of consent 	Moderate	Low
Sanctions	<ul style="list-style-type: none"> • Change maximum Penalties for offense • Include aggravating circumstances 	Moderate	Low
Jurisdiction	<ul style="list-style-type: none"> • Amend existing legislation 	Moderate	Low
Non-Prosecution of victims	<ul style="list-style-type: none"> • Rights of victim are already protected by law 	High	High
Assistance and support			
Victim support	<ul style="list-style-type: none"> • Make unconditional of victim's willingness to cooperate 	Moderate	High
Compensation	<ul style="list-style-type: none"> • Already has scheme, but doesn't work well. Need to make easier 	High	High
Prevention and monitoring			
Legal enforcement demand side	<ul style="list-style-type: none"> • Make customers punishable by law 	Moderate	High
Awareness campaigns	<ul style="list-style-type: none"> • Already complies 	High	High
National Rapporteur	<ul style="list-style-type: none"> • Appoint a rapporteur 	Moderate	High

Table 8: Goodness of Fit and Discretion in Germany

In the area of assistance and protection, Germany had already taken significant steps in the previous years. The first national action plan in 2003 for the protection of victims of sexual exploitation insisted on improving the assistance and protection of victims (Ministry of Family Affairs, 2003). Since 2007, trafficked persons cooperating in criminal proceedings can be issued with a residence permit for as long as the state prosecutor deems it appropriate (European Commission, 2015-G) This is in line with the earlier 2004 directive, but only partially with the 2011 directive, since such a residence permit only applied to persons who have entered Germany legally and who are willing to cooperate (Bundesrat, 2013; Deutsches Institut für Menschenrechte, 2013; KOK 2011, 2013). Since Article 11 of the Directive asks the member states to include victims who reside illegally as a consequence of their exploitation, amendments were needed if Germany wanted to meet the demands of the directive. More recently, the government introduced a Law in 2011 to 'Boost the Rights of Victims of Sexual Abuse', which aimed avoid letting victims testify multiple times, ensuring legal advice to victims, and regulations for extending limitation of actions (Ministry of Family Affairs, 2011: 88). Finally, victims can be entitled to state financed compensation under the victims of Crime Compensation act, or may claim compensation from the offender by initiating an Adhesion Procedure within the criminal proceeding (European Commission, 2015-G). In sum, in order to fully comply to

these provisions of the directive, the German government would have to take some steps in the area of victim support. However, since this part of the directive still allows for much discretion, the overall adaptation pressure was low overall.

Germany already had a wide set of actions in the area of prevention, such as awareness raising for children and their parents, training for professionals who come into contact with (potential) victims, and preventative offenders (Ministry of Family Affairs, 2011: 79). Therefore, the provisions in this area required mainly practical implementation into such existing measures. There was no formal legislation that explicitly reduced the demand side. The use of services that are the object of human trafficking was not punished under contemporary German law, so this would require Germany to take formal arrangements. However, article 17 of the directive only asks member states to consider taking action, but lets them decide for themselves if they will do so (European Union, 2011) Finally, The German government does not have a National Rapporteur for human trafficking. A Situation Report Trafficking in Human Beings is published annually by the Federal Criminal Police (European Commission, 2015). Furthermore, there is a Federal Working Group, which is an inter-ministerial task force that coordinates the fight against trafficking with together with the most important stakeholders; however, these did not fully meet the requirements of the directive, because these organisations hold no independent status (Bundesrat, 2013). In sum, the provisions regarding prevention have a good compatibility with existing German practices and require little formal arrangements. In addition, the Directive offers a lot of discretion, which leads to the conclusion that the adaptation pressure for this category of provisions was low.

Category of provision	Goodness of Fit	Degree of discretion	Adaptation Pressure
Criminal law and prosecution	Moderate	Low	Moderate
Assistance and protection	Moderate-High	High	Low
Prevention and monitoring	Moderate-High	High	Low
Total	High	Moderate	Low-Moderate

Table 9: Summarising table of Goodness of Fit and Adaptation Pressure in Germany

In sum, the goodness of fit for Germany was high and adaptation pressure was low to moderate due to the high discretion allowed for most of the provisions. Considering that Germany had such a bad transposition performance despite a high goodness of fit, it seems that the goodness of fit is not a satisfactory explanation for transposition performance.

5.2.3. Political Preferences in Germany

In order to prevent complications in the formation of majorities by the presence of small and very small parties a five-percent threshold is designed to stop them being represented in the Bundestag. Nevertheless, the German electoral system makes it very difficult for any party to form a government on its own. Coalition governments are predominant on both the federal and the state level, and exemplify the German political culture of consensus. Similar to The Netherlands, this multi-party, consensus-based culture, is beneficial for the representation of minority groups in political discussions, but typically restrains the political decision-making process. Different interest groups often block each other, resulting in political deadlocks (Lijphart, 1999).

The Merkel II cabinet consisted of two Christian Democratic parties, CDU, CSU, and the Liberal FDP. When putting the three parties on the two-dimensional scale in figure 4, the parties all belong to the right on the socio-economic scale and are all relatively pro-EU integration.

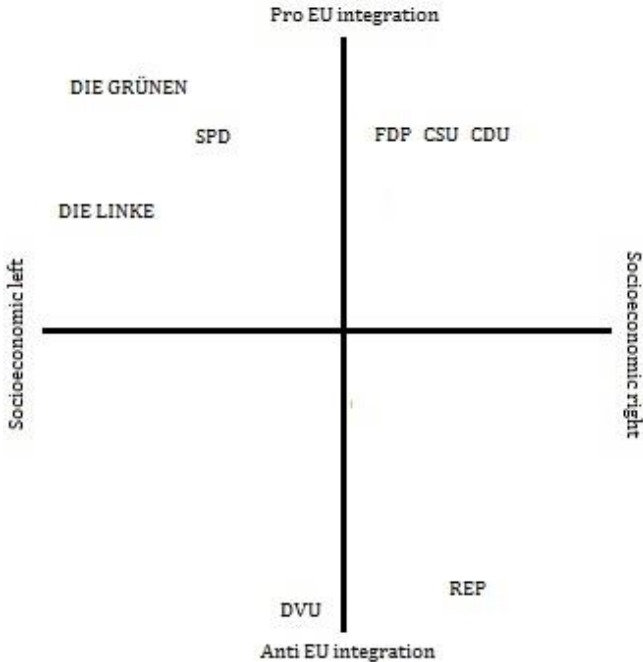


Figure 4: Political spectrum of Germany

Despite the relative ideological similarities, the Minister of Family (CSU) and the Minister of Justice (FDP) could not agree to whether or not stricter legislation would be necessary at all. The Minister of Family Affairs was responsible for preparing the legislation. However, the Federal Minister of Justice did not want a new law, saying that existing laws were sufficient as they were. In essence, without the FDP's approval, there would be no majority in parliament for new legislation (Die Welt, 2013-A).

At the end of April 2013, the parties sat down together in order to find a compromise (Die Welt, 2013-B). Afterwards, a first draft of the Bill was sent to the Bundestag on 6 June 2013 (Deutscher Bundestag, 2013-A). This was already a month after the official deadline had passed. The law committee examined the proposal on 28 June, and recommended to accept the original version in parliament (Deutscher Bundestag, 2013-B). During the second round, the fraction Bündnis 90/Die Grünen proposed three amendments to the Bill. These amendments demanded punishment for customers, more protection of the victims, and better rules for providing residence permits for victims (Deutscher Bundestag, 2013-C,D,E). However, the government parties in parliament overruled all of the amendments, and accepted the committee version of the Bill (Deutscher Bundestag, 2013-F).

In sum, though domestic politics have played a substantial role in delaying the Bill in Germany, the intra-coalitional dispute could not be linked to the political position of the parties on either the socioeconomic dimension or the position towards EU integration. Rather, the disagreement was based on technical implementation. The two coalition parties could not agree on the extent to which the measures had to be implemented in German legislation.

5.2.4. Institutional Veto Players in Germany

Germany is a federal parliamentary republic, consisting of two legislative chambers. Both chambers have a formal power to block legislation and therefore Germany has two real veto players (Tsebelis, 1995). The first veto player, the Bundestag, is the parliament of Germany for the representation of the German people. The cabinet has a majority in the Bundestag. Once the government coalition was able to come to an agreement for the transposition of the directive, the veto power of the Bundestag did no longer pose a threat, as the coalition had a majority of the seats.

However, whereas the government had a political majority in the Bundestag, this was not the case for the Bundesrat, which is the representative body of the regional states, the so-called “Länder”. In fact, the Bundesrat was dominated by the opposition parties Socialists (SPD) and the Greens (Süddeutsche Zeitung, 2013) The Bundesrat enjoys equal rights as the Bundestag in decisions over federal laws, and thus has the formal power to block legislation. When the political majority in the Bundesrat differs from that of the Bundestag, consent between the two legislative chambers is complicated when they are not in line with one another. Usually, a mediation committee is set up, but if the chambers do not agree, new legislation has to be proposed (Bundestag, 2015).

According to the opposition parties, the SPD, the Greens and the Left, the government’s proposition was completely insufficient in order to fight human trafficking and to fulfil the requirements of the EU directive (KOK, 2013-A; Die Welt, 2013-A). In their response, they argued that the bill did in no circumstance prevent any form of human trafficking. The Greens for example, demanded that customers who knowingly make use of services, which are object of trafficking, should be punished. As the German Upper House was at the time dominated by mostly Rot-Grün (Greens and Social Democrats), the chance of the bill to pass was predicted to be highly unlikely due to its veto power (Ibid).

As was predicted, the proposal was blocked in the Bundesrat. The Rot-Grün dominated representatives of the regional states considered the new law as insufficient (KOK, 2013-A). The Bundesrat convened the Mediation Committee. Also, the end of the parliamentary term was in sight. Therefore, the Bundestag was no longer able to come together before the election, and could not overthrow the veto with the necessary majority (Süddeutsche Zeitung, 2013). As a result, the legislation expired, and full transposition of the regulation was postponed until the 18th legislative term (European Commission, 2015-G). A new Bill had to wait until the new elections were held and a new government was to be inaugurated on 17 December 2013. The 18th Bundestag consisted of CSU, CDU and the SPD. With the upcoming elections and formation of a new government, it would take until January 2015 to propose a new law to the Bundestag for the transposition of the Human Trafficking Directive. Again, the proposal was criticised for being insufficient, even from within the coalition. The SPD Minister of Justice defended the legislation in the Bundestag, promising further improvements in a new piece of legislation (Frankfurter Allgemeiner Zeitung, 2015).

In sum, Germany had two veto players, both of which have played an important role in the transposition performance of Germany. In the Bundestag stage, the coalition parties could not

find an agreement, as has been discussed in the former paragraph. When the cabinet finally found a compromise, the veto power of the Bundestag did no longer pose a threat, despite disagreement of the opposition parties. However, since these opposition parties had a majority in the Bundesrat, they were able to block the insufficient Bill and forced the government to improve the proposals in the next legislative term. It seems therefore evident that Germany's veto players have contributed to the delay, but at the same time may ensure a more correct transposition in the long term.

5.2.4. Interest groups in Germany

In 1997, the German Federal Government set up a Federal Working Group on Trafficking in Persons. This is an inter-ministerial task force that gathers all relevant governmental and non-governmental actors on the various levels within the Federal system. The Working Group provides policy recommendation on both the federal and the Länder level, and aims to formulate and coordinate specific action in the area of trafficking in human beings (European Commission, 2015-G).

The Working Group also includes interest groups that promote fight against human trafficking, which are assembled under the German NGO network against human trafficking, or in German the *Bundesweiter Koordinierungskreis gegen Menschen handel* (KOK). The network consists of 37 member organisations across Germany. It represents a broad variety of groups, including faith based organisations and sex workers' rights groups (KOK e.V., 2015). Activities of the KOK include coordinating the efforts of its member organisations and other stakeholders involved in the issue of human trafficking. They transform their experiences into political strategies, and inform policy makers, scientists, civil society, and governmental and intergovernmental stakeholders on the complexity of anti-trafficking policies. Other core activities include political lobbying, as well as work in relevant committees and public relations (Ibid).

In August 2011, KOK released a statement that the organisation welcomed the adoption of the new EU Human Trafficking Directive. The network only regretted the conditionality of the residence permits, the limited financial support for shelters, and the absence of a right to refuse to testify for counsellors. For the rest, KOK stated to be positive about the provisions in the directive (KOK, 2011). In June 2013, shortly after the German government had introduced the proposal for the transposition of the Human Trafficking Directive to the Bundestag, KOK

released another statement. It stated that in the opinion of the network, the proposal was insufficient to fulfil the demands of the directive (KOK, 2013-A). KOK expressed that they would like the government to leave the bill alone and instead wait for the next to legislative term to reconsider the bill (KOK, 2013-B). On the 24th of June, experts attended a court hearing of the Bundestag, and repealed the government's bill. They argued that the bill failed to improve the rights of victims. However, this did not stop the Bundestag from approving the bill after a heated debate (Deutsches Institut Für Menschenrechte, 2013). Finally, after the proposal was vetoed in the Bundesrat, KOK issued another statement, stating it welcomed the decision of the Bundesrat (KOK, 2013-C).

In sum, the statements of KOK and the German Institute for Human Rights suggest that they find the quality of the transposition more important than the speed. They would rather see the bill being stopped or delayed until it meets the requirements of the directive, as this is a good window of opportunity to get their interests put into law. Since lobbying is part KOK's core activities, it is possible that the interest groups used their access and had an influence behind the scenes. However, the available information does not provide direct evidence that interest groups had an actual influence during the transposition stage, or on the decision of the Bundesrat.

5.3.6. Conclusion

Despite having a high goodness of fit and low adaptation pressure, the transposition directive was very problematic in Germany, and by the time this thesis was written, two years after the deadline, Germany still has not transposed the directive. Party ideologies were similar on both dimensions, so do not offer a satisfactory explanation for the weak transposition performance. However, there was a lot of intra-coalitional disagreement in Germany as to how the directive had to be transposed, and this caused heavy delay in the Bundestag. Eventually the government parties found an agreement, but the Bill was blocked by the opposition parties in the Bundesrat. Interest groups were clearly involved, both directly and indirectly, but no evidence could be found for their influence on the transposition performance. Therefore it is evident that the main explanation of Germany's transposition performance was the strong veto players. Though it is important to note that the Bundesrat delayed the transposition in order to secure a more correct transposition in the long term.

Independent variable	Score	Transposition performance
Goodness of Fit	High	Delayed and highly incorrect
Amount of Veto Players	2 (Bundesrat used blocking power)	
Interest groups involvement	<ul style="list-style-type: none"> • Voice: yes, but no evidence of influence • Access: Yes, but no evidence of influence 	
Domestic politics	<ul style="list-style-type: none"> • Similar ideologies government parties • Different view on content 	

Table 10: Summarising table for analysis of Germany

5.3. United Kingdom

5.3.1. Transposition performance of the UK

Despite starting with a six months delay after the UK had decided to opt-in to the directive, the British government was still able to transpose the directive in time, and unlike The Netherlands and Germany, has received no formal notice from the ECJ for infringement. Compared to The Netherlands and Germany, it has transposed the directive much faster. In terms of correctness, the United Kingdom has done sufficiently, but could have done more in terms of the less obligatory measures. As can be seen in table 11, the most pressing provisions have been complied to and the needed steps have been taken. With regard to the provisions that were less strict, the UK has transposed the directive a little bit more loosely, and therefore the quality is not as good as The Netherlands. In the area of assistance and support, most of the provisions are still only compliant by guidance and not by legislation. This means that there are official guidelines and best practice provided by the government for professionals and prosecutors dealing with human trafficking victims, but the protection has no legal basis (Anti-Slavery International, 2011), and authorities are not required to provide protection as a matter of domestic law (AIRE, 2012). This has been also criticised by ATMG and GRETA because this leads to inconsistency in the daily practice, and victims may still not be properly protected. For instance, victims are still often seen as offenders (Independent, 2013; ATMG, 2013-A,B; GRETA, 2014). Also the fact that the IDMG has been established as National Rapporteur, is not fully compliant, as the mechanism is not independent from the government. Finally, the government did not take the opportunity to bring together the legislation on human trafficking, which was very scattered, into one comprehensive act. This was criticised by some NGO's (ATMG, 2013-A,B; Centre for Social Justice, 2013).

Concerning the latter, in 2015 a comprehensive Modern Slavery Act was enacted, which brought together all legislative measures to counter human trafficking into one single Act. It would also make statutory the provisions for the protection of modern slavery victims (Parliament, 2015). The new Act also includes the creation of an Anti-Slavery Commissioner with an extended remit to include protection of victims (ECPAT, 2015). Although this officially cannot be seen as part of the transposition of the EU Directive, the new Act has made the UK law more compliant with the EU standards (Home Office, 2014-B), including the provisions that were not mandatory.

Directive Provision	Needed national measures	Compliance
Criminal law and prosecution		
Definition of exploitation	<ul style="list-style-type: none"> • Include forced begging and illicit activity in legislation • Extend in legislation to cover trafficking that takes place entirely within the UK, as well as trafficking into or out of the UK 	<ul style="list-style-type: none"> • Yes
Sanctions	<ul style="list-style-type: none"> • Already compliant 	<ul style="list-style-type: none"> • Yes
Jurisdiction	<ul style="list-style-type: none"> • Adding provision to Sexual Offences Act 2003 and Asylum and Immigration Act 2004 through amendment 	<ul style="list-style-type: none"> • Yes
Assistance and support of victims		
Victim support	<ul style="list-style-type: none"> • Already compliant in guidance, but not in legislation 	<ul style="list-style-type: none"> • Yes (no changes in legislation, but not obligatory)
Compensation	<ul style="list-style-type: none"> • Already complies 	<ul style="list-style-type: none"> • Yes
Non-Prosecution of victims	<ul style="list-style-type: none"> • Already complies in practice, but may have to be enshrined in legislation 	<ul style="list-style-type: none"> • No
Prevention		
Legal enforcement demand side	<ul style="list-style-type: none"> • Complies, but not on all forms of exploitation 	<ul style="list-style-type: none"> • Yes (No changes in legislation, but not obligatory).
Awareness campaigns	<ul style="list-style-type: none"> • Already complies 	<ul style="list-style-type: none"> • Yes
National Rapporteur	<ul style="list-style-type: none"> • Has monitoring mechanisms in place, it does not have the preferred / optimum National Rapporteur to independently oversee all anti-trafficking policy in the UK. 	<ul style="list-style-type: none"> • No. IDMG appointed, but is not independent. So not fully compliant.

Table 11: Quality of transposition in the United Kingdom

5.3.2. Goodness of fit in the United Kingdom

Like Germany and The Netherlands, the United Kingdom was also tied to the mentioned international commitments and therefore the legal framework was already much in line with that of the Directive. Initially, the United Kingdom even decided not to participate in the Directive through its ability to opt-out. The UK argued that it already complied with most of the provisions of the EU Directive, and that it would make many provisions mandatory that were discretionary in UK law. (AIRE, 2012; House of Commons, 2011, 2014). The UK decided to 'wait-and-see', until the Directive had been fully agreed on, so that UK could opt-in in at a later stage.

As was the case in Germany and The Netherlands, most action was needed in the area of criminal law and prosecution, for which the UK law did not yet meet fully the requirements of the directive. The definition of the offence in UK legislation was already compliant with the definition in the directive (Home Office, 2012-A). However, the current trafficking offences set out in the Sexual Offences Act 2003 and Asylum and Immigration Act 2004 needed to be amended in order to cover trafficking that takes place entirely within the UK, as well as trafficking into or out of the country (Home Office, 2012; House of Commons, 2011), and to confer extra-territorial jurisdiction over UK nationals who commit the offences anywhere in the world. The Minister announced that primary legislation was needed only to fill these gaps between article 2 (definition of offense) and article 10 (extension of extra-territoriality) of the directive (Home Office, 2012-A). According to the minister, the other aspects of the directive that would require change in legislation could be done through secondary legislation, for which agreement in the parliament is not needed (House of Commons, 2011, 2014). The UK already complied with the provisions regarding article 3 and article 4 that requires measures to ensure conviction of offenders and the sanctions against offenders in the Sexual Offence Act 2003 and the Asylum and Immigration Act 2004.

For the assistance and support provisions, the Directive would not add new requirements beyond the measures that were already provided in compliance with the Council of Europe convention. However, the fact that the provisions on victim support would be made mandatory was new (House of Commons, 2011; AIRE, 2012; O'Neill, 2011).

Directive Provision	Required actions	Goodness of Fit	Discretion
Criminal law and prosecution			
Definition of exploitation	<ul style="list-style-type: none"> • Include forced begging and illicit activity in legislation 	Moderate	Low
Sanctions	<ul style="list-style-type: none"> • Already compliant 	High	Low
Extra-territorial jurisdiction	<ul style="list-style-type: none"> • Adding provision to Sexual Offences Act 2003 and Asylum and Immigration Act 2004 through amendment 	Moderate	Low
Assistance and support of victims			
Victim support	<ul style="list-style-type: none"> • Already compliant in guidance, but not in legislation 	Moderate	High
Compensation	<ul style="list-style-type: none"> • Already compliant in guidance, but not in legislation 	Moderate	High
Non-Prosecution of victims	<ul style="list-style-type: none"> • Already complies in practice, but may have to be enshrined in legislation 	Moderate	High
Prevention and monitoring			
Legal enforcement demand side	<ul style="list-style-type: none"> • Complies, but not on all forms of exploitation 	Moderate	High
Awareness campaigns	<ul style="list-style-type: none"> • Already complies 	High	High
National Rapporteur	<ul style="list-style-type: none"> • Has monitoring mechanisms in place, but no independent rapporteur. 	Moderate	High

Table 12: Goodness of Fit in the United Kingdom

Over the years, the UK had taken considerable steps to ensure the assistance and support of trafficking victims. For instance, a number of safe houses for victims of THB have been set up throughout the UK, providing accommodation and support to both women and men (GRETA, 2014) The United Kingdom also offers the legal possibility to grant residence permits to victims of trafficking both on the basis of their personal situation and when co-operating with the competent authorities (Home Office, 2012-B; GRETA, 2014;). Existing measures for support of victims also included the access to legal counselling and representation, but existing legislation would need “minor amendment” (House of Commons, 2011). Furthermore, the support could be provided for a longer period of time and the funding model could be improved (TRACE, 2014). The appointment of a representative to support and protect a child victim was already covered by practice guidance but not officially enshrined in legislation (House of Commons, 2011). In 2010 the Government released a guidance that intended to support the Government’s commitment to improve the quality of treatment for victims and witnesses in the criminal

justice system so that they have an opportunity to provide their best evidence (Department of Justice, 2010). Finally, it is possible for victims of trafficking to claim compensation through a State compensation scheme, however, very few victims of trafficking seek such compensation (GRETA, 2014).

The provisions that ask from member states to take action for the assistance and support of victims asked the UK to make mandatory the measures that were already best practice, or make slight alterations in existing practices (House of Commons, 2011; AIRE, 2012). The Minister argued that these measures could be taken by the means of secondary legislation, which do not need to pass the parliament (House of Commons, 2011, 2014; Home Office, 2012). Furthermore, since the EU also gave member states a lot of discretion as to how to comply with these provisions, the adaptation pressure was low.

As far as the prevention of THB is concerned, the United Kingdom had already taken considerable steps in the area of awareness-raising (Home Office, 2011, 2012-B; GRETA, 2014; European Commission, 2015-G). In the UK, the clients of prostitutes that are subjected to exploitation can be penalised. The payment for sexual services provided by a prostitute subjected to force, deception, threats or other forms of coercion, is criminalised by the Policing and Crime Act 2009 in England, Wales and Northern Ireland, and trafficking for the purpose of the removal of organs is criminalised by the Asylum and Immigration (Treatment of Claimants) Act 2004, the Human Organ Transplants Act 1989, and the Human Organ Transplants (Northern Ireland) Order 1989 (TRACE, 2014). In the UK, clients that knowingly make use of prostitutes that are subjected to exploitation can be penalised. The payment for sexual services provided with a prostitute that is subjected to force, deception, threats or other form of coercion, is criminalised by the Policing and Crime Act 2009 (GRETA, 2014). Discouraging of demand had so far focused mainly on sexual exploitation, and not for the purpose of domestic servitude and labour exploitation (GRETA), though trafficking for the purpose of organ trade is criminalised by the Asylum and Immigration Act 2004, the Human Organ Transplants Act 1989 (TRACE, 2014).

The Interdepartmental Group on Human Trafficking (IDMG) was appointed as the UK's National Monitoring Mechanism (Home Office, 2014-A). The IDMG provides strategic oversight of all trafficking issues and directs UK policy on human trafficking, but is not politically independent and does not monitor or publish reports on the UK's progress as is required by the Directive (Anti-Slavery International, 2011; AIRE, 2011). Therefore an independent commissioner would have needed to be appointed in order to fully comply. However, since these provisions do not impose a lot of pressure because of their high degree of discretion.

Category of provision	Goodness of Fit	Degree of discretion	Adaptation Pressure
Criminal law and prosecution	Moderate	Low	Moderate
Assistance and protection	Moderate	High	Low
Prevention and monitoring	Moderate-High	High	Low
Total	Moderate	Moderate-High	Low-Moderate

Table 13: Summarising table of the Goodness of Fit and Adaptation Pressure in the United Kingdom

5.3.3. Political preferences in the United Kingdom

The United Kingdom is a unitary parliamentary democracy within the framework of a constitutional monarchy, and has a bicameral system. In that sense, it is very much the same like The Netherlands. However, the way politics is carried out is much different than The Netherlands, mainly because the UK is a majoritarian-unitary democracy, whereas The Netherlands is a consensus-unitary democracy (Lijphart, 1999). The UK Government is normally composed of members of the party that has the majority of the seats in the House of Commons, and minorities are not included. Therefore, coalition governments are very rare in the United Kingdom, and the government can usually propose new legislation without resistance from the opposition (Ibid). Interestingly, the UK government during the transposition of the Human Trafficking Directive was a coalition between the Conservative Party and the Liberal Democrats, the first coalition government since Churchill's War Ministry of the Second World War (Telegraph, 2010).

On the two-dimensional scale in figure 5, there are important differences between the two parties. First, the Liberal Democrats are on the left of the socioeconomic scale, whereas conservatives are right from the centre. Second, the Liberal Democrats are strongly in favour of EU integration, whereas the conservatives are slightly against EU integration. However, despite these differences, finding an agreement seemed to have been found without much difficulty.

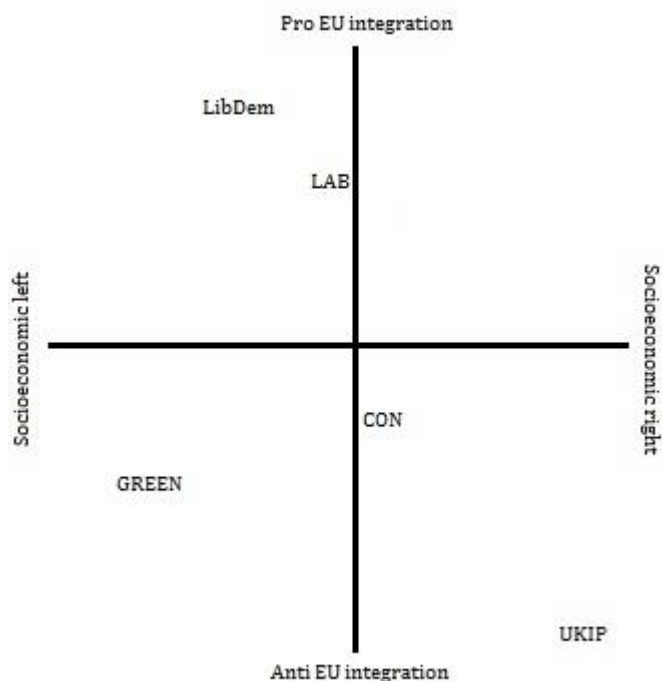


Figure 5: Political spectrum for the United Kingdom

Under protocol 36 of the Lisbon Treaty, The United Kingdom has the option to opt-out of all police and criminal justice legislation on a case-to-case basis. During the negotiations for the Human Trafficking Directive, the UK decided to not opt-in at the outset to the proposal of the directive and would review its position when the directive would be agreed, and there would be a finalised text, so that they could “*choose to benefit from being part of a directive that is helpful, but avoid being bound by measures that are against our interests*” (AIRE, 2011). After the finalised version of the directive was adopted, the British government took it into consideration, and on 22 March 2011 it decided to opt-in to the directive. The Home Office minister said that, “*by waiting to apply to opt in, we have a text that has been finalised and we have avoided being bound by measures that are against the UK’s interests.*” He also clearly stated the government’s willingness to implement the directive:

“The UK has always been a world leader in fighting trafficking and has a strong international reputation in this field. Applying to opt in to the directive would continue to send a powerful message to traffickers that the UK is not a soft touch, and that we are supportive of international efforts to tackle this crime” (Ibid).

The UK’s request to opt-in the directive was accepted by the European Commission, and the Directive came into force in the UK on 18 October 2011 after months of delay (Independent, 2011).

The statement above suggests that the UK government has opted into the directive with great willingness to implement the directive. Furthermore, there seems to have been an agreement between the coalition partners already before opting into the directive, because the rest of the transposition process did not contain any inter-coalitional dispute on how the directive had to be implemented. In sum, it can be concluded that party ideologies did not have an influence on the transposition process. Finally, the lack of an intra-coalitional dispute has certainly contributed to the speed of transposition.

5.3.4. Institutional veto players in the United Kingdom

The United Kingdom has a parliamentary system of government, meaning that the government depends on the confidence of the parliament. However, because of their majority in the House of Commons, the government's leadership can generally be confident about its legislative proposals getting approved (Lijphart, 1999: 11). Nevertheless, the House of Commons is still counted as a real veto player, because the government is not fully able to prevent their MP's from deflecting on parliamentary votes (Tsebelis, 1995: p. 302), especially in a coalition government.

The House of Lords consists mainly of members of the hereditary nobility but also a large number of so-called life peers, appointed by the government. The relationship between the two chambers is highly asymmetrical, because almost all of the legislative power belongs to the House of Commons. The only power that the House of Lords has is the power of delay. In the UK, the parliament is referred almost exclusively to the House of Commons. This highly asymmetrical bicameral system may also be called near-unicameralism (Lijphart, 1999: p. 18). Since the House of Lords has no formal power to block legislation, it does not count as an institutional veto player.

As mentioned earlier, the UK already complied with most of the requirements in the Directive, but two aspects of the Directive needed primary legislation in order to comply. To comply with these requirements the Protection of Freedom Bill – a comprehensive legislative programme to 'safeguard civil liberties and reduce the burden of government intrusion into the lives of individuals' - was used to make the necessary legislative amendments, new 'human trafficking' clauses were introduced to this effect during the Bill's Lord Committee Stage in order to comply to the Human Trafficking Directive (House of Commons, 2011; 2014). The amendments were added to the Bill without division and have since been enacted as section 109 and 110 of the

Protection of Freedom Act 2012 (Ministry of Justice and Home Affairs, 2012; Home Office, 2012; House of Commons, 2014).

At the time that these amendments were added, the Bill was already long underway. It had passed the House of Commons and had already reached the committee stage of the House of Lords. Clauses 109 and 110 were introduced during the debate of the Grand Committee of the Government on 12 January (House of Lords, 2012), and the amendments were accepted by the House of Commons during the ping-pong stage (Parliament, 2015-A). These aspects of the Act received royal assent on 6 April 2013.

The legislative amendments only dealt with those points of the directive that require primary legislation. The rest of the directive had to be implemented through secondary legislation or other appropriate means (House of Commons, 2011, 2014). Since these are a form of 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 (Parliament, 2015-B), the government could transpose the rest of the directive without any difficulty by means so-called trafficking people for exploitation regulations (Home Office, 2012-C).

In sum, for only two aspects of the directive primary legislation and the approval of the parliament was needed, and these could simply be implemented by adding clauses into a Bill that was already well under way. As a consequence, the government did not have to propose entirely new legislation. Moreover, there was a lack of veto players that could complicate the transposition process. The UK government has a majority in House of Commons, the only veto player. Since there is no need for consensus with other parties, the government can push legislation rather easily. Most of the directive could be transposed through secondary legislation, which do not require the approval of any veto players. This suggests that the lack of powerful veto players contributed to the quick transposition of the UK.

5.4.4. Interest groups in the United Kingdom

In 2006, the United Kingdom government initiated a joint venture, 'Operation Pentameter'. It was the first coordinated effort to tackle human trafficking on a national scale. The Pentameter involved every police force, as well as the Immigration Service, the Serious and Organised Crime Agency, the Crown Prosecution Service, and several non-governmental organisations, such as the Poppy project (House of Commons, 2014). Its tasks included the raising of national awareness of trafficking, identifying the scale of the problem, improving intelligence, recovery of

victims and reduction of harm, asset recovery, and tougher action against traffickers (Pentameter, 2006). The Operation had an operational phase of three months. Because of the positive results of Operation Pentameter, a Pentameter 2 was launched in October 2007, which finally led to the creation of a UK Human Trafficking Centre, or UKHTC (House of Commons, 2014). The UKHTC has been set up as a point of co-ordination for the development of expertise and co-operation to combat human trafficking (TRACE, 2014). Among the partners of the UKHTC are NGO's and many charitable and voluntary expert groups (UKTHC, 2015). Some NGOs work directly with the UKHTC (TRACE, 2014).

Despite the fact that some NGO's work together as partners of the government in the UK anti-trafficking strategy, there was no empirical evidence available for this study that would suggest that these organisations have had a direct influence on the transposition of legislation.

NGO's have visibly used indirect influencing strategies, and have played an important role in the decision of the UK government to opt-into the directive, after NGO's teamed up for a campaign (ECPAT, 2013; 38 Degrees, 2013; Anti-Slavery International, 2013). The decision to not opt-in to the Human Trafficking Directive was heavily criticised by the anti-trafficking organisations, and Anti-Slavery International, ECPAT UK and campaigning organisation 38 Degrees launched a public campaign calling upon The Prime Minister and Deputy Prime Minister to guarantee that the UK opts in to the Trafficking Directive (Anti-Slavery International, 2011). The NGO's and the Independent on Sunday initiated a petition to the Prime Minister to ask the government coalition to sign up to the Human Trafficking Directive (Anti-Slavery International, 2011; 38 Degrees, 2015; Human Trafficking, 2015). Over 47,000 people signed the petition and it was delivered to the Prime Minister on 10 Downing Street at 19 March 2011 (38 Degrees, 2011; Anti-Slavery International, 2013, ECPAT, 2013). Shortly after, on 22 March 2011, the Home Office announced that the UK would be opting into the directive, which was seen as a great success for the campaigning organisations (Independent, 2013). After the decision was made to opt into the directive, the NGO's have not been visibly involved in the transposition process. No statements were released and there is no indication that NGO's have had influence during the transposition phase.

All in all, the NGO's have been visibly involved both directly and indirectly in favour of the Human Trafficking directive. However, it cannot be proven that their efforts actually had a direct effect on the transposition performance, mainly because their efforts were not visible during the transposition stage.

5.4.5. Conclusion United Kingdom

Despite starting the transposition process months later than Germany and The Netherlands, the United Kingdom was able to transpose at a much faster pace. The UK had a high goodness of fit and only few provisions required changes through legislation. Despite clear ideological differences between the two coalition parties, the political process was fast and without visible intra-coalitional disputes. The only two provisions that asked for primary legislation could be transposed through amendments of a Bill that was already long underway. Most other measures could be transposed through secondary legislation, which did not need consent of parliament. The lack of strong veto players to oppose the transposition is therefore another important reason for the fast transposition time. However, this has also led to the fact that many of the discretionary provisions, such as the protection of victims, were largely ignored. The latter to the disappointment of societal actors, who pressed for further action until the adoption of the Modern Slavery Act. Though there was clear involvement of NGO’s on the political agenda setting, their influence during the transposition stage could not be proven.

Independent variable	Score	Transposition performance
Goodness of Fit	High	Timely, incorrect.
Amount of Veto Players	1 (Government has majority in both houses, so did not impose a threat)	
Interest groups involvement	<ul style="list-style-type: none"> • Voice: yes, but no evidence of influence • Access: yes, but no evidence of influence 	
Domestic politics	<ul style="list-style-type: none"> • Different ideologies government parties • Similar view on content 	

Table 14: Summarising table for analysis of the United Kingdom.

6. COMPARATIVE ANALYSIS

The previous chapter has analysed in depth the effect of the independent variables on the transposition performance within each individual country. This chapter summarises these findings and compares them across countries in order to assess the overall causal effect of the independent variables in the following order: (1) goodness of fit, (2) domestic politics, (3) veto players, and (4) interest groups.

6.1. The Goodness of Fit

It has become clear in the former part of the analysis that each of the countries had a very similar, high goodness of fit between the Directive and national arrangements. This was mainly because of the international commitments that all of the countries had agreed to in the decade before.

The Netherlands, though clearly having a high degree of legal fit, did not manage to transpose the directive in time, and received a formal notice by the European Commission. As the analysis has shown, the high goodness of fit The Netherlands cannot explain the transposition delay. Germany had almost exactly the same goodness of fit as The Netherlands, and has experienced by far the most trouble to transpose the Directive, as Germany until today has not transposed the Directive. The United Kingdom also had a high goodness of fit, and it formed the main argument for the UK government's decision to opt-out of the directive. Many of the requirements in the directive were already part of the UK practice, but did not have a legal basis. Participating in the directive therefore required minor legal adjustments in some areas, and make mandatory the measures that were already best practice. However, since these could be made within the existing legal and policy framework, it did not impose a lot of adaptation pressure and the UK was able to transpose the directive swiftly.

Bringing the three countries in comparison in table 15, it becomes clear that the goodness of fit was almost identical in all cases, and despite this very low variation in terms of goodness of fit between the countries, the countries scored very differently on the dependent variable. This leads to the conclusion that in the case of Human Trafficking Directive, the causal relationship between the variables is not strong enough, and that the Goodness of Fit is not a satisfying explanation for the transposition performance. Therefore, the first hypothesis is rejected.

		Compatability (Goodness of Fit)	Discretion	Adaptation Pressure	Total Adaptation pressure	Timeliness	Correctness	Consequence
Netherlands	Criminal law	Moderate	Low	Moderate	Low	6 months delay	High	Formal notice
	Assistance and support	High	High	Low				
	Prevention and Monitoring	High	High	Low				
Germany	Criminal law	Moderate	Low	Moderate	Low	2 years delay	Not yet transposed	Formal notice
	Assistance and support	High	High	Low				
	Prevention and Monitoring	High	High	Low				
United Kingdom	Criminal law	Moderate	Low	Moderate	Low	No delay	Sufficient	None
	Assistance and support	Moderate	High	Low				
	Prevention and Monitoring	Moderate	High	Low				

Table 15: Summarising for the impact of Goodness of Fit

6.2. Domestic politics

Many scholars have argued that domestic political preferences have a significant impact on the speed and correctness of transposition. In the theoretical framework of this study, it was assumed that party ideologies of member states would not have an influence, because the human trafficking policies do not fit into a certain party ideology. Based on the country studies there is no strong indication that party ideologies of the governments have had an effect on the transposition of the performance. Although in Germany the inter-coalitional dispute can be explained by opposing views between coalition partners. However, the opposing views between the FDP and CSU were based on what actions were required in order to transpose the directive rather than on ideological preferences, especially because both parties fall in the same area of the political spectrum.

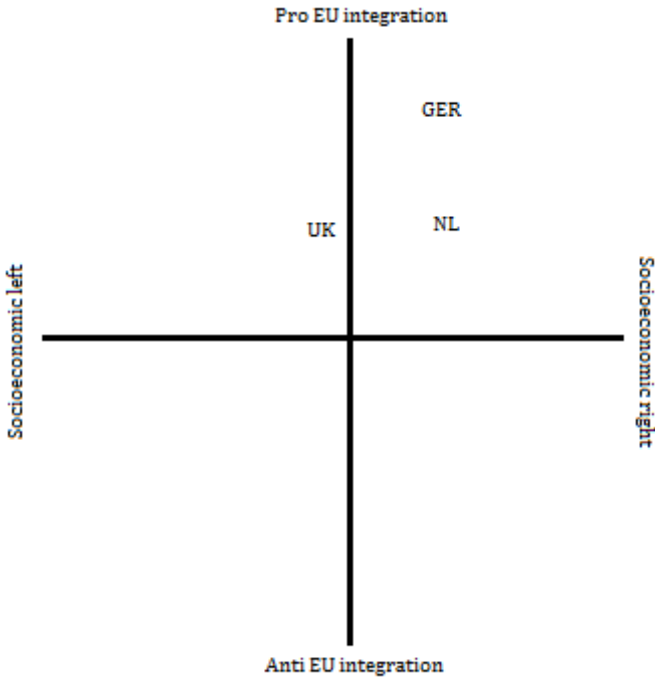


Figure 6: Aggregate ideological positions of the national governments

In the figure above the positions of the national government parties are aggregated in order to display the approximate ideological positions of the national governments. When looking at the effect of party ideologies across countries, the socioeconomic position does not say much, as Germany and the Netherlands are similar but have a very different transposition performance.

Within the countries, the partisan position towards EU integration did not have an effect. And as can be seen in figure 6, the government's position towards EU integration could neither be connected to transposition performance *across countries*, as all national governments were pro EU, but had very different results. Therefore, the third hypothesis is rejected.

For the fourth hypothesis, *"The higher the agreement within the government as to how to the directive should be transposed, the higher the probability of timely and correct transposition"*, the case of Germany shows that intra-coalitional disagreement as to how the directive had to be transposed can indeed impede the transposition process. At the same time in the UK and the Netherlands, the government parties agreed with each other and were able to have a better transposition performance than Germany. Therefore, the fourth hypothesis is accepted.

This study shows that domestic politics have an important influence on transposition performance, but this is more complex than simply the party ideologies of governments. It also has to do a lot with complex case-specific political processes such as elections, change of government

6.3. Institutional Veto Players

The Netherlands has a bicameral system, and both legislative chambers have the formal power to reject legislation. However, the parties in the two chambers are highly congruent, so when a legislative proposal has passed the Second Chamber, the parties of the First Chamber will normally vote the same. Since there was no opposition in the Second Chamber, the First Chamber did not really count as a Veto Player. Therefore, Netherlands has only one Veto Player.

Germany has two legislative chambers with equal power regarding federal laws. Both veto players have had a considerable impact on the bad performance of Germany. An agreement between the coalition parties was crucial, because all the parties essentially had a veto to block the legislation in the Bundestag. However, it took a considerable amount of time to find an agreement between the coalition parties. When the coalition partners were finally able to come to an agreement, the bill passed through the Bundestag with relative ease. However, the Bundesrat, which was dominated by the opposition, used its veto power to block the legislation, arguing that the legislation did not go far enough in order to comply to the demands of the directive. The transposition was therefore postponed until the next legislative term, with a new government and a new balance of power.

In the United Kingdom, the legislative chambers were not really able to complicate the legislative progress. Although the government was a coalition, which is quite rare in the UK, the parties did not have any visible trouble finding an agreement. It was able to transpose most of the provisions into law by means of secondary legislation, which does not require consent from the houses of parliament. The two aspects of the directive that did need formal approval by the parliament were transposed without further difficulties because the House of Commons was dominated by the government parties, and the House of Lords does not have the ability to veto legislation.

	Veto Players	Timeliness	Correctness
Netherlands	1	6 months delay	Strong
Germany	2	2 years delay	No transposition
United Kingdom	1	Just in time	Sufficient

Table 16: Comparing veto players and the transposition performance

In sum, The Netherlands was late, but the transposition itself passed the chambers without political opposition. The delay was explained mostly by the instable political situation at the time. Both legislative chambers were apparently willing to pass the Bill, but were simply not able to as a result of this very specific situation. Furthermore, in the end the quality of the transposition was strongest of the all. Germany’s transposition process was heavily delayed because of the veto powers of both parliaments, and in particular the Bundesrat who was able to block the government’s Bill. The United Kingdom was able to pass legislation without difficulty because there were no veto players that blocked the proposal, and at the time this thesis was written Germany had still not transposed the directive.

The three cases all provide evidence that the amount of veto players has an influence on performance. However, the amount of players does not necessarily say much. It is more important to look at the individual strength of the veto players, or the lack thereof, in combination with their preferences. If the veto players have opposing views, they will use their blocking power. If they are supportive, they will let the legislation pass without much difficulty. Also, in consensus-based systems the veto point is harder to pass than in a majoritarian system, because it has to consider more preferences.

The fourth hypothesis: *“The lower the number of veto players, the higher the probability of full and timely transposition”* has found support in this study. However, this is more complex than simply

counting the amount of veto players, because veto players will not always use their blocking power, either because they are supportive, or because government parties are in control.

6.4. Interest Groups

All three countries had anti-trafficking networks that included official partnerships with interest groups. This means that anti-trafficking NGO's have direct access to the policy makers. However, with regard to the transposition, for none of the countries evidence could be found that interest groups have used this access to influence the performance during the period of transposition.

The Dutch National Task Force includes the main anti-trafficking NGO, Comensha, who can serve as a conduit for other NGO's. Though there is no evidence that these NGO's have influenced the transposition process either directly or indirectly, this may just not be documented.

Furthermore, full implementation is also dependent of NGO's, mostly for the provisions in victim support, awareness-raising, and monitoring. So they did play an important role for the correctness of the directive in the practical implementation, but their involvement in the transposition stage could not be measured, and therefore the hypothesis could also not be properly tested for the Netherlands.

Germany has a similar integral approach to fight trafficking with the Federal Working Group on Trafficking in Persons, which includes non-governmental actors to provide policy recommendations and coordinate specific action. Therefore NGO's should have good access to policy makers. However, there is no evidence that suggests that NGO's have had a direct influence in the legislative process. For instance, they weren't formally asked for their opinion. The KOK, did release public statements in favour of the directive, and criticising the incorrect transposition of the Directive by the German government. It welcomed the veto by the Bundesrat. This suggests that NGO's think the correctness of the transposition is more important than the speed.

The United Kingdom also had a network between governmental and non-governmental organisations, the UKHTC. Though NGO's have an important role within the network, there is no evidence that indicates that their access to policy makers has influenced the transposition process. However, in the UK there has been a lot of lobbying and campaigning by NGO's in order to convince the UK government to opt-in to the directive, and they succeeded. This may have affected the sudden willingness of the government implement the legislation, and may explain

why it was able to transpose the Directive relatively smoothly. Nevertheless, when the directive was officially transposed, NGO's complained that it was insufficiently protecting the victims, and advocated for more comprehensive measures. This suggests that their influence during the transposition stage was not effective enough. In 2015 a more comprehensive Modern Slavery Act was finally adopted at a later point, though it was not part of the transposition of the Human Trafficking Directive.

All in all, interest groups definitely have an important role in the strategy to fight human trafficking both within and across countries. NGO's provide policy recommendation through the networks, influence the agenda setting, and they play an important role in the monitoring of trafficking and the rights and support of victims. However, the influence of the interests groups on the transposition process of the member states could not be proven, at least not visibly with the data that was available for this study. Moreover, when taking into account all cases, we see that all three countries had similar constructions for NGO's, but the performance was still very variable, so no causal effect can be shown. Finally, the case study of Germany shows that NGO's do not necessarily want to increase the speed. NGO's seem to be far more interested in the correctness of transposition, and are even in favour to postpone legislation for better quality, so that the window of opportunity is not lost.

Therefore, the hypothesis *"The higher the involvement of interest groups that are in support of the directive, the higher the probability of a full and timely transposition"* was not supported by this study.

7. CONCLUSION AND DISCUSSION

In this closing chapter, the answer to the research question is given. Next, the implications and limitations of the research will be provided, followed by some suggestions for further research.

7.1. Conclusion

This thesis aimed to find explanations for the differences in transposition performance of the Human Trafficking Directive across countries. The research question was: *“What determines the performance of member states at the transposition of the EU Directive on Human Trafficking?”*

A review of existing literature brought forward many different theories as to what factors may determine the transposition performance, though these were rather ambiguous in their conclusions and often even contradictory. In order to give an answer to the research question, this study set out to take on a more comprehensive approach, taking into account more variables than has often been done in qualitative studies on transposition performance.

In order to accurately assess the impact of each of the independent variables on transposition performance, three countries, The Netherlands, Germany and UK, were subjected to in-depth country studies, in order to qualitatively measure the explanatory values of the variables within the countries. Next, the findings of the country studies were promptly brought together and compared in order to draw more general conclusions about the explanatory value of the independent variables. The cross-country analysis found no support for the goodness of fit hypothesis, since the countries had very different transposition performance despite having an almost identical goodness of fit. The same could be said about the importance of domestic party preferences, as governments with similar political preferences on the political spectrum had very different results.

Though ideologies do not seem to play a role, the transposition performance may still be determined by the degree of domestic opposition. Domestic opposition in the case of the Human Trafficking Directive, both by political parties and interest groups, was mostly focussed on the fullness of transposition. Since the Human Trafficking Directive allowed a lot of discretion, this lead much room for interpretation as to how the provisions should be transposed into national practice. Domestic actors who are supportive of the legislation and integration generally prefer a more literal transposition of the directive and want to include the discretionary provisions.

Others may want to take a minimal approach, transposing only the mandatory provisions and keep the discretionary provisions discretionary in national practice. This disagreement can exist within government coalitions, as well as between the government and opposition parties and societal actors. Interestingly, the position towards EU integration did not play a role.

Depending on the amount of consensus that is needed with institutional veto players, the disagreement as to how the directive should be transposed can pose a threat to the timeliness of the transposition. If veto players have no real power over the government, such as in the UK, it may cause governments to swiftly transpose a directive, but in a relatively minimalistic way. If veto players are powerful, such as in Germany, the veto players may demand more far-reaching measures from the government, and obstruct the legislative process. Though this may cause delay, in the long run this may lead to a more accurate transposition. This study therefore supports the importance of institutional veto players for transposition speed, but their preferences and their relative power in decision-making should be taken into account. Unfortunately, this study could not properly test if interest groups actually have an influence on the performance of legal transposition. However, since their activities are mostly under the radar, their influence may not have been noticeable. The study does show that interest groups that are in favour of the directive will encourage a full transposition of the directive rather than a fast but minimal transposition, and thus supportive interest groups do not necessarily lead to more timely transposition.

To answer the research question, member states' performance is strongly dependent on domestic political processes. Case-specific factors aside, transposition performance can be explained by the degree of agreement between domestic actors as to how the directive should be transposed, and the willingness and capacity of veto players to block legislation. A lack of veto players may cause swift transposition regardless of domestic opposition, but this may also lead to less accurate transposition. On the other hand, more veto players may cause delay in case of disagreement, but may ensure a more accurate transposition in the long run.

7.2. Discussion

7.2.1. Limitations of this study

Every study has its weaknesses. In this section I will shortly address the main limitations of this study. The first limitation concerns the external validity. Since this was a qualitative study, only three countries have been studied. Because of this small amount of cases, the external validity to other countries is always quite low. The external validity is further weakened because only one directive has been studied. As has often been the case, the results are different for each individual case, in a specific policy area, and the findings may not find support in other cases or large-N studies. Since it takes a long time to perform in depth studies for a larger amount of cases, this was not feasible for the given time. Follow-up research would be needed in order to see if the findings also find support in other countries and other directives.

Another limitation concerns the data collection. Although the amount of sources that has been used was extensive enough to show the explanatory value of the variables and give answer to the research question, the information they provide is sometimes limited, or biased (e.g. in the case of interest group publications). The fact that the amount of available data varies between countries is also problematic, because it makes structural comparison complicated. The inclusion of other methods, such as interviews and surveys, could have strengthened the quality of the research by filling in some of the gaps and to confirm the findings from the analysis. For instance, it would have been meaningful to interview interest groups and policy makers to ask what the role of interest groups has been, a causal relationship for which the available information does not provide sufficient empirical evidence. As absence of evidence cannot be seen as evidence of absence, this meant that the interest group hypothesis, namely the involvement of interest groups on the transposition stage, could not be properly tested.

7.2.2. Implications of this study

The analysis confirmed that even the transposition of legislation with a high goodness of fit could lead to complications in the transposition problems because of domestic political processes. Domestic actors may struggle to find an agreement as to how to implement the provisions that allow for discretion.

It is likely that future directives will also contain provisions that leave room for interpretation, and that this will cause disagreement on the national level. The need for formal agreement between domestic actors will then decide the extent to which the directive will be transposed correctly and in time. Further qualitative research would be needed in order to see if these findings would also hold in future cases.

The cases in Germany, and especially The Netherlands both showed that transposition delay could also to a large extent be explained by government crises and or change of government. Transposition deadlines are strict, but do not take into account the national processes that hamper the ability to transpose in time. These factors are very case specific, and do not explain transposition performance completely, but nevertheless explain a large proportion of the delays. These factors have hitherto received little attention in existing literature. Political processes on the domestic level remain very complex and cannot always be explained through systematic deductive analysis, such as the political ideology on the left-right scale. A more open and inductive approach may lead to new insights in future attempts to explain transposition performance of member states.

Finally, this study focused on the transposition of the first directive in the area of justice and home affairs since the Lisbon Treaty, a policy field that has hitherto attracted only scant attention (Treib, 2008). The area of criminal justice and home affairs is diverse, ranging from organised crime, to terrorism and migration. What they have in common is that these are problems that cannot be addressed on the national level. Now that the transition period for this policy area is over, it can be expected that the upcoming years will bring more policies that will attempt to further integrate national measures in order to effectively tackle these problems. The conclusions of this study may serve as input for further research, which can test if the findings of this study will also find support in other cases of criminal justice and home affairs.

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