

Radboud University Nijmegen

# What if the best student does not comply?

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A case of non-compliance with EU gender equality policy in  
the Netherlands.

**Karlijn de Graaf - s4050185**

**23-6-2016**

**Department of Public Administration**

**Faculty of Management Sciences**

**Supervisor: Dr. Ellen Mastenbroek**

## **Preface**

I wrote this master thesis to complete the master Comparative Politics, Administration and Society (COMPASS) at the Radboud University. In this research I compare two cases in order to explain what caused the Dutch government not to comply with European gender policy. Given the active Dutch advocacy for gender equality at national and international level, it is surprising that the Netherlands has not complied with European gender laws on multiple occasions in the last decade. When a Member State with a high level of motivation does not comply with EU gender laws, how can the European Union achieve gender equality in Member States with lower levels of motivation?

This thesis would not have been written without the support of several people. I would, therefore, like to thank my supervisor Dr. Ellen Mastenbroek for her patience and Drs. Karin Dusée for her help with my writing skills in English.

Karlijn de Graaf  
Nijmegen, 23 June 2016

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# **1. Introduction**

## **1.1. Puzzle**

The Dutch government presents itself as a country actively striving for gender equality. Two important goals pursued by the government are to achieve more women participating in the labour market and a better division of caring tasks between men and women (Dutch government, n.d.). The fight for more gender equality by the Dutch government does not stop at the border lines. Also at the international level the Dutch government opted for an active role in fighting discrimination of women and is committed to international treaties (Dutch government, 2014a, p.11). The Netherlands is, for instance, committed to United Nations Security Council Resolution no. 1325 (Dutch government, 2014a, p.11). This resolution states that Member States of the UN must increase participation of women and must take special measures in order to protect women from gender based violence (United Nations, n.d.). Another example is the international conference the Dutch government organized for the United Nations to promote and protect women's rights (United Nations, 2013). Because of its commitment and active role in fighting for more gender equality, the Netherlands has all features to achieve gender equality. According to the United Nations, the Netherlands is a leading country in equality between men and women: the Netherlands is number one on the international ranking list of gender equality made by the UN (Dutch government, 2014b).

Gender equality is also one of the fundamental principles of the European Union. Goals of the European gender equality policy are 'equal treatment of men and women at work', 'prohibiting discrimination in social security schemes', 'minimum requirements on parental leave' and 'protection of pregnant workers and recent mothers'. These goals are promoted by multiple treaties and directives that are binding for Member States of the European Union (European Commission, 2011a, p. 4,6; European Commission, 2015).

The Netherlands, being a Member State of the European Union, has to comply with

the European gender laws. Given the active Dutch advocacy for gender equality at national and international level, it seems likely that the Netherlands will not have any problems with transposing<sup>1</sup> EU gender laws. This assumption seems to be true: gender equality legislation in the Netherlands is indeed often driven by the European legal framework on equality between men and women. Until 2006 the Netherlands had always transposed European directives related to gender into laws (Ramos Martin, 2008, p. 23). It is therefore surprising that the Netherlands did not comply with European gender laws on multiple occasions in the last decade. These cases of non-compliance with European gender law caused the European Commission to start infringements procedures<sup>2</sup> against the Netherlands (European Commission, 2014, p. 167-173).

These instances of non-compliance form a problem for the European Union's ambitions concerning gender equality. When a Member State with a high level of motivation does not comply with EU gender laws, how can the European Union achieve gender equality in Member States with lower levels of motivation? It is therefore important to find what caused the Dutch government to not comply with European gender policy. The aim of this research is to raise awareness of factors that hamper compliance with European gender policy.

Research is important because gender inequality is a very persistent problem. A lot of resistance to gender equality still remains nowadays, as well as social, legal and political obstacles (McClain and Grossman, 2009, p. 1). More knowledge of what factors cause non-compliance in the gender policy field, can lead to new or improved measures to diminish these factors and enhance compliance with EU gender policy. Therefore, the problem definition and research question related to this problem are as follows:

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<sup>1</sup> Transposition is the first step of implementing EU laws. Transposing EU law is translating EU law into national legislation (Mastenbroek, 2003, p. 372)

<sup>2</sup> An infringement procedure is a measure that the Commission uses when a Member State is suspected of violating European Law (European Commission, 2014b). Violating means a Member State fails to incorporate EU directives into its national law, fails to communicate to the Commission what actions are taking, or when a Member States breaches a European Union law (European Commission, 2014c).

## **1.2. Problem definition**

### **1.2.1. Research question:**

How can we explain non-compliance with European gender equality policy in the Netherlands?

### **1.2.2. Objective:**

Aim of this research is to provide better insights in compliance behaviour of Member States with European gender policy and therefore offer tools which can be used to motivate Member States to comply in order to achieve more gender equality in the European Union.

### **1.2.3. Sub-questions**

- a) What are the main goals and instruments of European gender equality policy?*
- b) To what extent does the Netherlands comply with European gender equality policy?*
- c) What explanations for non-compliance with European directives does the literature provide?*
- d) How can these explanations be analysed empirically?*
- e) What were the determinants of non-compliance in the Netherlands?*
- f) What recommendations can be given to the European Commission to motivate Member States to comply with European gender directives in order to achieve more gender equality in the European Union?*

## **1.3. Type of research**

In general, scientific researchers carry out one of four main types of research. These research methods are descriptive, exploratory, explanatory and evaluative research. This research is in its nature explanatory because it tries to explain non-compliance with gender policy in the Netherlands. The theoretical framework offers multiple variables that could explain non-compliance (Gabrielian, et al., 2008, p. 152; Van Thiel, 2007, p. 23, 45).

#### **1.4. Theory preview**

This research uses EU compliance theory (Treib, 2003; Dimitrova and Rhinard, 2005; Haverland, 2000; Mastenbroek and Keading, 2006; Versluis 2003; Bueno de Mesquita, 2000; Thomson and Stokman, 2006, p. 41-42; Leuffen, et al., 2014). Compliance is a state of conformity between an actor's behaviour and a specified rule. Compliance theory tries to explain the process of how a given law is being put into practice in accordance with a given norm (Treib, 2014, p. 5). The theoretical model is built on literature that tries to explain this process at the European level and, therefore, describes why a Member State does not comply with European law. However, compliance theory consists of an enormous amount of different theories. Moreover, a large amount of these theories are criticized for being insufficient to explain compliance behaviour (Treib, 2014, Mastenbroek, 2005). Firstly, the theoretical framework is therefore dedicated to the different waves of European compliance theory. Based on evaluation of these different waves, a reasoned selection of compliance theories is made. Theories found to be sufficient are used for the theoretical model. Theories in the model explain non-compliance due to factors related to politics and the political context of decision-making. These factors are grouped into two categories: 1) preferences of actors involved and 2) saliency of the issue related to the European Directive (Treib, 2003, 2014; Mastenbroek and Keading, 2006; Haverland, 2000; Dimitrova and Rhinard, 2005; Versluis, 2003, 2004; Steunenberg and Rhinard, 2010; Bueno de Mesquita, 2000; Thomson and Stokman, 2006, p. 41-42; Leuffen, et al., 2014 ).

#### **1.5. Methodology preview**

This research uses a qualitative approach. Qualitative research is the best option for analysing the complex environment of compliance behaviour, because it assumes a complexity of variables and a difficulty in measuring those variables. Moreover, it offers a way to analyse this environment in detail because it draws data from the context in which events occur



(Lombardo and Forest, 2012, p. 3; Gorman and Clayton, 2005, p. 3-9).

This research uses the method of most similar system design to analyse the data. This research compares two cases which have multiple variables in common but have a different outcome: compliance and non-compliance. The assumption of this method is that the few differences in the explanatory variables are associated with the differences in the dependent variable (Van der Heijden, 2013). Comparing these cases offers a way to find out, in a systematic way, what caused the Dutch government to not comply with European Gender policy (Anckar, 2008, p. 389-390). By means of conducting interviews and analysing a large number of documents that describe the decision processes, the data for this research is gathered (Van Thiel, 2007, p. 106).

## **1.6. Relevance**

### *Scientific relevance*

This research is academically relevant because it shows how compliance functions in the field of gender policy. Compliance theory consists of multiple theories, giving different explanations of what causes non-compliance with European gender laws. These explanations form four hypotheses that are tested. The main variables of these explanations are preferences and salience. This research combines the different existing theories in order to bring about a new perspective on the issue of gender inequality and, by doing so, contributes to the body of knowledge on this topic. This research will provide new insights because in the field of gender policy there is only little research of compliance that carries out an in-depth analysis and takes in multiple factors as possible explanations (Lombardo and Forest, 2012, p. 8). This research will do just that. The case studies consist of in-depth analyses, which involve multiple factors, and therefore will provide new insights.

### *Societal relevance*

The aim of this research is to provide better insights into compliance behaviour of Member States with European gender policy. These insights can be used to understand non-compliance behaviour better. It will therefore give the European Commission insights on what factor withholds Member States from complying with gender policy. The European Commission can react to this factor, adapt its infringement procedure and thereby enhance compliance with gender policy.

If compliance with gender equality policy improves, more equality between men and women in the European Union can be attained. This is important because gender inequality has proven to be a persistent problem. Despite that there has been enormous progress, gender equality is still not fully realized in laws and in life (McCain and Grossman, 2009, p.1). Achieving gender equality is important because men and women would then have the same rights and same chances in practice. Gender equality will empower women and will not make men less powerful. Therefore, gender equality creates a social multiplier and causes greater progress on personal and socio-economic level than the individual (Patel, 2012, p. 24). Giving the possibility to improve measures to achieve equality for citizens of the European Union is the social relevance of this research.

### **1.7. Reading guide**

Chapter two is dedicated to the policy framework. The policy framework provides information about the main goals of European gender equality policy and reflects how the Netherlands complied with the European gender equality policy. Chapter three is dedicated to the theoretical framework of this research in which compliance theory is discussed. The methodological framework is displayed in chapter four. The different sections of the chapter consist of a discussion of the research method, method of collecting data, method of analysing the data and a final paragraph in which the theoretical model is operationalised into workable

concepts. In chapter five, the analysis, the data is coded by use of the operationalised concepts. Finally, conclusions of the analysis are summarized in the last chapter, chapter six. These conclusions form an answer to the research question of this paper. Discussions of the research form the second part of chapter six, in which suggestions are made for further research. Lastly, the outcome of this research is used to form recommendations to the European Commission in order to achieve more gender equality in the European Union.

## **2. Policy framework**

This chapter introduces the policy framework of this research, the EU gender policy, and discusses the main goals and instruments of this policy. The main focus of European gender equality policy is on equality of employment. The European Union strives for more women working and equal pay. Moreover, the focus on employment is reflected in laws for parental leave and protection of pregnant workers and recent mothers (European Commission, 2010; 2011b; 2015).

First the chapter refers to the main goals of the European Union. The European Union is committed to these main goals by means of two pacts of formal commitment: the Beijing Platform for Action and the European Pact for Gender Equality. Second, this chapter discusses the different measures the European Union takes to achieve different gender equality goals. These measures are legislation, financial programmes, and a Gender Equality Strategy. Despite these three types of measures countering gender inequality in the European Union, there are still challenges that exist today for gender equality which are discussed in section 2.3. Section 2.4. discusses how the Netherlands complied with EU gender policy. 2.5. describes cases where there are issues of debate concerning differences in Dutch and EU gender policy. The last section of this chapter, section 2.6. gives a summary of the policy framework.

### **2.1. Gender policy goals**

Gender equality is one of the fundamental principles of the European Union (European Commission, 2014d, p. 1). Gender policy goals of the European Union are based upon two international pacts. A first pact by which the European Union and the Member States are committed is the Beijing Platform for Action which was part of the UN World Conference on Women in 1995. The aim of this Platform is to eliminate all obstacles to women's participation in public and private life. This means that men and women should have an equal

share in economic, social, cultural and political decision making. Another aim of the Platform is to improve women's health and access to education (European Commission, 2011a, p. 12).

A second pact of commitment to gender equality is on European level. Formal goals of gender equality are established in the European Pact for Gender Equality adopted in 2006. The European Pact calls upon Member States and the European Union itself to achieve gender equality. Goals written out in the European Pact that should lead to gender equality are equal pay for equal work between men and women and equal participation of men and women in decision-making. Moreover, the European Pact calls for improvement of childcare that should be affordable and of high quality, promotion of flexible working arrangements, actions to reduce violence against women, and an increase in protection for victims of violence (European Commission, 2011a, p. 13).

A difference between the two pacts is that the Beijing Platform for Action includes gender equality in a broader range of policy areas than the European Pact for Gender Equality. The aim of the Beijing Platform for Action is to eliminate obstacles for women in both private and public life (European Commission, 2011a, p. 12), while the European Act for Gender Equality focuses on employment of women (European Commission, 2011a, p. 13).

## **2.2. Gender policy measures**

The European Union uses two different approaches to achieve gender equality. These two approaches are gender mainstreaming and initiating specific measures. Gender mainstreaming consists of integrating gender equality into every policy field and into all stages of the policy process: the design, implementation, monitoring and evaluation. The purpose of gender mainstreaming is to achieve gender equality effectively and not only on paper (European Commission, 2011a, p. 7).

The second approach is taking specific measures in addition to gender mainstreaming. These specific measures are legislation in the form of treaties and directives and financial

programmes. The aim of these measures is to solve certain persistent problems of gender inequality, especially in the field of employment (European Commission, 2011a, p. 7). In addition to these special measures, the Commission drafted a strategy to increase its activities for gender equality (European Commission, 2011a, p. 11). The legislation, financial programs and the strategy are discussed in the following section.

### *Treaties and directives*

The European Union promotes gender equality in multiple treaties and directives (European Commission, 2011a, p. 4; European Commission, 2015). A first treaty where gender policy is mentioned, is the Treaty of Rome, which was established in 1957. The Treaty commits the Member States to the right of equal pay for work for men and women (European Commission, 2011a, p. 4; European Commission, 2015).

The Treaty of Amsterdam (1997), secondly, attached more importance to gender equality as a task of the European Union. The treaty emphasized that gender equality is one of the fundamental tasks of the European Union and states that the European Union must promote gender equality in all activities. Moreover, it commits Member States to the elimination of inequalities and discrimination (European Commission, 2011a, p. 4; European Commission, 2015).

The third treaty is the Charter of Fundamental Rights of the European Union of 2000. The Charter complements the previous treaties by stating that gender equality must be ensured in all areas, including employment, work and pay (European Commission, 2011a, p. 4; 2015). The treaty clearly shows the priority the European Union gives to the policy area of employment and working conditions.

The last treaty in which gender equality is promoted, is the Treaty of the Functioning of the European Union (2012). The Treaty states that the European Union aims to eliminate inequalities and promote gender equality. Moreover, the Treaty states the European Union

aims at eliminating all discrimination based on gender (European Commission, 2011a, p. 4; 2015).

Apart from the treaties there are different directives that promote gender equality in the European Union (European Commission, 2011, p. 6). All these directives are legally binding for all Member States and must be transposed into national law. Most directives on gender equality are brought together in the Recast Directive of 2006 (2006/54). Aim of the Recast Directive was to clarify and bring together all main provisions on gender equality in a single text (European Commission, 2013, p. 8). The Recast Directive is divided in four sections. The first section includes a description of the main aim of the Directive and definitions of discrimination, harassment and sexual harassment (European Commission, 2013, p. 8). The three remaining sections cover provisions on equal pay, equal treatment in occupational and social security schemes (European Commission, 2013a, p. 8). The following text discusses those provisions in that order.

The directive capturing equal pay for men and women was adopted in 1975 and repealed by Article 4 in the Recast Directive. The Article stipulates:

*“For the same work or for work to which equal value is attributed, direct and indirect discrimination on grounds of sex with regard to all aspects and conditions of remuneration shall be eliminated. In particular, where a job classification system is used for determining pay, it shall be based on the same criteria for both men and women and so drawn up as to exclude any discrimination on grounds of sex.”*  
(European Commission, 2013, p. 9)

The article clarifies that equal pay applies to equal work and work of equal value. This prohibition of discrimination applies to both public and private sectors (European Commission, 2013a, p.9). The second section of the Recast Directive also covers the principle of equal treatment between men and women in employment. All provisions relevant to this principle are included in Title 2, Chapter 3 of Directive 2006/54. The main article that captures equal treatment is Article 14, which forbids sex discrimination in the public and

private sectors. The Directive allows some exceptions, for example, when an actor in a film has to be a man. Some exceptions are set up to allow women to have specific rights on account of pregnancy and maternity (European Commission, 2013a, p. 9-10). Finally, Recast Directive covers provision that promotes equal treatment of men and women in occupational social security schemes, in particular as regards to the scope of such schemes and the conditions of access to them. Moreover, it covers the obligations to contribute and the calculation of contributions and the calculation of benefits (European Commission, 2013a, p. 12).

In addition to the Recast Directive five more directives promote gender equality, covering issues that are not covered by the Recast Directive. These directives promote equal treatment of men and women in statutory social security schemes (Directive 79/7), equal treatment of men and women engaged in an activity in a self-employed capacity (Directive 86/613 and Directive 2014/41), protection of pregnant workers (Directive 92/85: the Pregnant Workers Directive), minimum requirements designed to facilitate the reconciliation of parental and professional responsibilities for working parents (Parental Leave Directive 2010/18), and equal treatment of men and women in the access to and the supply of goods and services (Directive 2004/113) (European Commission, 2013a, p. 12-15). This last directive promotes gender equality outside the labour market. It prohibits discrimination based on sex applied to all persons who provide goods and services which are available to the public in both public and private spheres (European Commission, 2013a, p. 16).

### *Financial measures*

Another way to increase gender equality is by means of financial programmes. The European Union has multiple financial programmes and some of those programmes have gender equality as one of their tasks. One financial programme of the European Union that supports gender equality is the European Social Fund (ESF). The ESF is a structural fund, established



to diminish differences in living standards in the Member States. The main goal of the ESF is promoting employment. From 1993 onward the ESF has made equality between men and women one of its priorities. The ESF, among others, encourages women to work in traditionally male dominated fields of science and technology (European Commission, 2011a, p. 8).

A second relevant financial programme is the European Regional Development Fund (ERDF). The main goal of this second structural fund is to strengthen economic and social cohesion by diminishing economic and social differences between European regions. The ERDF seeks to promote gender equality in multiple ways. For instance, the ERDF promotes childcare facilities that should encourage women to work more (European Commission, 2011a, p. 8). PROGRESS is the third programme set up to help achieve social policy goals of the European Union. The social policy goals can be divided into five sections: employment, social inclusion and protection, working conditions, non-discrimination, and gender equality. An objective of the PROGRESS Programme related to gender equality is effective application of EU rules worker protection and equality (European Commission, n.d.). Since 2007, the programme has spent 50.3 million euros on gender equality projects in these five sections (European Commission, 2011a, p. 9).

While the first three financial programmes have a main focus on working conditions, the fourth relevant programme aims to counter violence. The fourth programme is DAPHNE, which aims to protect children, young people and women from violence. DAPHNE funded hundreds of projects in the European Union. Both the DAPHNE and PROGRESS programme ran until 2013 (European Commission, 2011a, p. 9).

### *Gender Equality Strategy*

The most recent effort of the European Commission to reinforce its activities for gender equality is the Gender Equality Strategy. The main goal is to make better use of women's

potential and thereby contribute to the European economy and overall social goals. The Commission has outlined six priorities of these lists of actions. Two priorities relate to equality of work. The priorities state that there should be equal economic independence and equal pay for men and women. A third priority is equality between men and women in decision making and the fourth one is ending gender violence. The fifth and sixth priorities are about promoting gender equality beyond the European Union and about addressing the role of men in gender equality. Every year the Commission provides an assessment of gender equality across all priorities of the Strategy (European Commission, 2010; 2011b; 2015).

### **2.3. Challenges**

Despite the fact that a large number of measures are effective to counter gender inequality in the European Union, still a lot of differences exist between men and women. The main difficulties relate to work and the division of domestic work.

Researchers of the report ‘Gender equality in the workforce’ of the European Commission (2014d) identified improvements in gender equality over recent decades. There has been a massive entry of women into the labour market in the past fifteen years across many European countries (European Commission, 2014e). However, these improvements did not solve the differences in the division of work and family responsibilities (European Commission, 2014d, p. 1). Divisions of domestic work are still very uneven. On average, when a man is sole provider of income, he spends 11,7 hours a week on domestic work, while in that same family a woman, on average, spends 43,2 hours on domestic work. When a woman is sole provider of income, she will do most of the domestic work, on average eight hours more a week (men: 17,5; women: 25,4 hours a week). A conclusion of the researchers is that traditional gender roles still have a very strong effect on division of domestic work, regardless changes in contribution of income (European Commission, 2014d, p. 18).

A second challenge for gender equality in the European Union is that, despite the fact

that more women entered the labour market, the female employment rate still remains considerably behind the employment rate of men in most of the Member States and most Member States struggle to reach the employment rate target of 75 per cent of the Strategy 2020 (European Commission, 2014d, p. 7; European Commission, 2014e). Mainly women who are also mothers are underrepresented in the labour market, while men who are fathers are more likely to be employed than those who are not fathers (European Commission, 2014d, p. 7).

## **2.4. Compliance in the Netherlands**

This section answers sub-question b. In order to answer this question the following text discusses multiple researches of compliance with EU gender policy in the Netherlands over the years (Ramos Martin, 2008; Gerards, 2006; Holmaat, 2013). These researchers describe how the Netherlands complied with the EU gender policy as chapter two put forward, but also discuss cases in which the Netherlands did not comply. These cases of non-compliance are discussed in section 2.5.

Since 1983, the principle of equality and non-discrimination has been captured by the Constitution [*Grondwet*] (Ramos Martin, 2008, p. 21). A first directive that captured gender equality ‘Equal treatment in access to employment’ was transposed into Dutch law in 1970. The directive deals with equal treatment between men and women in access employment and has now been captured in the Dutch Civil Code [*Burgerlijk Wetboek*]. Equal treatment between men and women is also stipulated in the Equal Treatment for Men and Women Act in the Netherlands. This Act establishes the right to equality for men and women in private and public employment, vocational training, access to liberal professions, pensions and membership of employer’s organisations and trade unions (Ramos Martin, 2008, p. 23; Gerards, 2006, p. 293-294). Another law that promotes gender equality in the Netherlands is the General Equal Treatment Act, which protects citizens against sex discrimination in

employment and outside the labour market, for instance with access to goods and services and housing (Ramos Martin, 2008, 24). The directive on part-time work is transposed by the establishment of the act on working time adjustments and the act prohibiting discrimination of part-time workers. Because a lot of Dutch women work part-time, these acts can be seen as promoting gender equality (Ramos Martin, 2008, 24).

In addition, more specific acts have been adopted in order to transpose directives on gender equality. In the Netherlands legislation exists for equality in terms of: pay, access to work and working conditions, occupational pension schemes, pregnancy and maternity protection, parental leave and adoption leave, statutory schemes of social security, rights for self-employed persons, and goods and services. Most of this gender equality legislation in the Netherlands was driven by EU laws and therefore is equivalent to EU directives (Holmaat, 2013, p. 167-173; Ramos Martin, 2008, p. 31). However, there are few exceptions in Dutch law that are issues of debate (Gerards, 2006, p. 301; Holmaat, 2013, p. 173), which are described in the next section.

## **2.5. Non-compliance in the Netherlands**

Gender equality legislation in the Netherlands is often driven by the European legal framework on equality between men and women. Until 2006 the Netherlands had always transposed European directives related to gender into laws (Ramos Martin, 2008, p. 23). There are, however, some differences between gender law in the Netherlands and the European Union. Twice the European Commission started an infringement procedure against the Netherlands concerning gender policy. The European Commission thought the Dutch law was insufficient in order to comply with European gender policy (Gerards, 2006; Ramos Martin, 2008). The first infringement procedure started in 2006 and concerned the definition of direct and indirect discrimination. This seems a minor issue, but the definitions of discrimination are used in many gender equality laws. In short, in Dutch law, discrimination is

referred to as a ‘distinction’ between men and women, which is more of a neutral concept. Whereas the European definition of discrimination refers to a ‘less favourable treatment’ and thus assumes a particular disadvantage (Gerards, 2006, p. 301-304; Ramos Martin, 2008, p. 34-35).

A second difference between Dutch and EU gender policy are the numerous legal exceptions made in the Dutch Equal Treatment Act. The requirement of equal treatment between men and women does not apply to religious communities and clergy. In addition, associations, clubs and societies form exceptions. In these cases membership can be limited to women, or it is possible to exclude certain groups from interior activities (European Commission, 2014c, p. 168; Gerards, 2006, p. 294-295).

A third difference concerns the consequences of a possible report of violation of equal treatment legislation. Possibilities are offered to avoid having to go to court. Moreover, some sanctions of the equal treatment legislation are not binding and therefore in contradiction with the EU requirements for sanctions to be ‘effective, proportionate and dissuasive’ (Holmaat, 2013, p. 172).

The European Commission started a second infringement procedure in 2013. According to the European Commission the Netherlands lacks an explicit right to return to the same or comparable job after having taken maternity or pregnancy leave in the Netherlands (Holmaat, 2013, p. 173). According to the EU Gender Equality Directive, employees are entitled to their job, or a comparable job, after taken maternity, adoption or parental leave. Moreover, the directive specifies that the employee will also benefit from any improvement in working conditions to which they would have been entitled during their absence. National laws should explicitly protect those laws according to the European directive (European Commission, 2013b).

## **2.6. Summary**

Gender equality is one of the fundamental principles of the European Union. Gender equality goals are set out in the European Pact for Gender Equality and the Beijing Platform for Action. The European Union uses different measures to achieve these goals. The European Union promotes gender equality through multiple treaties and directives, financial programmes, and a Gender Equality Strategy. The main focus of the European Union is on employment and working conditions in order to achieve more women in the workforce and receiving equal pay. The Netherlands complies with most of EU gender policy. A numerous amount of different acts are equivalent to EU gender policy and promote gender equality in the Netherlands. There are, however, few exceptions that are discussed in section 2.5. These issues of debate relate to: the definition of discrimination that is insufficient according to the European Commission, a numerous of legal exceptions the Netherlands has for an equality act, lack of sanctioning violation of equal treatment legislation and, finally, not implementing a law that gives employees the right to return to the same or comparable job after taking maternity.

### **3. Theoretical framework**

The theoretical framework consists of three sections. Firstly, section, 3.1. gives a definition of the concept of non-compliance with EU policy. The second section discusses different waves of compliance theory, which includes a description of the main factors that belong to that certain wave and criticism on these waves. At the end of the 3.2, it will be concluded which theories will be used to explain compliance behaviour. The third part of the theoretical framework is the theoretical model. The theoretical model is built on theories chosen in the second section. Together these theories form a complete theoretical model needed to analyse the complex context of gender policy. Theories in the model explain non-compliance due to factors related to the institutional and political landscape. These factors are grouped into two categories: 1) preferences of actors involved and 2) saliency of the issue.

#### **3.1. Non-compliance**

In order to explain what non-compliance is, the concept of compliance needs some explaining. Raustiala and Slaughter (2002, p. 539) refer to compliance as: “a state of conformity or identity between an actor’s behaviour and a specified rule”. Matthews (1993) defines it as: “A behaviour which conforms to a predetermines set of regulatory measures”. Studying compliance, therefore, means starting from a given norm and asking whether the studied actors conform to it (Thomson et al., 2007). Compliance with provisions of a directive, which is the given norm, is the most important part of EU law (Perkins & Neumayer, 2007).

Compliance can occur without implementation, because it can be the case, for instance, that a Member State already has laws in practice that are conform the EU preference. Then there is no need for implementation. On the other hand, implementation does not necessarily result in compliance of a norm. Implementation can be incomplete or contrary to the EU requirements (Treib, 2014, p. 5). Effectiveness is the efficacy of a given regulation in

solving the political problem. Compliance is therefore not the same thing as implementation or effectiveness. Member States can comply with European regulation without solving the problem (Versluis, 2005). If domestic change took place in a Member State and a correct and complete reproduction of the European norm is facilitated by national law, complete compliance has occurred (Panke, 2007).

The opposite of compliance is non-compliance, which can be described as a state of non-conformity with EU law between an actor's behaviour and a specified rule. There are two categories of non-compliance. One that relates to not transposing legal instruments in accordance with European requirements and, the second one, relates to not applying the legal instruments in practice (Angelova et al., 2012, p. 1274; Tallberg, 2002, p. 623). In the first category, three types of non-compliance can be distinguished. The first type is *non-transposition*, which captures the act of not transposing the European directives into national law. A second type is *non-conformity*, which relates to the correctness of transposing legal instruments. The third type of non-compliance relates to *not implementing the EU requirements on time* (Angelova et al., 2012, p. 1274). The deadline for implementation is on average two years (Tallberg, 2002, p. 623). The second category of non-compliance relates to the period after the implementation, which is applying EU requirements in practice. The European Commission named this non-compliant behaviour 'bad application' (Anglova et al., 2012, p. 1286-1287; Tallberg, 2002, 623-624).

### **3.2. Waves of compliance theory**

Researchers from various backgrounds have sought to explain non-compliance. Krislov et al. (1986) were the first ones to draw attention to the growing problem of compliance and put non-compliance on the research agenda (Mastenbroek, 2005, p. 1104). The Single Market Programme acted as a stepping stone to shift the focus towards EU compliance. The Programme consisted of many of provisions that needed to be legally implemented in order to



achieve a smooth functioning European-wide market. Because compliance with the Single Market Programme was very important, the question rose what caused Member States not to comply with the Programme (Treib, 2014, p. 7; Mastenbroek, 2005, p. 1104). EU compliance theory has evolved over time and different waves of compliance theory can be identified (Mastenbroek, 2005, p. 1104). The next section discusses the different waves of compliance theory.

*First wave: implementation and institutional efficiency*

The first wave, which started in the mid-1980s, can be described as a stage with a focus on implementation and institutional efficiency. The main inspiration for this wave was the top-down school of domestic implementation studies. Moreover, the first wave originates from legal and international relations studies. In this stage researchers portrayed compliance as an a-political process and had legal and administrative explanations for compliance behaviour. According to researchers of this wave, success of compliance depends on streamlined legislative procedures, effective administrative organization and clearly worded provisions (Treib, 2014, p. 7; Mastenbroek, 2005, p. 1104-1105).

The main legal variables mentioned in this wave are national constitutional characteristics, complexity and poor quality of many directives, range and complexity of existing national laws, gold plating (adopting stricter standards than prescribed), and the national legal culture. As to the administrative variables, main variables mentioned are the gap between preparation and implementation in Member States, interior coordination problems, lack of resources, the inefficiency of domestic institutions and corporatism (Mastenbroek, 2005, p. 1104, 1108).

The main criticism on this wave is that political factors were not taken into account. This while decision making that determines compliance behaviour takes place in a political context (Mastenbroek, 2005, p. 1104-1108; Treib, 2014, p. 8). The lack of political variables

can be explained by the background of the researchers of this wave who are mainly from administrative and legal studies (Treib, 2014, p. 8). A second criticism on this wave is the lack of theoretical underpinning. Research in this wave lacked strong theoretical frameworks because it only combined insights from implementation research, international relations theory and legal studies (Mastenbroek, 2005, p. 1104).

### *Second wave: misfit theory*

The second wave of compliance theory, the wave of misfit, took a stronger theoretical character than the first wave. Researchers of this wave argued that success of compliance depends on the fit between European policy requirements and existing institutions at national level. Researchers of the misfit theory originated in neo-institutionalist theory (Mastenbroek, 2005, p. 1109). The main focus was therefore on the degree of compatibility between European policies and domestic structures (Anglova et al., 2012, p. 1274; Treib, 2014, p. 8,9). The underlying assumption is that governments and administrators in Member States want to protect their own existing policy and therefore hamper implementation of European policies. This protection of Member States is based on the assumption that Member States want to minimize the costs of adaption. If there is a large misfit between domestic policy and the European policy, Member States are confronted with large costs for implementation. These costs can be either rational costs as in the term of money, or social costs which are preference costs, which entail changing domestic preferences in accordance to European policy (Treib, 2014, p. 8-10; Mastenbroek, 2005, p. 1108-1110). Despite the fact that the misfit theory has a stronger theoretical character, most research of misfit could not explain compliance and therefore, the theory lacks proof (Treib, 2014, p. 8-10; Mastenbroek, 2005, p. 1108-1110). Treib (2003) argues in his research, where he refutes the misfit theory, that it is not the compatibility of existing national policy, but by the preferences of national actors that determine compliance. In his research he finds that domestic politics are an important

explanation for compliance behaviour and that these preferences of national actors are only to a small amount determined by the fit or misfit of European policy (Treib, 2003, p. 8).

Mastenbroek and Keading (2006) support Treib's statement in their research. Mastenbroek and Keading believe that the misfit theory lacks empirical evidence and argue that focus should be on the preferences of domestic political and administrative actors, because preferences of these actors change over time and they do not want to maintain the status quo. Therefore the misfit theory wrongly assumes that the attitude towards European policies does not vary (Mastenbroek and Keading, 2006, p. 331). Moreover, besides political preferences of actors, the political context in which decisions must be made, like in the first wave, was not taken into account in the misfit theory, whereas the degree of domestic support and policy salience are important factors in a political context (Mastenbroek, 2005, p. 1110).

#### *Third wave: worlds of compliance*

The worlds of compliance by Falkner et al. (2007) discusses another important theory of the European compliance literature. This theory offered a whole new way of analysing compliance behaviour of Member States and is therefore described in this paragraph as the third wave of compliance theory. In order to explain differences in compliance the theory offers an explanation in terms of national culture. According to Falkner et al. there are three different cultures of appraising and processing adaption requirements. These different cultures are called 'world of law observance', 'world of domestic politics', and 'world of transposition neglect'. The culture of Member State determines compliance behaviour (Falkner et al., 2007, p. 404).

In the world of law observance, domestic concerns are mostly overridden by the compliance goal. Transposition of European policies is mostly on time and correct even if directives conflict with national policies, beliefs or interests. Non-compliance in a Member State with a culture of 'law observance' is rare. In the world of domestic politics domestic

concerns override the compliance goal. The decision whether to comply or not is based on a cost-benefit analysis. Non-compliance is a likely outcome of the cost-benefit analysis if European requirements conflict with domestic interest politics. In the 'world of transposition neglect' compliance is not even a goal itself. The obligation to transpose European policies is often not recognized at all. Explanations for this can be national arrogance, which means a Member State considers its own standards superior, or administrative inefficiency. Inactivity is often the response to European requirements and non-compliance is likely in the Member States with a culture of 'transposition neglect' (Falkner et al., 2007, p. 405).

Toshkov (2007) criticized the theory of worlds of compliance. While testing the theory of worlds of compliance he only found little empirical evidence to support it. It is expected that Member States belonging to 'world of domestic politics' will sometimes transpose on time and sometimes will not. In addition, Member States belonging to world of law observance score high on transposing on time and Member States belonging to world of transposition neglect score low. He did not find results in line with these expectations. Moreover, he did not find any important differences between the different worlds on compliance. He did find proof that institutional variables have impact on compliance instead of culture. Culture does not capture the complexity of transposition patterns according to Toshkov (2007, p. 947-952).

Lombardo and Forest (2012) supported Toshkov's statement and criticized the theory of Falkner et al. According to Lombardo and Forest, the theory fails to account for the European Union's differential impact on Member States. It only divides the EU in worlds of compliance. That is insufficient, because the theory only focuses on stereotypical national features which is a narrow and a normative focus. This while research in compliance with European gender policy needs a more fragmented and variegated political and institutional landscape (Lombardo and Forest, 2012, p. 5, 219; 221). When this landscape has been

identified, compliance with gender policy from the EU can be better explained (Lombardo and Forest, 2012, p. 3).

Toshkov (2007) and Lombardo and Forest (2012) were not the only ones who criticized the worlds of compliance. Many researchers tested compliance behaviour according to the theory, using large data sets. Hardly any researcher could find differences in compliance behaviour between the different worlds. The one researcher that did find differences between the worlds, could not find the expected patterns the theory predicts (Treib, 2014, p. 27-28).

#### *Fourth wave: domestic politics*

The fourth wave on compliance theory arose due to criticism on previous theories. Criticism on the first wave of compliance theory was the lack of political factors taken into account (Treib, 2014, p. 8-10). Researchers in the fourth wave did take political factors into account and discovered domestic politics to be important for compliance (Treib, 2014, p. 10). Treib (2003) showed that political preferences of parties in governments could have a great impact on compliance behaviour. In his research he showed that parties in governments were able to accept large changes, requested by the European Union, if the changes were in line with their political preferences. Moreover, parties in governments were able to drag their heels and hamper small changes requested by the European Union, if these little changes were in conflict with their political preferences.

Criticism on the second wave of compliance theory, implies the false assumption of the status quo of politics, the assumption that national actors do not want to change existing policies and institutions, and the lack of taking important political and administrative actors into account (Mastenbroek, 2005, p 1110). Therefore, compliance theory needs more dynamic explanations. Multiple researchers from the last wave showed that important actors have an impact on compliance behaviour. Haverland (2000) argued the importance of institutional

veto-positions where actors could influence decision for compliance with European policy (Treib, 2014; Mastenbroek and Keading, 2006).

Another critique on the second wave was that the policy context was not taken into account. A political context includes the degree of domestic support and policy salience (Mastenbroek, 2005, p. 1110). In the fourth wave of compliance theory, Mastenbroek and Keading (2006) argue the influence of domestic support in the form of domestic preferences and beliefs on compliance behaviour. Dimitrova and Rhinard (2005) also analysed the effect of domestic support in form of preferences. The second factor of a political context, policy salience was studied by Versluis (2003 and 2004). She showed that low political salience means little adaption pressure for a Member State (2003, p. 329). Steunenberg and Rhinard, 2010, p. 504-505) studied policy salience in terms of elections. They showed that national elections could cause a slow transposition because politicians wanted to postpone criticism until after the elections.

### **3.3. Theoretical model**

The main criticism on theories from the first three waves consists of lack theoretical underpinning and lack empirical evidence. The theories are argued to be too simplistic and theories that explain the fragmented and variegated political and institutional landscape were needed. During the fourth wave, researchers attempted to enhance compliance theory where researchers in the first three waves failed. This research, therefore, uses multiple compliance theories of the fourth wave and combines them. Together they form a complete, pluralistic theoretical framework needed to analyse the complex political and institutional landscape of gender policy (Lombardo and Forest, 2012, p. 3).

The following text discusses all the different theories of the theoretical model in detail and derives hypotheses from these descriptions. These theories relate to two groups of explanations: 1) 'preferences of actors involved' and 2) 'saliency of the issue related to the

European Directive'. These two groups of explanations and the variables related to those explanations are put together in one theoretical model in table 3.1. (p. 35).

### ***Preferences***

Mastenbroek and Keating (2006) argue that domestic preferences of policy makers are important factors for compliance behaviour. The assumption is that the preferences of policy makers determine the outcome of a transposition process of European policy. When dominant national preferences clash with the European policy, compliance with that policy will be unlikely (Mastenbroek and Kaeding, 2006, 344 - 348).

Treib (2003; 2014), like Mastenbroek and Keating (2006) and Dimitrova and Rhinard (2005), stresses the influence of preferences of policy makers on compliance behaviour. According to Treib, political preferences determine to a large extent governments' behaviour. Especially the preferences of the government have a strong impact on compliance, particularly on equality directives (Treib, 2014, p. 22). Two different reactions towards transposition requirements are possible (Treib, 2003, p. 8-9). When a directive is in line with political preferences of the party in government, the government will actively support measures that need to be taken in order to transpose European policy.

A second type of reaction occurs when a directive contradicts political preferences of a party in government. The government will then respond with explicit opposition (Treib, 2003, p. 9). In this case it matters whether there is a single-party government or a coalition government. The latter is the case in the Netherlands. In the case of a coalition government it matters whether the party that is opposed to the EU requirements, holds the department which is in charge of the implementation. When the party in opposition to the EU requirements holds the specific department, it will then intentionally hamper transposition (Treib, 2003, p. 9-10). Treib showed in his research that even small changes can fail if they are in conflict with political preferences of a party in government, which shows the importance of

preferences of governmental parties on compliance behaviour (Treib, 2003, p. 13).

Preferences of a coalition government could also differ between the different coalition parties. When the unwillingness of the hostile party leads to conflict between different parties in government, intentionally flawed transposition is a likely outcome (Treib, 2003, p. 8, 9, 23). A directive often touches upon the jurisdiction of several ministries. As a consequence these ministries need to work together. If there are different coalition parties in charge of the ministries involved, there could be a conflict of interests between the ministries when dealing with the directive (Mastenbroek, 2007, p. 38-40). Conflict of interests are likely to occur in the Netherlands because the ministries are highly autonomous and all have an own specific policy style (Andeweg and Irwin, 2002, p. 159; Mastenbroek, 2007, p. 39). This leads often to a struggle between ministries, what leads to a delay in decision-making and subsequently leads to non-compliance (Dimitrakopoulos, 2001, p. 616; Mastenbroek, 2007, p. 38-40).

In this paragraph the influence of preferences on compliance behaviour is explained. According to the researchers preferences lead to non-compliance in two different ways. A first way is explained by Mastenbroek and Keading (2006). They stress the influence of preferences of policy makers on compliance behaviour. Actors that influence the outcome can be administrative, political and societal actors that have access to the political process (Haverland, 2000, p. 85). Because Treib (2014) emphasizes the importance of only preferences of governmental parties, a division of actors is made: ‘non-governmental actors’ and ‘governmental actors’. Non-governmental actors that can influence compliance behaviour can be members of parliament, sub-national authorities, interest groups and stakeholders (Mastenbroek and Keading, 2006, 342-448). The theory of Mastenbroek and Keading (2006), therefore, leads to the following hypothesis:

<p><i>Hypothesis 1: Non-compliance was caused by preferences of non-governmental actors that are in conflict with European policy.</i></p>
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Treib stresses the importance of preferences of the government on compliance behaviour, particularly on equality directives (2014, p. 22). When a directive is not in line with political preferences of the party in government, the government will actively oppose measures that need to be taken in order to transpose European policy (Treib, 2014). Preferences within the government could also differ from each other if there are different parties involved. If the different coalition parties, that are in charge of the multiple ministries responsible for the directive, do not agree on the European directive, there could be a conflict of interests between the ministries. This leads often to a struggle between ministries with as a result that ministries often dispute the responsibility for a directive what leads to non-compliance (Dimitrakopoulos, 2001, p. 616). These two theories lead to the second hypothesis of this research:

<p><i>Hypothesis 2: Non-compliance was caused by contradicting political preferences of governmental actors.</i></p>
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### ***Saliency of issues***

Versluis (2003, p. 329) found in her research that the salience of a particular issue, that relates to the European directive, is of great influence on compliance behaviour. Issue salience refers to the importance and visibility of a certain issue that is assumed to influence the preferences of decision-makers (Versluis, 2004, p. 10). An issue is visible when it receives a lot of news coverage. The amount of media attention given to an issue, shows its visibility. A lot of attention means a lot of adaption pressure for decision-makers. Low political salience means little news coverage and little adaption pressure for decision-makers. The assumption of this theory is that when an issue has low visibility, adaption pressure is low and non-compliance is

very likely to occur (Versluis, 2003, p. 10, 14). This theory of Versluis leads to the following hypothesis:

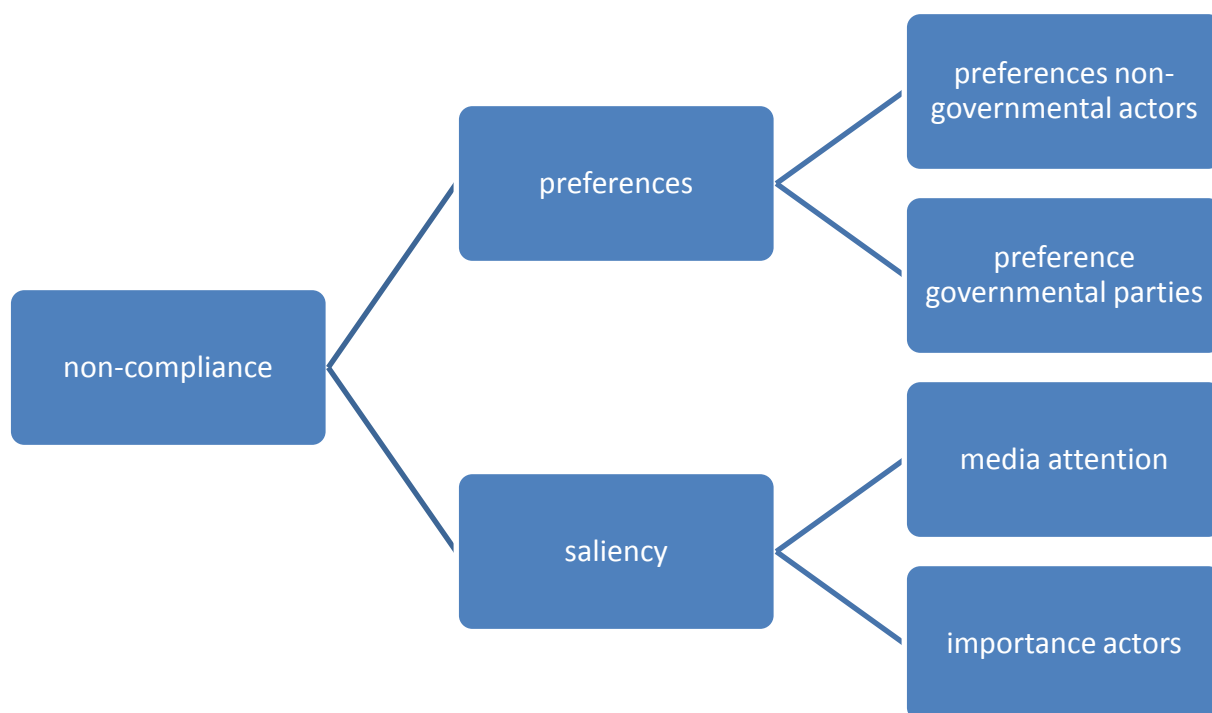
*Hypothesis 3: Non-compliance was caused by the lack of media attention given to the European policy.*

A second indicator of saliency is the importance actors attach to the issue, choice or situation (Bueno de Mesquita, 2000; Thomson and Stokman, 2006, p. 41-42; Versluis, 2004, p.10). According to Leuffen, Malang and Wörle (2014) salience is “the extent to which actors experience utility loss from the occurrence of decision outcomes that differ from the decision outcomes they most favour”. When an actor attaches a high level of importance to an issue, that actor will be highly sensitive to small changes of that policy. An actor who attaches a low level of salience to an issue, will be less sensitive for change (Leuffen, et al., 2014). Importance given to the issue, shows the willingness to trade costs or benefits in exchange for implementing European directive. An actor, who attaches low importance to the European directive and is therefore more indifferent, will be more likely to implement the directive (Bueno de Mesquita, 2000). Importance is a key component of decision making. It is found to be important for explaining decision-making processes and outcomes (Leuffen et al., 2014; Achen, 2006) and therefore will be analysed in this research. This theory forms the following hypothesis:

*Hypothesis 4: Non-compliance was caused by the high importance decision-makers attached to issues of European policy.*

All variables from the different compliance theories are put together in one table. Table 3.1. offers therefore an overview of the theoretical model. As table 3.1. shows there are two groups of explanations: 1) preferences of actors involved and 2) saliency of the issue related

to the European Directive. The first group, preferences, consists of two variables. The first one is ‘the preferences of non-governmental actors’, the second variable is ‘the preferences of governmental actors’. The second group of explanations consists of ‘media attention’ and ‘importance given to issues by decision makers’. These two together form the second group ‘saliency’. For each variable a hypothesis is made, which will be tested in the analysis, chapter 5.



**Table 3.1. Theoretical model**

### **3.4. Control variables**

The theoretical model encompasses theory-derived variables that could explain non-compliance with gender policy in the Netherlands. These variables relate to the political and institutional landscape of implementing EU gender policy. However, more factors could have influenced compliance behaviour. This research uses explanations from the first wave of EU compliance theory as control variables. Researchers of this wave portrayed compliance as an a-political process and had legal and administrative explanations for compliance behaviour.

These researcher argued that success of compliance depends on streamlined legislative procedures, effective administrative organization and clearly worded provisions (Treib, 2014, p. 7; Mastenbroek, 2005, p. 1104-1105).

A first control variable is ‘complexity’. Non-compliance is a likely outcome when the transposition process of the directive is complex (Mastenbroek, 2007, p. 36). The transposition process is complex when the directive cannot be simply incorporated in existing law. It can be difficult to adapt national law to European directives because of the range and complexity of existing national policy in which the directive needs to be incorporated (Collins and Earnshaw, 1992). In that case the directive demands a lot of changes in different items of legislation and, subsequently, new measures are needed in order to implement EU policy (Collins and Earnshaw, 1992; Mastenbroek, 2007, p. 36, 37).

A second control variable is the quality of the directive. There is a clear link between a clear worded directive and potential policy implementation. A clear text in a directive is easier to understand and easier to implement in national law. Because a directive is often the outcome of a lot of different compromises, that are needed to reach consensus in the Council of Ministers, the text in a directive is often not that clear. The directives often tend to have vague or contradictory objectives and are imprecise (Tallberg, 2002; Jordan, 1999; Collins and Earnshaw, 1992). A low quality of a directive is when a directive is vaguely worded, or highly complex in nature. A low-quality directive takes a lot of time to implement and therefore is non-compliance a likely outcome when the directive is low of quality (Mastenbroek, 2007, p. 34, 35).

The third control variable ‘*the intensity of coordination between ministries*’ is administrative in nature. A directive often touches upon the jurisdiction of several ministries. As a consequence these ministries need to work together, what may cause problems of communication (Mastenbroek, 2007, p. 38-40). Inter-ministerial coordination problems are

likely to occur in the Netherlands because the ministries are highly autonomous and all have an own specific policy style (Andeweg and Irwin, 2002, p. 159; Mastenbroek, 2007, p. 39; Dimitrakopoulos, 2001, p. 616). Therefore, is assumed in this research that a less intensive coordination between ministries leads to non-compliance.

### **3.5. Summary**

Four waves of compliance theory can be identified. These waves appoint different factors that explain compliance behaviour. After evaluating the different waves and a reasoned consideration, is in this research chosen for theories derived from the fourth wave. These theories explain compliance behaviour by factors related to the political and institutional landscape. In this research these factors are grouped into two categories: 1) preferences of actors involved and 2) the saliency of the issue. In this research is tested if preferences of non-governmental actors, preferences of the government, media attention and importance given to the issue are associated with non-compliance with European gender policy.

## **4. Methodology**

This chapter is dedicated to the methodology of this research. The first section of this chapter explains why this research uses a qualitative approach. Moreover, it explains how the comparison of two similar cases offers a way to find relevant variables. Section 4.2 explains which cases are compared and why these two have been chosen. Section 4.3. brings forward the data collection methods used in this research and 4.4. explains in what way these data have been analysed. Section 4.5. has been dedicated to the operationalisation of the theoretical model into workable concepts in order to conduct the research. The validity and reliability of this research are discussed in paragraph 4.6.

### **4.1. Research method**

This section explains what approach, quantitative or qualitative, has been used for this research. As has been put forward in the theoretical chapter, compliance behaviour is formed in a complex environment. This research, therefore, needs an approach that offers the possibility to study a complex context. A quantitative research focuses on context, but takes in only a few contextual factors and analyses them superficially. Because transposing European policy happens in a complex environment and this environment needs to be analysed in detail, a quantitative approach does not suit this research. A qualitative approach is best applicable to analyse this complex environment, because qualitative research assumes a complexity of variables and a difficulty in measuring those variables. A qualitative approach offers a way to analyse in detail because it draws data from the context in which events occur, the natural setting (Lombardo and Forest, 2012, p. 3; Gorman and Clayton, 2005, p. 3-9).

The qualitative approach used in this research consists of a case study. A case study can be seen as an intensive study of a case, in which the purpose of that study is to explain, at least partly, a larger class of cases (Gerring, 2006, p. 20). This suits the aim of this research,

i.e. providing better insights in compliance behaviour of Member States with European gender policy and therefore offers tools which can be used to achieve more gender equality in the European Union. In order to explain why Member States of the European Union do not comply with European gender policy, the case of non-compliance in the Netherlands has been studied intensively

There are different methods of case selection. These types of cases can be: typical, diverse, extreme, deviant, influential, crucial, pathway, most-similar and most-different (Gerring, 2008). The method of most similar system design is provided by Przeworski and Teune (1970) as an improvement to Mill's (1851) method of agreement and method of difference (Meckstroth, 1975; Levy, 2008). A most similar system design needs two cases that differ on the outcome of theoretical interest, the dependent variable (Gerring, 2008; Levy, 2008). It means that one case led to non-compliance and one case to compliance. The cases selected need to be similar on various factors, the independent variables, because, except for the outcome, the cases need to be as similar as possible (Anckar, 2006). What follows is an intensive study of the two cases, that apparently seem similar but have a surprisingly different outcome (Gerring, 2008; Meckstroth, 1975).

Falsification is the major goal of this approach because a variation on the dependent variable cannot be caused by a factor that is constant across the two cases (Caramani, 2009). The assumption of this approach is that the few differences in the explanatory variables are associated with the differences in the dependent variable (Van der Heijden, 2013). The hope is, thus, that this study reveals similar scores on possible causal factors, which, therefore, cannot explain the different outcome. On the other hand the study hopes to find the same scores on at least one factor of interest (Gerring, 2008; Meckstroth, 1975). The method of most similar system design is chosen for this research because small-n research is needed in order to intensively study the case and the method of most similar system design offers a way

to make conclusions on the basis of small-n research (Anckar, 2008, p. 389-390; Pennings, Keman and Kleinnijenhuis, 2006).

However, there are also some downsides to this method. A problem with the method of most similar systems design, like in any comparable case research, is the identification of two similar cases. It is almost impossible to find two cases that are identical in all aspects except one. A way to find two similar cases is to look for cases from a similar context, where the circumstances are the same (Levy, 2008).

A second caveat of the method is that there are no interaction effects. Each causal factor is understood as having an independent effect on the outcome (Gerring, 2008). The study does not take in causal complexity but works fine for single explanatory variables. More complex causation involving interacting effects is not suited for this research. It is impossible to account for all possible combinations of independent variables (Levy, 2008; Anckar, 2008).

A third caveat of this method is that scores on cases must be coded dichotomously. Which means variables are either found (X) or not (-) in order to simplify the two case studies (Gerring, 2008). Moreover, all possibilities are equally relevant with the use of this method. The method provides no criteria to select among the possible explanations (Meckstroth, 1975).

#### **4.2. Selection of research units**

The requirements for a valid comparison, when using the method of most similar system design, are using two cases with a different outcome and external variables in common (Anckar, 2008, p. 389-390). The case this research wants to explain is a case that involves European gender equality policy which the Netherlands do not comply with. A case that fulfils this requirement is the infringement procedure of 2013, the case in which European Commission blames the Netherlands for not having an explicit right to return to the same or comparable job after having taken maternity or pregnancy leave (Holmaat, 2013, p. 173;



European Commission, 2014c, p. 173). The European Commission insisted on implementation of that specific provision (European Commission, 2013b; Spijkerman, 2013; NRC, 2013). This right is established in article 25 of the Recast Directive, which ensures the principle of equal opportunities and equal treatment of men and women in matters of employment and occupation (2006/54/EC).

The identification of two identical cases in all aspects except one is almost impossible to find (Levy, 2008). In this research, therefore, a second case was to be found which was as similar as possible. In order to find the second case as similar as possible, cases out of a similar context are looked for, in which the circumstances are the same (Levy, 2008). Demands for a similar context are that it needs to take place in the Netherlands, preferably concerns the same policy area, has the same type of decision-making process and, the only thing that differs, led to compliance. By using a case out of a similar context, most of the plausible explanatory variables are automatically kept constant and cannot intervene in the relation between the dependent variable and independent variables (Levy, 2008; Anckar, 2008).

A case that fits this description best is the infringement procedure of 2006. In this case the Commission found the definitions of direct and indirect discrimination used in Dutch law not in line with EU law and therefore harmful for gender equality in the Netherlands (Gerards, 2006, p. 308; Ramos Martin, 2008, p. 34-35). The European Commission insisted on adaptation of the Dutch General Equal Treatment Act to fit the directive 2000/78/EC better. The European Commission argued that the Dutch Equal Treatment Act did not have correct general definitions of direct and indirect discrimination according to the European Directive 2000/78/EC (Minister of the Interior and Kingdom Relations, 2009, p. 1. nr. 3; 2008, p. 1-2; Von Kempis, 2008).

The cases are comparable because they both take place in the Netherlands, they both

involve equality policy and both led to an infringement procedure (Ministry of the Interior and Kingdom Relations, 2009, nr.3). However, this case led, from the start of the infringement procedure, to compliance with the European policy (Ministry of the Interior and Kingdom Relations, 2013). In order to compare the same phases of decision-making, this study has started the analysis of the cases from the moment the European Commission started the infringement procedure. The different phases of an infringement procedure need to be explained first, because it has to be clear which phase of the decision-making process is compared.

An infringement procedure is a measure that the Commission uses when a Member State is suspected of violating European Law (European Commission, 2014a). Violating means a Member State fails to incorporate EU directives into its national law, fails to communicate to the Commission what actions are taken, or when a Member State breaches a European Union law (European Commission, 2014b). The infringement process has multiple stages. A first stage is the Letter of Formal Notice. This letter is sent after the European Commission suspects the Member State to violate European directive (European Commission, 2012; Börzel, Hoffman and Sprungk, 2003). The Letter of Formal Notice is a request from the European Commission to the Member State for more information about the suspected violation. The Letter must be answered within two months. If the European Commission is not satisfied with the answer of the Member State, the European Commission sends a Reasoned Opinion. A reasoned opinion is a formal request to comply with European law and the Member State is asked to inform the European Commission about the measures the Member State is taking to comply (European Commission, 2012). If the Member State fails to do this within the specified period, the European Commission may decide to refer the State to the European Court of Justice, which is the third stage (European Commission, 2012; Börzel et al., 2003). The cases to compare are the cases from the moment the European Commission

sent the Netherlands a reasoned opinion because that is the first formal stage of the infringement procedure. It means the European Commission has formally decided the Netherlands has failed to comply with a European directive (Börzel, et al., 2003).

### **4.3. Data collection**

Researchers use six types of research methods for collecting data (Gabrielian, et al., 2008, p. 152; Van Thiel, 2007, p. 68). These methods are: interview, observation, questionnaire, content analysis, meta-analysis and secondary analysis. For this research two methods are used: interview and content-analysis.

The method of interview means that by asking respondents questions data are gathered. An interview is a helpful way of collecting data in a complex environment because the observer can ask respondents questions needed to study the cases. An interview offers a way of asking for a reconstruction of events that happened in the past which is needed for this research. With the other research methods, that is more difficult to do (Bryman, 2004). Moreover, an interview offers flexibility while collecting data, because during the interview, the researcher has the opportunity to ask more questions in order to understand answers better. However, this flexibility is a threat for the reliability of the research because every interview can differ considerably from other ones (Gabrielian, et al., 2008, p. 152; Van Thiel, 2007, p. 106).

To get an objective perspective on the complex environment of transposing European gender policy, different people from different backgrounds were invited to participate in an interview. For this research the aim was to get respondents from four categories: at least one respondent from the European Commission; at least one respondent from the Lower Chamber; at least one respondent from a ministry and lastly multiple independent experts, including at least one advisory body. Respondents from the Lower Chamber, a ministry and advisory bodies were included, because these respondents have access to the decision-making

process (Mastenbroek, 2007), which is the process wanted to analyse. Respondents from the European Commission have been chosen for an interview because they started the infringement procedures and communicated with the government during the processes. Multiple experts have been interviewed because they are more objective than politicians or civil servants working for the politicians. Moreover, experts have a broader view on the issue. By including multiple independent experts, the chances of including a personal opinion of one of the experts is reduced. These four different categories have been chosen because these people have a duty in monitoring and criticizing one another and therefore their views, once placed next to each other and contemplated, together form a complete picture of what caused non-compliance. Unfortunately, the European Commission did not want to participate in this research because, according to them, it could harm the relationship between the European Commission and the Dutch government. The respondents are displayed in table 4.1. Six people have been interviewed. These respondents include a policy advisor of the Lower Chamber, an administrative legal officer of the Ministry of Social Affairs and four independent experts.

	<b>Name</b>	<b>Function</b>	<b>Organisation</b>
1.	Dorrit de Jong	Policy advisor Social Affairs for member of parliament	Lower Chamber of the Netherlands (parliament)
2.	Anonymous	Administrative legal officer	Ministry of Social Affairs and Employment in the Netherlands
3.	Marlies Vegter	Dutch expert specialised in European gender equality law	Independent researcher. Among other for the gender equality stream of the European Equality Law Network
4.	Annejet Swarte	Jurist	The Netherlands Institute for Human Rights [ <i>College van de Rechten van de Mens</i> ]
5.	Rikki Holtmaat	Member of the European Network of Legal Experts in the Non-Discrimination Field and the European Network of Legal Experts in the Field of Gender Equality.	Professor International Non-Discrimination Law Leiden University

6.	Eva Cremers	Dutch expert specialised in European gender equality law.	Independent researcher. Specialized in rights of equal treatment.
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**Table 4.1.: Respondents**

The interviews have been semi-structured. The interviews started with the following open questions: *what did the respondents think was the reason one case led to compliance and the other one to non-compliance? Who were the stakeholders involved in the process of dealing with this directive? What did those stakeholders think about implementing the directive? What did the decision-structure of dealing with his directive look like?* In this way the respondents could answer the questions without any steering by the researcher (Boeijs, 2005). After the respondents answered the first open questions, they were asked about issues that were not already addressed in the answers. When the respondents gave different answers to the same question, the answers were averaged out. The common denominator was looked for rather than contradictory answers. The respondents' expertise was evaluated on the basis of the extent to which they were able to provide arguments for their statements. All the interviews were, with permission of the respondents, recorded and the answers were written down literally afterwards.

Because the cases are from a few years back, and respondents were not always able to remember every detail of the process, it is important to complement the interviews with documents written around the time the decision process took place. Especially when the answers of respondents contradicted each other. Documents that described steps of the decision-making process have been included. These documents are reports from general consultations between the Lower Chamber and ministers, researches from advisory bodies, letters either the ministers sent to the Lower Chamber or the Lower Chamber sent to the ministers and news articles about the cases. All documents contain information about the process of dealing with the two cases. Table 4.2. displays all the documents from the

decision-making process of case 1, the case of compliance, and table 4.3. displays all documents from the decision-making process of case 2: the non-case of compliance.

<b>Case 1: compliance</b>		
<b>number</b>	<b>Author</b>	<b>Type of document</b>
1.	Equal Treatment Commission (2008).	Advice concerning the infringement procedure against the Netherlands.
2.	Lower Chamber (2011).	General debate handling act Equal Treatment between Lower Chamber and Minister of the Interior and Kingdom Relations.
3.	Minister of the Interior and Kingdom Relations (2003A).	Advice Council of State and following report from the Minister.
4.	Minister of the Interior and Kingdom Relations (2008, nr. 40).	Letter from Minister to European Commission.
5.	Minister of the Interior and Kingdom Relations (2009 nr 4).	Advice State Council and following report from the Minister.
6.	Minister of the Interior and Kingdom Relations (2009 nr 5).	Parliamentary documents: <i>Evaluation General Law Equal Treatment</i> .
7.	Minister of the Interior and Kingdom Relations (2009 nr. 3).	Explanatory statement.
8.	Minister of the Interior and Kingdom Relations (2010 nr. 5).	Letter from Minister of the Interior and Kingdom Relations to the Chairman of the Lower Chamber.
9.	Minister of the Interior and Kingdom Relations (2010 nr. 6)	Letter from Minister of the Interior and Kingdom Relations to the Chairman of the Lower Chamber.
10.	Minister of the Interior and Kingdom Relations (2011 nr. 9).	Letter of amendment following the report of amendment.
11.	Minister of the Interior and Kingdom Relations, Minister of Justice, Minister of Education, Culture and Science, Secretary of State for Social Affairs and Employment and Secretary of State for Public Health, Welfare and Sport (2003, nr. 3).	Explanatory statement.
12.	Permanent Commission of Interior Affairs and Kingdom Relations (2010 nr 7).	Report of general consolation on amendments to Equal Treatment Act.
13.	Permanent Commission of Interior Affairs and Kingdom Relations (2011 nr 8).	Report on amendments to Equal Treatment Act.

**Table 4.2.: documents case 1: compliance**

<b>Case 2: non-compliance</b>		
<b>number</b>	<b>Author</b>	<b>Type of document</b>
1.	NRC (2013).	News article on infringement procedure
2.	Commission Interior Affairs (2013).	Report of general consultation
3.	Cremers, E. (2014).	Article on infringement procedure
4.	Cremers, E. and Vegter, M.S.A. (2013).	Research The Netherlands Institute for Human Rights
5.	Dobber, L. (2013)	News article on infringement procedure
6.	Holtmaat, R. (2013).	Research The Netherlands Institute for Human Rights
7.	Houtzager, D. and Swarte, A. (2015).	Research The Netherlands Institute for

		Human Rights
8.	Ministry of the Interior and Kingdom Relations (2013).	Letter for the Lower Chamber from the Minister of the Interior and Kingdom Relations.
9.	Ministry of Social Affairs and Employment (2013).	Letter from the Secretary of State to the Lower Chamber.
10.	Spijkerman, C. (2013).	News article on infringement procedure

**Table 4.3.: documents case 2: non-compliance**

These documents need to be analysed in a structured way. Therefore, the method of content analysis is also used as an instrument to collect data (Van Thiel, 2007, p. 121). The written answers of the respondents and the documents have been categorized with the codes as set up in paragraph 4.5.

#### **4.4. Data analysis**

The data-analysis of the two cases consist of different steps. A first step was to gather information on the contents of the two directives. Secondly, the governmental and non-governmental actors needed to be identified, as well as their preferences. Furthermore, the different steps of the decision process are outlined in order to reconstruct a timeline and in this way the different steps of the decision process can be compared.

The data-analysis is performed by coding the interviews and documents. These codes were derived from the theoretical framework. By coding the interviews and documents it is possible to compare different data to the same codes. In that way coding offers a way to systematically summarize the extensive qualitative data. The data are connected to the theory. This means that the codes are matched to hypothesized causes of the theoretical model. By analysing the codes it becomes clear what variables derived from the theory are found in the cases analysed (Rohlfing, 2012, p. 151, 152; Beach and Pedersen, 2013, p. 4, 29; Van Thiel, 2007, p. 159). Before codes can be derived from the theoretical model, it is needed to operationalise the variables from the model. The operationalised definition of a concept prescribes which measures are appropriate to measure the theoretical concepts (Pennings et

al., 2006). The next paragraph operationalises the variables in different steps. Multiple questions belong to every code. In order to give a structured overview of the variables and operationalisation a schematic representation of the variables is offered in table 4.4. (p. 52).

## **4.5. Operationalization**

### **Preferences variables:**

Mastenbroek and Keating (2006) argue that preferences of non-governmental actors involved in the decision-making process determine the outcome. Actors that influence the outcome can be administrative, political and societal actors who have access to the political process (Haverland, 2000, p. 85). These actors can be members of parliament, sub-national authorities, interest groups and stakeholders (Mastenbroek and Keating, 2006, 342-448). According to Treib (2003, 2014), political preferences of a party in government determine the outcome of implementation requirements. If these preferences contradict the EU requirements, non-compliance is likely the outcome of the transposition process. If these actors have preferences that contradict the directive, it could cause non-compliance. However, compliance with European policy is determined by the non-governmental actors' ability to influence compliance if they disagree with the European adoption requirements (Haverland, 2000, p.100).

The respondents were asked what the decision-process looked like and who had access to the decision-making process. However, the documents that reported the decision-making process are a better source, because the respondents often do not remember what the decision process of years ago looked like. In these documents can be found who was involved, or whose opinion was involved in the decision-making process. Advisory bodies, for instance, are not directly involved in the decision-making process but can influence the decision made. In order to identify who had access to the decision-making process, the documents and answers of the respondents are therefore coded with 'direct access' and 'indirect access'.



A next step is to categorize the preferences that the actors involved had about the directive. Only preferences that oppose the implementation of the directive can lead to the outcome of non-compliance. Contradicting preferences can be either clear outspoken statements against the implementation of the directive or a preference for an alternative of the directive (Thomson and Stokman, 2006). The respondents were asked if the non-governmental and governmental actors agreed or contradicted the directive and if actors favoured other options than the directive. The answers and documents of the decision-making process are coded by, 'preferences contradicting the directive' and 'preference alternative directive'.

Those preferences of the non-governmental and governmental actors are statements that are made in public. However, preferences are not only made in public, but may show themselves indirectly. An indirect sign is when the department responsible for the implementation, shows difficulties with implementing the directive. These difficulties indicate that the party in charge of the implementation, has political preferences contradicting the directive (Treib, 2003). Indirect signs of preferences contradicting the directive can show themselves in a conflict amongst ministries, that are involved in the decision-making process. A conflict could indicate an indirect preference for not implementing the directive. A directive often touches upon the jurisdiction of several ministries. If there are different coalition parties in charge of the ministries involved, there could be a conflict of interests between the ministries when dealing with the directive (Mastenbroek, 2007, p. 38-40). A struggle between ministries leads to a delay in decision-making and subsequently leads to non-compliance (Dimitrakopoulos, 2001, p. 616; Mastenbroek, 2007, p. 38-40). A struggle amongst ministries indicates that one of the parties in government does not agree with the requirements (Treib, 2003). The documents and answers of the respondents are analysed by using the code 'conflict ministries'.

When preferences of non-governmental influenced the outcome the codes ‘preferences contradicting the directive’ and ‘preference alternative directive’ are likely to be found in the case of non-compliance and not in the case of compliance. If preferences of governmental actors influenced the outcome the codes ‘preferences contradicting the directive’, ‘preference alternative directive’ and ‘conflict ministries’ are likely to be found in the case of non-compliance and not to be found in the case of compliance. If two or three indicators are found the concluded is that preferences of governmental actors are associated with the outcome. If one or zero indicators is found, concluded is that preferences of governmental actors are not associated with the outcome.

### **Salience variables**

According to Versluis (2003, 2004) salience is the amount of attention given to a certain issue that pressures politicians to adapt or not. Media attention is therefore an indicator for salience. Little media attention means little adaption pressure for politicians which will lead to non-compliance (Versluis, 2003, p. 10, 14). The amount of media attention was measured by searching in LexisNexis, which is a on-line database for newsletters. The main key concepts from the directive were used as search terms. The respondents were also asked if the directives got media-attention, and if they did, in what way. The two results are be compared and checked if the respondents did not name news articles found by the use of LexisNexis. Besides news articles respondents may mention radio or television coverage. All these types of media attention will be added up. Because the variables have to be measured dichotomously the conclusion is that one to ten items, whether they are news articles, or attention given to it on television or radio, means little media attention. If there is more news coverage than ten items, it means that little media attention cannot be the cause of non-compliance.

A second variable is the importance actors in the decision-making process attach to the

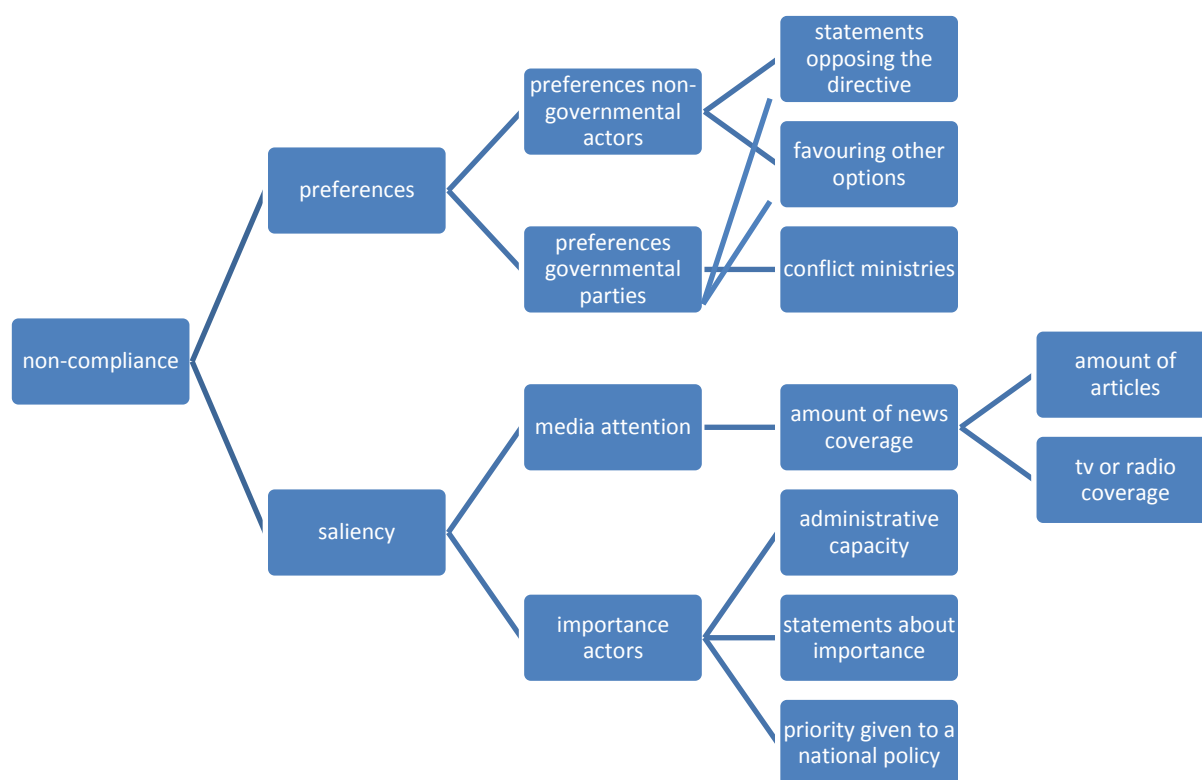
issue (Thomson and Stokman, 2006, p. 41-42). When an actor attaches a high level of importance to an issue, that actor will be highly sensitive to small changes of a policy that concerns that issue. An actor who attaches a low level of salience to an issue, will be less sensitive to change (Leuffen et al., 2014) and therefore be more likely to implement the directive. This variable was measured by the means of three indicators.

A first indicator of ‘importance given to the issue’ are statements made about importance of the issue during the decision-making process. The respondents were asked if they think the involved actors thought of the issues as important. Furthermore, the documents were analysed and statements made about the importance of the issues were searched for. If the actors stated they thought the issue to be important, or a majority of the respondents stated the actors involved thought of the issue as important, the conclusion will be that the actors thought of the issue as important. If importance given to the issue influences the outcome and leads to non-compliance, expected is that the actors in the non-compliance consider the issue to be important and in the case of compliance to be unimportant.

A second indicator of importance is the priority given to the issue. The way an actor prioritizes the issue related to the directive, shows his or her importance given to the issue. The relevance of the issue compared to other issues expresses its salience (Van den Bos, p. 68). In this research, therefore, the assumption is that if there was a national policy that got prioritized over the directive, the importance given to the directive was low. In order to find out if there was another priority, the respondents were asked if there was another priority and the documents were analysed to see if there was a different priority mentioned during the decision-making process. If the priority given to the issue, influences the outcome of non-compliance, the assumption is that in the case of compliance there was at least one national policy prioritized over the directive and in the case of compliance that there was at least one priority given to a national policy.

A third indicator of importance is a lack of administrative capacity. According to Thomson and Stokman (2006), the administrative capacity available to deal with the policy area concerning the issue, shows is the importance of the issue to them. An insufficient administrative capacity for the policy area concerning the directive shows a low salience actors attach to the issue. Therefore, the respondents were asked whether there was a lack of administrative capacity in order to deal with the policy area. If high importance is the cause of non-compliance respondents are expected to answer to answer yes to this question in the case of compliance and ‘no’ in the case of non-compliance.

In order to measure the importance given to the issue, it will be concluded that there is a high importance given to the issue if two out of three indicators say so. If only one indicator shows a high importance it will be concluded that the government attached low importance to the issue. An overview of all operationalised variables is given in table 4.4.



**Table 4.4. operationalisation**

## **Control variables**

### *Complexity*

Non-compliance is a likely outcome when the transposition process of the directive is complex (Mastenbroek, 2007, p. 36). The transposition process is complex when the directive cannot be simply incorporated in existing law. Complexity of the transposition process can be measured by the number of measures that are needed in order to implement the directive. For that reason the respondents were asked how many new measures were needed in order to implement the directive. Moreover, the documents were looked into to see if and how many new measures are mentioned. A transposition process is complex when many new measures need to be adopted or changed in order to transpose the directive. The number of measures is therefore an indicator of complexity (Mastenbroek, 2007; Collins and Earnshaw, 1992). The conclusion of this research that one new measure needed means little complexity to implement the directive and if there is more than one measure needed, the transposition process is not complex. Because both cases are infringement procedures at least one measure was needed. However, if more than one measure is needed, it means that the directive asks for changes in multiple ways. This makes the process more complex (Collins and Earnshaw, 1992). If complexity has an effect on the outcome, a complex process in the case of non-compliance is expected and an easy process in the case of compliance.

### *Quality directive*

A second control variable is the quality of the directive. A clear text in a directive is easier to understand and easier to implement in national law (Tallberg, 2002). A low-quality directive takes a lot of time to implement and therefore is non-compliance a likely outcome when the directive is of low quality (Mastenbroek, 2007, p. 34, 35). Indicators of a low-quality directive are when actors responsible of the transposition process thought the directive was: 1) vaguely worded, 2) highly complex in nature, 3) interiorly inconsistent, 4) at odds with other

directives, or when a directive contains: 5) unnecessary abbreviations, 6) unintelligible community jargon, 7) imprecise references to other texts, or 8) political statements with unclear legal status (Mastenbroek, 2007, p. 35, 47). For these reasons the respondents were asked whether the directive contained unnecessary abbreviations, unintelligible community jargon, imprecise references to other texts, or political statements with unclear legal status. The documents were analysed to see if one of these indicators is mentioned. Furthermore, the respondents were asked if the directive was vaguely worded, highly complex in nature, interiorly inconsistent or at odds with other directives and the documents were analysed to see if any of those indicators is mentioned. If a low quality of the directive had influence on the outcome the assumption is that at least one of these indicators in the case of non-compliance will be found and none of the indicators in the case of compliance.

### *Coordination*

The third control variable is the coordination between ministries. If ministries need to work together, it can cause problems of coordination, which makes it harder to implement a directive (Mastenbroek, 2007, p. 38-40). In this research it is therefore assumed that a less intensive coordination among ministries leads to non-compliance. A first indicator of less intensive coordination is a dispute about the responsibility for the directive among ministries. A second indicator is communication problems among the ministries (Mastenbroek, 2007, p. 38-40; Dimitrakopoulous, 2001, p. 616). That is why the respondents were asked if it was clear which ministry was responsible for the directive, or whether there was a dispute about which ministry was responsible. The documents were analysed for any questions about who was responsible during the decision-making process. Furthermore, the respondents were asked whether there was any sign of communication problems between the ministries that were responsible. If coordination amongst the ministries influenced the outcome of the

decision-making process, coordination problems are expected in the case of non-compliance and no signs of coordination problems in the case of compliance.

#### **4.6. Validity and reliability**

##### *Validity*

There are two types of validity: internal and external. A research is internal valid when the correct inference is made that X (the independent variable) causes Y (the dependent variable). It concerns being able to capture reality by analysing the case (Van der Heijden, 2013). A researcher that performs a comparative case study is able to gain in-depth understanding of the cases and the findings drawn from these (internal validity) and is at the same time able to produce some level of generalization (external validity) (Van der Heijden, 2013).

When performing interviews for a qualitative research, the researcher is the instrument that performs the interviews and connects data to the theory. The thinking and interpretation of the researcher have more influence on the analysis than in quantitative research. A different researcher might interpret the data differently. This influences the internal validity of the research. However, there are also ways to counter the disadvantages and increase the internal validity of the research. The tactic of *disconfirming the evidence* can help. Instead of only searching for proof of the hypothesis, it is also important to search for proof that falsifies the hypothesis. Moreover, the researcher should also be prepared to find alternative explanations of phenomena observed. A second measure to increase the internal validity of the small-n research is *triangulation*. Triangulation is the use of different sources of information (Gorman and Clayton, 2005, p. 24, 25, 26; Van Thiel, 2007, p. 166-167). This helps the researcher to strengthen her own understanding of reality and therefore the conclusions are less dependent on the interpretation of the researcher (Van der Heijden, 2013). This research therefore uses two types of data: interviews and documents.

A research is external valid if the results can be generalized to a larger population. A

second disadvantage is the limitation of generalization to another context, the external validity, because only two cases are analysed. There is a limited amount of cases and many variables (Anckar, 2008, p. 389-390; Van Thiel, 2007, p. 165; Gabrielian, 2008, p. 159; Van der Heijden, 2013). A comparative case study with only two cases cannot produce empirical generalization, because it is impossible to meet the *ceteris paribus* condition that empirical generalizations require (Van der Heijden, 2013). However, a comparative case study can produce a *moderatum* generalization. This is a claim to basic patterns, or tendencies, so that other studies are likely to find something similar, however not identical. There are, however, some strategies to increase the external validity (Van der Heijden, 2013). This research uses the strategy of *thick descriptions*. By giving enough detailed information of the cases, other researchers will be able to determine how closely the study relates to other cases or situations.

### *Reliability*

The reliability of a research refers to the possibility of other researchers finding the same results when they repeat the research. The extent of the repeatability of the research, assuming that all techniques and procedures remain the same, is its reliability. For a case study this can raise some problems because the data are not as static as are used in quantitative research. In qualitative research there is more room for interpretation by the researcher and other researchers might therefore collect data differently (Riege, 1998). A well-structured interview, based on well-operationalised concepts, is important to improve the reliability of the research. In paragraph 4.4, therefore, the theoretical model is systematically operationalised into concepts, which are in their turn formed into questions. This increases the chance that if the research is repeated, the researcher will find the same results and draw the same conclusions (Van Thiel, 2007, p. 113).



#### **4.7. Summary**

This research uses a qualitative approach. Qualitative research is best applicable to analyse the complex environment of compliance behaviour. Qualitative research assumes a complexity of variables and a difficulty in measuring those variables. It offers a way to analyse this environment in detail because it draws data from the context in which events occur. The research method used for this research is the method of most similar system design. A comparison of two cases that are similar but have a different outcome offers the opportunity to find relevant variables. By means of conducting interviews and analysing a large amount of documents that captured the two processes, data for this research have been gathered. In order to structure the interviews, the theoretical model (consisting of the dependent variable and independent variables), has been operationalised in paragraph 4.4. Tactics like falsifying, triangulation and structured interviews have been used to counter any disadvantage of conducting qualitative research. These tactics are discussed in section 4.5.

## 5. Analysis

This chapter displays the analysis of this thesis. In chapter 4 the different steps, needed in order to compare the two cases, were described. The first step is to gather information on the contents of the two directives of which the European Commission thought Dutch law differed too much and therefore started the infringement procedures. Secondly, the governmental and non-governmental actors need to be identified. Furthermore, the different steps of the decision process are outlined in order to reconstruct a timeline. This information is gathered in two case descriptions, which are the first two subsections 5.1 and 5.2. To answer the research question the cases are compared based on all the variables and control variables as operationalized in chapter 4. The focused comparison of the cases is displayed in subsection 5.3. Subsection 5.4. gives a summary of chapter 5.

### 5.1. Case description: definitions of discrimination

#### *Content of the directive*

On 31<sup>st</sup> January 2008, the European Commission sent a reasoned opinion to the Dutch government. In this reasoned opinion the European Commission insisted on adaptation of the Dutch General Equal Treatment Act to fit the directive 2000/78/EC better (Minister of the Interior and Kingdom Relations, 2009, p. 1. nr. 3; 2008, p. 1-2; Von Kempis, 2008). The European Commission argued that the Dutch Equal Treatment Act did not contain correct general definitions of direct and indirect discrimination according to the European Directive 2000/78/EC. In the European Directive the definition of direct discrimination is:

“When one person is treated less favourably than another is, has been or would be treated in a comparable situation, on any of the grounds referred to in Article 1” (European directive 2000/78/EC).

The definition in the directive of indirect discrimination is:

“When an apparently neutral provision, criterion or practice would put persons having a particular religion or belief, a particular disability, a particular age, or a particular sexual orientation at a particular disadvantage compared with other persons unless:

(i) that provision, criterion or practice is objectively justified by a legitimate aim and the means of achieving that aim are appropriate and necessary, or

(ii) as regards persons with a particular disability, the employer or any person or organisation to whom this Directive applies, is obliged, under national legislation, to take appropriate measures in line with the principles contained in Article 5 in order to eliminate disadvantages entailed by such provision, criterion or practice” (European directive 2000/78/EC).

The definitions of ‘direct discrimination’ and ‘indirect discrimination’ defined as ‘direct distinction’ and ‘indirect distinction’ in Dutch law, did not meet the definitions as represented in the directive (Equal Treatment Commission, 2008, p. 4; E. Cremers, personal communication, 30 March 2016; R. Holtmaat, personal communication, 23 March 2016). In the Dutch General Equal Treatment Act direct discrimination was defined as:

“A distinction between persons on grounds of religion, belief, political opinion, nationality, race, gender, sexual orientation or marital status.”

And indirect discrimination as:

"A distinction based on characteristics or behaviour other than those referred to in subparagraph b [definition direct discrimination], which results in direct discrimination."

According to the European Commission these Dutch definitions in the General Equal Treatment Act needed to be changed because sufficient definitions of direct and indirect discrimination are needed to fight discrimination so equal treatment can be achieved (Von Kempis, 2008; E. Cremers, personal communication, 30 March 2016; R. Holtmaat, personal communication, 23 March 2016).

### *Actors involved*

Two advisory bodies were involved in the decision-making process: the Council of State<sup>3</sup> (Minister of the Interior and Kingdom Relations, 2009, p. 1. nr. 3; Minister of the Interior and Kingdom Relations; 2003, p. 3-5) and The Netherlands Institute for Human Rights<sup>4</sup>, then called Equal Treatment Commission (2008). The Lower Chamber was present in the decision-making process in different commissions. These were the permanent commission of Interior Affairs, commission of Education, Culture and Science, commission of European Affairs, commission Public Health, Welfare and Sports and the commission of Social Affairs and Employment (Commission of Interior Affairs, 2010, nr. 7). From these commissions the permanent commission of Interior Affairs was responsible for preliminary examination of the bill (Commission of Interior Affairs, 2011, nr. 8).

Multiple ministries were involved in the preparation of the bill that led to changing the definition of direct and indirect distinction in the law equal treatment of men and women (Minister of the Interior and Kingdom Relations, 2009, p. 1. nr. 3). Besides the Minister of Interior and Kingdom Relations, the Minister of Justice, the Minister of Social Affairs and Employment, the Minister of Education, Culture and Science, the Minister of Public Health, Welfare and Sports and lastly, the Minister of Housing, Communities and Integration were involved in the decision making process (Minister of the Interior and Kingdom Relations, 2009, p. 1. nr. 3). Because the process took several years, four different Ministers of the Interior and Kingdom Relations were responsible for this infringement procedure: Ter Horst, Donner, Hirsch Ballin and Plasterk (Minister of the Interior and Kingdom Relations, 2010, nr. 6 and nr. 7).

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<sup>3</sup> The Council of State is an advisory body on legislation for the government and parliament (The Council of State, n.d.)

<sup>4</sup> The Netherlands Institute for Human Rights is an advisory body that explains, monitors and protects human rights, promotes respect for human rights, including equal treatment, in practice, policy and legislation, and increases the awareness of human rights in the Netherlands (The Netherlands Institute for Human Rights, n.d.).

### *Time line*

The decision process in this case was long, but had only few stages. There were only a few stages because the government agreed to implement new definitions almost right after the European Commission started the infringement procedure (Minister of Education, Culture and Science, 2008). On 18 March in that year, the government sent a reaction to the Lower Chamber and the European Commission, about the infringement procedure, which is the first stage in the decision making process. In this reaction the Minister declared to implement different definitions of distinction in accordance with the European Directive 2000/78/EC (Minister of the Interior and Kingdom Relations, 2008). No debate took place between the reasoned opinion and the proposal of the Minister of the Interior and Kingdom Relations (2008) to change the definition of distinction.

The process after this proposal for an amendment took a long time. The following discussion with the Lower Chamber about this amendment was cancelled because the Minister of Interior Affairs and Kingdom Relation was ill. After that the amendment was postponed because new elections were held. After the elections a new Minister of Interior and Kingdom Relations was appointed (Minister of the Interior and Kingdom Relations, 2010, nr. 6).

The second stage was the debate with the Lower Chamber in November 2010 in which the Lower Chamber and the Minister of the Interior and Kingdom Relations discussed the amendment proposed by the government to implement the directive (Commission of Interior Affairs, 2010, nr. 7).

The third stage was the general consultation when the report from of the permanent commission of Interior Affairs was discussed. This was a report on the examination of the bill and was sent on 16 December 2010. Before the members of parliament voted on the bill one

more consultation about this report was held on 14<sup>th</sup> September in 2011 (Lower Chamber, 2011; Commission of Interior Affairs, 2011, nr. 8).

Stage	Date	Content
1.	March 2008	Reaction from government about the infringement procedure to the Lower Chamber.
2.	November 2010	Debate between the Lower Chamber and the Minister of the Interior and Kingdom Relations.
3.	September 2011	Consultation about report on the examination of the bill by the permanent commission of Interior Affairs.

**Table 5.1.** Timeline case: definitions of discrimination

### *The outcome: compliance*

On 30 December 2008 the Minister of the Interior and Kingdom Relations filed a legislative proposal in order to adjust the definitions of direct and indirect distinction in Dutch law in line with directive 2000/78/EC (Equal Treatment Commission, 2008, p. 3; Administrative legal officer ministry of Social Affairs and Employment, personal communication, 28 September 2015). The process of handling the bill was postponed at the request of the Lower Chamber, so it could be dealt with simultaneously with another bill, which contained an adjustment of the law of equal treatment on the basis of disability, chronic illness and age. The bill was passed in a voting of the Lower Chamber on 27 September 2011 and on 1 November by a vote of the Upper Chamber. The amendment became effective on 3 December, 2011 (Administrative legal officer ministry of Social Affairs and Employment, personal communication, 28 September 2015). On May 30, 2013 the European Commission approved the changes made and announced to shelve the infringement procedure (Ministry of the Interior and Kingdom Relations, 2013). The outcome of this case is therefore compliance.

## **5.2. Case description: specific provision**

### *Content of the directive*

In September 2011 the European Commission sent the Dutch government a reasoned opinion. In this reasoned opinion the European Commission insisted on implementation of a specific

provision that guaranteed the right of employees to return to the same or comparable job after taking maternity leave (European Commission, 2013b; Spijkerman, 2013). This right is established in article 25 of the Recast Directive, which ensures the principle of equal opportunities and equal treatment of men and women in matters of employment and occupation (2006/54/EC). Article 25:

“For reasons of clarity, it is also appropriate to make express provision for the protection of the employment rights of women on maternity leave and in particular their right to return to the same or an equivalent post, to suffer no detriment in their terms and conditions as a result of taking such leave and to benefit from any improvement in working conditions to which they would have been entitled during their absence”.

In Dutch law there is not a specific provision that guarantees the right of women to come back to the same, or comparable job after taking maternity leave. The Dutch government argued that the Dutch discrimination laws and the law Contract of Employment together prohibit discrimination of women taking maternity leave (Minister of Internal Affairs, 2013).

#### *Actors involved*

In this case one advisory body was involved in the decision-making process: The Netherlands Institute for Human Rights (A. Swarte, personal communication, 4 November 2015; E. Cremers, personal communication, 30 March 2016). During debates, several commissions consisting of members of parliament were involved. These were the permanent commission of Interior Affairs (Commission Interior Affairs; 2012) and the permanent commission of Social Affairs and Employment (Ministry of Social Affairs and Employment, 2012).

Multiple ministries and ministers were involved in the process. When dealing with policies that affect the work place, like in this case, at least four ministries get involved in the discussion about implementation of the directive. This included the Ministry of Security and Justice, the Ministry of the Interior and Kingdom Relations, the Ministry of Social Affairs and

Employment and the Ministry of Economic Affairs. In this case the Ministry of Education, Culture and Science and the Ministry of Foreign Affairs were also involved (Administrative legal officer, personal communication, 28 September, 2015; R. Holtmaat, personal communication, 23 March 2016; Ministry of Internal and Kingdom Relations, 2013).

The Ministry of Security and Justice is responsible for the Civil Code provisions which are about equal treatment (Administrative legal officer, personal communication, 28 September, 2015; R. Holtmaat, personal communication, 23 March 2016). The Minister of the Interior and Kingdom Relations informed the Lower Chamber about the process and statements of the government on this matter, whilst the Minister of Foreign Affairs led the defence in the infringement procedure in consultation with the Minister of Social Affairs and Employment (Ministry Interior Affairs and Kingdom Relations, 2013). In a general consultation the Minister of Education, Culture and Science, who is responsible for emancipation in the Netherlands, the Minister of the Interior and Kingdom Relations and the Minister of Social Affairs and Employment answered questions related to this issue (Ministry of Social Affairs and Employment, 2012; Commission Interior Affairs, 2012; Commission Education, Culture and Science, 2012).

### *Timeline*

The decision structure consisted of two debates, questions from a member of parliament sent to the Minister and a letter from the Minister as a response to those questions. The two debates were two general consultations between members of parliament and different ministers about discrimination of pregnant women or young mothers at work, which was related to the infringement procedure (Commission Interior Affairs; 2012; Commission of Social Affairs).

The first stage in the decision structure was one of those general consultations. The



general consultation on 19 January 2012, between the Minister of the Interior and Kingdom Relations and several members of parliament from the permanent commission of Interior Affairs, was the first stage (Commission Interior Affairs, 2012). During this debate the report on the evaluation of the General Law of Equal Treatment was discussed (Commission Interior Affairs, 2012; Minister of the Interior and Kingdom Relations, 2011).

The second stage was the general consultation held between the permanent commission of Social Affairs and the Minister of Social Affairs and Employment on 28<sup>th</sup> June, 2012 (Ministry of Social Affairs and Employment, 2012).

The third stage was when on 11 March 2013 Linda Voortman (Green Left party [Groenlinks]) sent the Minister of Social Affairs and Employment eleven questions about the infringement procedure against the Netherlands for the lack of protection of women who take pregnancy leave. The Secretary of State of the Ministry of Social Affairs and Employment answered these questions in a letter (2013; D. de Jong, personal communication, 28 September 2015).

Stage	Date	Content
1.	January 2012	General consultation between Minister of the Interior and Kingdom Relations and the permanent commission of Interior Affairs.
2.	June 2012	General consultation between the permanent commission of Social Affairs and the Minister of Social Affairs and Employment.
3.	March 2013	Questions of member of parliament answered by Secretary of State of the ministry of Social Affairs and Employment.

**Table 5.2.** Timeline case: specific provision women

### *The outcome: non-compliance*

Until this day, the Dutch government has not yet complied with the European directive. There is still no specific provision, which is needed to protect women at work that take maternity leave (R. Holtmaat, personal communication, 23 March 2016; E. Cremers, personal communication, 30 March, 2016). Moreover, the European Commission still believes the Netherlands does not comply with the European law (Cremers, 2014b, p.9). On 24 January

2013 the European Commission decided to refer the Dutch government to the Court of Justice of the European Union for not implementing a law that guaranteed the right of employees to return to the same or comparable job after taking maternity leave (European Commission, 2013b; Spijkerman, 2013).

However, the European Commission made a mistake handling the case. The Commission declared the Netherlands had a law that contradicted a specific provision for women going back to the same job after taking maternity leave, instead of missing a specific provision that guaranteed that right (R. Holtmaat, personal communication, 23 March 2016). On October 22, 2014 the Court of Justice of the European Union decided the case against the Netherlands was dismissed due to lack of clarity in the accusation (Eur-Lex, 2014). According to the Court of Justice the European Commission failed to clarify which part of Dutch law content or application would violate the objective of the European directive. Therefore, the Court ruled that the Commission failed to offer the necessary information in order to make a decision (Ministry of Foreign Affairs, 2014; Cremers, 2014a).

The infringement has been still open and the Commission is working on their case right now to refer the Dutch government to the Court of Justice again for not implementing the specific provision (S.J. King, Deputy Head of Unit Equality legislation EC, personal communication, 15 July 2015). Therefore, the Netherlands has not implemented a specific provision yet that is needed to protect women that come back from maternity leave (E. Cremers, personal communication, 30 March 2016; R. Holtmaat, personal communication, 23 March 2016). The outcome of this decision making process is therefore non-compliance.

### **5.3. Focused comparison**

As discussed in the previous two subsections there are two comparable cases with a different outcome: the case of the definitions of discrimination and the case of a specific provision for women after taking maternity leave. The first case in which the definitions of direct and

indirect discrimination in Dutch law are brought in line with directive 2000/78/EC (Equal Treatment Commission, 2008, p. 3), is called ‘case of definitions’ from now on. Secondly, 5.2. describes the case in which the Dutch government failed to comply with the Recast Directive (2006/54/EC) and has not yet implemented a specific provision that is needed to protect women that come back from maternity leave (E. Cremers, personal communication, 30 March 2016; R. Holtmaat, personal communication, 23 March 2016). This second case will be called ‘case of a specific provision’ from now on. These two cases are compared on the following variables in this subsection: preferences non-governmental actors, preferences governmental actors, media attention and importance. After that focussed comparison, the two cases are compared on the control variables: complexity, quality directive and coordination ministries.

## **Preferences**

Only preferences that oppose the implementation of the directive can lead to the outcome of non-compliance (Thomson and Stokman, 2006). Contradicting preferences that show themselves openly are clearly outspoken statements against the implementation of the directive or an outspoken preference for alternatives for the directive. Indirect signs of contradicting preferences are shown when the department responsible for the implementation shows difficulties with implementing the directive, which can cause conflict between ministries about the directive. First, the preferences of the first group of actors involved in the decision-making process: non-governmental actors, will be discussed. Secondly, the preferences of the governmental actors will be analysed.

### *Preferences of non-governmental actors*

Preferences of non-governmental actors that had access to the decision-making process, are measured by two indicators. These are: ‘preferences contradicting the directive’ and

‘preference for an alternative for the directive’. The two cases are compared in terms of these two indicators in the following text.

a. Preferences contradicting the directive

Case of definitions: There are three non-governmental actors that tried to interfere in the decision-making process of this case. These are two advisory bodies, the Equal Treatment Commission (now called The Netherlands Institute for Human Rights), the Council of State and members of parliament.

In 2008 the Equal Treatment Commission published an advice for the Minister of Social Affairs and Employment on the infringement procedure (Equal Treatment Commission, 2008). The Equal Treatment Commission stated that Member States are not required to precisely adopt every word of the directive. What matters is that the laws are sufficient enough to achieve the effect pursued by the directive. According to the Commission the definition of ‘direct distinction’ in Dutch law differed from the definition of ‘direct discrimination’ in the directive, but the Dutch definition has the same effect as intended by the European directive. The definition of ‘indirect distinction’, however, deviates in a more substantial way from the definition in the directive and, like the European Commission, they found the Dutch definition insufficient (Equal Treatment Commission, 2008, p. 4-5). The Equal Treatment Commission noted this in several documents (Evaluations General Equal Treatment Act 1994-1991 and 1999-2004). They found the definition unclear and noticed that it created confusion in practice (Equal Treatment Commission, 2008, p. 5). Therefore, the Equal Treatment Commission advised the Dutch government to adapt the definition of indirect distinction to the European definition of indirect discrimination (Equal Treatment Commission, 2008, p. 6). The preference of this non-governmental actor was therefore to implement the directive.

The Council of State advised the government multiple times to implement the

terminology of the directive in order to achieve equal treatment in employment and occupation (Ministry of the Interior and Kingdom Relations, 2009, p. 1. nr. 3; Minister of the Interior and Kingdom Relations, 2003, p. 3-5). According to the Council the government was taking a big risk by not implementing the same terminology as the European gender directive, because it caused a mismatch between Dutch law and European directives. The Council of State stated that it will become more and more difficult to implement European gender law when the government sticks to their own terminology (Minister of the Interior and Kingdom Relations, 2003, p. 3). In an explanatory statement the Minister of the Interior and Kingdom Relations (2009, p.1, nr. 3) explained that the multiple recommendations (Minister of the Interior and Kingdom Relations, 2009, nr. 4; Minister of the Interior and Kingdom Relations, 2003) from the Council of State were the reason the government decided to change the definitions of 'direct' and 'indirect distinction' after all.

During a general consultation on 2 November, 2010 the amendment was discussed with the Lower Chamber. Several members of parliament spoke. They all supported the proposal to change the definitions (Commission of Interior Affairs, 2010, nr. 7).

The permanent commission of Interior Affairs was responsible for the preliminary examination of the bill and submitted a report on this examination on 16 December 2010 (Commission of Interior Affairs, 2011, nr. 8). The members of parliament in the commission emphasized that the bill only concerned a small textual change and agreed with the proposal. Some members asked whether this small change would lead to a better protection and if this change is enough for the European Commission to drop the infringement procedure (Commission of Interior Affairs, 2011, nr. 8).

Before the members of parliament voted on the bill there was one more consultation held on 14 September, 2011. None of the members of parliament rejected the bill (Lower Chamber, 2011).

Case of a specific provision: In this case there were two types of non-governmental actors that at least tried to interfere in the decision-making process of this case. These were the Equal Treatment Commission (now called The Netherlands Institute for Human Rights) and members of parliament. In the general consultation on 19 January 2012 the evaluation of the General Law of Equal Treatment was discussed. A member of parliament, Schouw, from the Democrats '66 Party, asked the Minister to listen to the criticism from the European Commission and to take a closer look into whether the Dutch law truly meets the European law. According to Schouw, the Netherlands should continue to fulfil its leading role in the protection against discrimination. Schouw argued that the seriousness of the problem of discrimination of women at work and the statement of the European Commission were quite clear and asked the Minister why the government did not just implement the specific provision (Commission Interior Affairs; 2012, p. 2). Several members of parliament aligned themselves with Schouw and showed the same concerns about discrimination of women at work and wondered why the government did not act (Commission Interior Affairs; 2012, p.8).

A different general consultation was held on 28 June 2012. The Minister of Social Affairs and Employment and permanent commission of Social Affairs and Employment (members of parliament) participated in this general consultation. Member of Parliament, Ulenbelt, from the Socialist Party [SP] was concerned about the results of the research executed by the Equal Treatment Commission (2012). The research showed that 45% of pregnant women or young mothers had to deal with discrimination at work (Ministry of Social Affairs and Employment, 2012, p. 3; D. de Jong, personal communication, 28 September 2015).

The government reassured the Lower Chamber by stating that, although the Dutch government considered gender equality to be very important, Dutch legislation covered the European gender equality directive. The government told the Lower Chamber it would come

up with different methods other than law to achieve more gender equality. The Lower Chamber agreed with the government on this case. They thought that more legislation would not help women (D. de Jong, personal communication, 28 September 2015).

The Netherlands Institute for Human Rights agreed with the government as well. The Institute thought discrimination of pregnant women is a persistent problem in the Netherlands. However, they thought that the General Law of Equal Treatment was sufficient to deal with complaints of discrimination. According to the Netherlands Institute for Human Rights most women are not aware that they are discriminated, which is the true problem. The Commission, therefore, advised the government that it is not really necessary to implement the specific provision that guarantees women can come back to the same or comparable job after maternity leave (A. Swarte, personal communication, 4 November 2015; E. Cremers, personal communication, 30 March 2016).

Comparative analysis: In the case of definitions three non-governmental actors tried to influence decision-making: The Netherlands Institute for Human Rights, the Council of State and members of the parliament. The two advisory bodies both advised the government to implement the directive. According to them, not implementing the definitions led, or would lead to problems. Implementing the directive would protect the people of the Netherlands better. The members of parliament seemed to be in favour of the implementation because it was only a small, technical change and seemed only to be worried whether this change was big enough to make the European Commission drop the infringement procedure.

In the case of a specific provision, there were two non-governmental actors that tried to influence the decision-making: the Netherlands Institute for Human Rights and members of the parliament. Although at first members of the parliament seemed to be worried about the problem of women being discriminated at work, in the end they chose to support the idea of raising more awareness about the discrimination. The government seemed to have convinced

the Lower Chamber that a specific provision will not help women. The advisory body, the The Netherlands Institute for Human Rights, agreed with this statement and advised the government to raise awareness about this issue. In both cases the members of parliament agreed with the statements and arguments from the government. These findings are shown in table 5.3.1. on page 73.

b. Preferences for an alternative of the directive

Case of definitions: In no debate, or any other form of communication by the members of parliament, another option came up. Moreover, the two advisory bodies did not mention their preference for another option, than to implement the definitions. Therefore, another option did not play any part in this case (R. Holtmaat, personal communication, 23 March 2016; Commission of Interior Affairs, 2010, nr. 7; Minister of the Interior and Kingdom Relations, 2009, p. 1. nr. 3).

Case of a specific provision: In this case the The Netherlands Institute for Human Rights was in favour of an alternative. They believed that raising awareness would help better (A. Swarte, personal communication, 4 November 2015; E. Cremers, personal communication, 30 March 2016). Moreover, the government convinced the Lower Chamber that raising more awareness would help to decline discrimination of pregnant women at work and not a specific provision in the law. The Lower Chamber therefore supported the idea of a campaign as an alternative for the implementation of the directive (D. de Jong, personal communication, 28 September 2015).

Comparative analysis: The two cases show a clear difference. In the case of definitions there is no preference for another option but in the case of a specific provision there is. Although this is mainly the case because the government proposed a campaign to raise awareness and convinced the members of parliament to agree. The Netherlands Institute for Human Rights



supported this option by stating that the law did not need to be changed and that awareness was the main problem. Table 5.3.1. shows these results.

Conclusion: Now the preferences of the non-governmental actors have been discussed, it is time to look at hypothesis 1, which states: *(H 1): Non-compliance was caused by preferences of non-governmental actors who are in conflict with the directive.* Preferences in conflict with the directive were analysed by two indicators: statements opposing the directive and preferences for another option than the directive.

The difference between the cases is very clear. In the case of definitions no non-governmental actor opposed the directive and no actor suggested another option than the directive. In the case of a specific provision the non-governmental actors did oppose the directive and all favoured another option. The findings, therefore, do not reject hypothesis 1. Table 5.3.1. shows this result.

variables			case of definitions	case of a specific provision	difference	Hypothesis
<b>1. Preferences</b> <i>1.a. preferences non-governmental actors</i>	1.	Statements opposing the directive	-	X	X	H 1 not rejected
	2	Preferences for an alternative of the directive	-	X	X	

**Table 5.3.1.** preferences of non-governmental actors

### *Preferences of governmental actors*

The preferences of governmental actors consisted of three variables: explicit preferences, measured by the indicators ‘preference contradicting the directive’, ‘preference for an alternative’, and preferences that show themselves indirectly, measured by indicator ‘conflict between ministries’. The results are displayed in the following text.

#### a. Statements opposing the directive

Case of definitions: The government expressed her preferences explicitly in two ways: a letter

to the Lower Chamber that was sent two months after the government received the reasoned opinion of the European Commission and during debates with the parliament. In the letter the Minister of the Interior and Kingdom Relations stated that the government would implement the definition of direct and indirect distinction in accordance with the European directive 2000/78 on implementing a general framework for equal treatment in employment and occupation (Minister of the Interior and Kingdom Relations, 2008, nr. 40). Despite the government's belief the Dutch General Act of Equal Treatment to be completely in line with definitions in the European directives on this matter (Minister of the Interior and Kingdom Relations, 2009, p. 1. nr. 3), the government no longer opposed the directive (Commission of Interior Affairs, 2010, nr. 7).

After this statement a few debates were held between the Minister of the Interior and Kingdom Relations and parliament about the amendment the government wanted in order to implement the directive. A debate in which the government expressed their statement about the directive was a general consultation on 2 November, 2010. During this debate the amendment was discussed with the Lower Chamber. The Minister of the Interior and Kingdom Relations argued to hurry up with this proposal because of the possible drastic consequences of the infringement procedure. According to him it only concerned a simple adjustment and this simple rephrasing was not a sensitive topic for members of parliament (Commission of Interior Affairs, 2010, nr. 7).

Case of a specific provision: In the case of a specific provision, like in the case of definitions, the government expressed her preferences explicitly in two ways: in a letter to the Lower Chamber and during debates with the parliament. On 12 January 2012 during a general debate between the Minister of the Interior and Kingdom Relations and several members of parliament, the Minister stated that the Netherlands had a very accurate law that guaranteed equal treatment. In the past years there had been several adjustments to keep it up to date. The

Minister argued that the government looked at the possible need for a specific provision with care. However, the government agreed on the statement that this right is already captured in the existing law (Commission of Interior Affairs, 2012, p. 11, 16). According to the Minister the addition of a specific provision might cause the idea that it was not captured in the previous law (Commission Interior Affairs; 2012).

On 28<sup>th</sup> June 2012 a general consultation took place between the permanent Commission of Social Affairs and the Minister of Social Affairs and Employment (Ministry of Social Affairs and Employment, 2012). A member of parliament showed his concerns about the high number of pregnant women discriminated at work, as was shown in a research. The Minister replied that he was also worried about the position of pregnant women. He stated it was important to take good care of women who take maternity leave. The Minister stated he would take a better look at the research to see if it concerned small things. If it is not and a new policy was needed, the Minister told the Member of Parliament, he was ready to do so (Ministry of Social Affairs and Employment, 2012, p. 11).

In May 2013 the Minister of the Interior and Kingdom Relations sent a letter to the Lower Chamber. In this letter the Minister gave an update to the Lower Chamber about the infringement procedure (Ministry Interior and Kingdom Relations, 2013; D. de Jong, personal communication, 28 September 2015). The Minister stated again that the government believed Dutch law to be sufficient to European gender law and no extra implementation was needed (Ministry Interior and Kingdom Relations, 2013).

Comparative analysis: In both cases the government made the same statement: Dutch law is sufficient and there is no need the change the law. In both cases this statement has not changed over time. However, in the case of definitions the government immediately decided to implement the directive, after the European Commission had sent the reasoned opinion. Arguments for this given by the government were the possible drastic consequences of the

infringement procedure and the fact that it only concerned a simple adjustment. The preferences of governmental actors did not differ between the two cases. In both cases the government did not want to implement the directive because they believe the Dutch law to be sufficient. Table 5.3.2. shows these results.

b. Preferences for an alternative of the directive

Case of definitions: In no debate, or any other form of communication by the government, another option came up. Another option, therefore, did not play any part in this case (R. Holtmaat, personal communication, 23 March 2016; Commission of Interior Affairs, 2010, nr. 7; Minister of the Interior and Kingdom Relations, 2009, p. 1. nr. 3).

Case of a specific provision: In the case of a specific provision there was an alternative option for implementing the specific provision to protect pregnant women at work. A few respondents believe the government did feel the need to do something about the discrimination of pregnant women. However, the government did not think adding a line in the law would help. The government said to the Lower Chamber that more awareness about discrimination was needed (A. Swarte, personal communication, 4 November 2015; D. de Jong, personal communication, 28 September 2015; The Secretary of State of the ministry of Social Affairs and Employment 2013). The government made a plan on how to fight discrimination by raising more awareness and announced the start of a campaign (D. de Jong, personal communication, 28 September 2015; E. Cremers, personal communication, 30 March 2016; Administrative legal officer, personal communication, 28 September, 2015).

Comparative analysis: There is a clear difference between the cases. In the case of compliance there was no alternative option, than adapting the law. While in the case of a specific provision there was a clear preference for another option: raising more awareness of discrimination by the use of a campaign. Table 5.3.2. shows these results on page 78.

c. A conflict between ministries

Case of definitions: There was some discussion between ministries about whether or not to change the definition, although it was seen as a small technical issue (Administrative legal officer ministry of Social Affairs and Employment, personal communication, 28 September 2015). The government did not take much time to decide to implement the directive. Therefore, the issue did not cause a conflict between the different ministries that were involved (R. Holtmaat, personal communication, 23 March 2016; Administrative legal officer ministry of Social Affairs and Employment, personal communication, 28 September 2015).

Case of a specific provision: According to the respondents there was no conflict caused by this case (Administrative legal officer ministry of Social Affairs and Employment, personal communication, 28 September 2015). There might have been some discussion at first, because the Ministry of the Interior and Kingdom Relations first wanted to implement the directive. However, the Ministry of Social affairs and Employment was primarily responsible and immediately stated that no change in the law was needed (R. Holtmaat, personal communication, 23 March 2016). This statement was expressed and supported by the various ministers in multiple debates (Commission Interior Affairs, 2012; Minister of the Interior and Kingdom Relations, 2011; Commission of Education, Culture and Science, 2012, nr. 170).

Comparative analysis: In both cases there was no conflict between the ministries about whether or not to implement the European directives. No difference has been found between the cases based on this indicator. These results are shown in table 5.3.2.

Conclusion: Now the three indicators have been compared between the two cases, it is time to look at hypothesis 2, which states: (*H 2*): *Non-compliance with EU gender equality policy was caused by contradicting political preferences of governmental actors.* The contradicting preferences of governmental actors is measured by statements opposing the directive and

preferences for an alternative of the directive. Statements made explicitly by the government are the same on both cases: the government believed there is no need to implement the directives because the law in the Netherlands is sufficient. The difference between the cases is the preference for another option. There is no preference for another option in the case of definitions, but a clear preference for another option in the case of a specific provision. In both cases there was no conflict between ministries that was caused by these issues. The ministries did not have different interests. Because two out of three indicators of preferences of governmental actors have not been found in this research hypothesis 2 is rejected. These results are shown in table 5.3.2.

variables			case of definitions	case of a specific provision	difference	hypothesis
<b>1. Preferences</b> <i>1.b. preferences governmental actors</i>	3.	Statements opposing the directive	X	X	-	H2 rejected
	4.	Preferences for an alternative of the directive	-	X	X	
	5.	Conflict between ministries	-	-	-	

**Table 5.3.2.** preferences governmental actors

## 2. Saliency

Saliency consists of two variables: media attention and importance given to the issue. Media attention is measured by the indicators ‘news articles’ and ‘coverage of the issue on radio and television’. These indicators are discussed in the text below. Importance given to the issue is measured by ‘statements made about the issue being important’, ‘priority given to the issue in comparison to a national policy’ and ‘a lack of administrative capacity’.

### 2.1. Media attention

Case of definitions: There was no media attention for this case (E. Cremers, personal communication, 30 March 2016). It was only an internal discussion within the coalition and

between the Ministers and Lower Chamber (Administrative legal officer Ministry of Social Affairs and Employment, personal communication, 28 September 2015). A search with LexisNexis showed no articles had been published about this topic in any Dutch newspaper (LexisNexis, 2016).

Case of a specific provision: Some media attention was given to this issue in the form of a three articles. The first article covered the start of the infringement procedure by the European Commission and the last two articles covered the European Commission taking the Dutch government to court (Dobber, 2013; Spijkerman, 2013; NRC, 2013). These are all small articles. Other than that, there was no media-attention for this topic (D. de Jong, personal communication, 28 September 2015; M. Vegter, personal communication, 7 October 2015; E. Cremers, personal communication, 30 March 2016).

Comparative analysis and conclusion: The case of definitions got no media attention at all. For the case of a specific provision the little media attention it got consisted of only a news update about the infringement procedure by the European Commission. This result does not support the expectation and therefore defies hypothesis four: (*H 3*): *Non-compliance was caused by the lack of media-attention given to the European policy.*

variables			case of definitions	case of a specific provision	difference	hypothesis
2. Saliency 2.a. Media attention	6.	More than ten news items	-	-	-	H 4 rejected

**Table 5.3.3.** Saliency: media attention

## 2.2. Importance of actors given to the issue

### a. Statements given about importance issue

Case of definitions: In debates the various ministers only seem to find the bill important because of the consequences the infringement procedure might have. In arguments given, they

emphasized the consequences of the infringement procedure. They stated the bill will have no effect in practice and will therefore not lead to any changes. However they preferred to change the law (Lower Chamber, 2011; Commission of Interior Affairs, 2010, nr. 7)

Case of a specific provision: The government made clear in a number of debates that it did feel the need to do something about the discrimination of pregnant women. The current government puts a has made a good effort to share information on discrimination at work. Minister Asher talks a lot about it and has announced a range of different measures he wants to take in order to fight discrimination at work. Moreover, a lot of research has been done by different organizations and advisory bodies (M. Vegter, personal communication, 7 October, 2015; Swarte and Houtzager, 2015, p. 3). The majority of respondents thinks the government considered this issue very important (D. de Jong, personal communication, 28 September 2015; Administrative legal officer, personal communication, 28 September, 2015; M. Vegter, personal communication, 7 October, 2015).

Comparative analysis: The difference between the cases is that in the case of a specific provision the government explicitly said they found the issue important. They offered a different option, a campaign that according to them would be more effective than a provision in the law. Whereas in the case of definitions the government stated that they only implied the directive because it was only a small change and they wanted to prevent consequences that would come out of the infringement procedure. They stated that they did not think it will change anything in practice. In the case of a specific provision the actors indeed made statements about the importance of the issue. Moreover, the majority of the respondents agreed on the fact that the government considered the issue very important. These results are shown in table 5.3.4.



b. Priority given to a national issue

Case of definitions: In this case there were no signs of a different issue that got more priority than this case (E. Cremers, personal communication, 30 March 2016).

Case of a specific provision: At the time this issue came up the Ministry of Social Affairs and Employment dealt with a lot of big changes in social law, which took a lot of energy and time of the people working at the ministry. Focus was on those cases and not on conditions of pregnant women at work (R. Holtmaat, personal communication, 23 March 2016)

Comparative analysis: In the case of definitions there was no sign of a priority given to another issue. In the case of a specific provision there were some big changes that were prioritized over the issue concerning the directive. The results do not support the expectation derived from the theory, because in the case of definitions the issue was found important. There are no national policies that have been prioritized over the European directive. In the case of a specific provision national policies are prioritized over this issue and therefore, considered to be less important. Despite the fact the two cases differ on this indicator, the outcome is opposite of the prediction of the theory. The results therefore reject the hypothesis. These results are shown in table 5.3.4.

c. A lack of administrative capacity

Case of definitions: In this case there was no shortage of personnel at the Ministry of Interior Kingdom Relations, which was responsible for the implementation. There were no problems with the amount of staff available in that policy area to deal with the issue (Administrative legal officer ministry of Social Affairs and Employment, personal communication, 28 September 2015).

Case of a specific provision: The administrative capacity was enough to deal with a possible implementation. It did not provide a problem for implementing the specific provision at that

time (Administrative legal officer ministry of Social Affairs and Employment, personal communication, 28 September 2015).

Comparative analysis: When looking at the shortage of personnel there seems to be no difference between the two cases. In both cases there was no shortage of personnel. Table 5.3.4. shows these results.

Conclusion: After comparing both cases on the three indicators, it is time to discuss hypothesis four: (H4): *Non-compliance was caused by the high salience decision-makers attached of issues of European policy*. In the case of a specific provision the government claimed to consider the issue of discrimination of pregnant women at work to be important. However, the indicators of ‘a shortage of personnel’ and ‘a priority given to a national policy’ do not indicate the government considered the issue of high importance. Because two out of the three indicators do not support the expectations that come with a high salience given to the issue, it can be concluded the importance given to the issue did not influence compliance behaviour. Therefore, hypothesis 4 has been rejected. The results are shown in table 5.3.4.

Variables			case of definitions	case of a specific provision	difference	Hypothesis
2.b. Importance given	7.	Statements about importance	-	X	X	H 4 rejected
	8.	a priority given to a national policy’	-	X	X	
	9.	A lack of administrative capacity	-	-	-	

**Table 5.3.4.** Salience: importance given

### 3. Control variables

Three variables have been analysed in this research: complexity, quality of the directive and coordination between the ministries. The first control variable ‘complexity’ is measured by the amount of new measures that are needed in order to implement the directive. The second control variable; ‘quality of the directive’ is measured by eight different indicators that all individually show a low quality of the directive. Finally, the third control variable ‘coordination between ministries’ is measured by the indicators ‘dispute about the responsibility for the directive’ and ‘communication problems between the ministries’.

#### 3.1. Complexity: amount of measures needed

Case of definitions: It took the government very little time to decide to implement the definitions. The reason for this is that implementing the directive did not have any consequences. For instance, it would not have any additional costs for employers. It was easy to equalize with the European directive (R. Holtmaat, personal communication, 23 March 2016). The government, the members of parliament and experts all agreed the amendment implied only a simple change (Lower Chamber, 2011; Commission of Interior Affairs, 2010, nr. 7; R. Holtmaat, personal communication, 23 March 2016).

Case of a specific provision: When looking at the changes in the law, it comes down to adding a sentence to the law, which is an easy adjustment. An explicit notification in the law that a woman has the right to return to her job or an equivalent job which could have been taken literally from the European directive (Administrative legal officer, personal communication, 28 September, 2015; M. Vegter, 7 October 2015; A. Swarte, personal communication, 4 November 2015). However, when the law is implemented it will have consequences, because more changes will be needed. The government will then have to look at how the whole equal treatment legislation needs to be changed (A. Swarte, personal communication, 4 November

2015; Administrative legal officer, personal communication, 28 September, 2015). Making the right of women to return to the same, or equivalent job after maternity leave explicit in the law, demands for the same laws for people that come back from for instance parental leave, or adoption leave. All these rights then have to be made explicit which makes this case even more complex (E. Cremers, personal communication, 30 March 2016; A. Swarte, personal communication, 4 November 2015).

Comparison and conclusion: When looking at purely the measure that is needed in these cases for implementing the European directive, both cases only need a small textual change in the law. The text needed in both cases be can taken literally from the text the European directive offers. However, when looking at the amount of measures that will be needed after these sentences have been implemented, there is a big difference between the cases. In the case of definitions, no further measure is needed. In the case of a specific provision multiple measures are needed. Consequently, it will cause the right of return to the same or equivalent job to be made explicit for people that return from all different kinds of leaves, like parental leave and adoption leave. Because the implementation of the directive in the case of a specific provision is more complex, this control variable could therefore be of influence on the decision not to implement the European directive. Table 5.3.5. shows this result.

control variables			case of definitions	case of a specific provision	difference
3.1. complexity	10.	More than one measure needed	-	X	X

**Table 5.3.5.** Complexity

### 3.2. Quality of the directive

A low quality of the directive means it contained one of the following indicators: 1) unnecessary abbreviations, 2) unintelligible community jargon, 3) imprecise references to

other texts, or 4) political statements with unclear legal status and the directive was either, 5) vaguely worded, 6) highly complex in nature, 7) interiorly inconsistent or 8) at odds with other directives.

Case of definitions: All the respondents agree the directive did not cause any problems in this case. It was a clear text and therefore easy to adjust to it (Administrative legal officer ministry of Social Affairs and Employment, personal communication, 28 September 2015; R. Holtmaat, personal communication, 23 March 2016; M. Vegter, personal communication, 7 October, 2015; E. Cremers, personal communication, 30 March 2016).

Case of a specific provision: According to the Ministry of Social Affairs and Employment there were no problems with understanding or using the directive. It was a clear text which was clear for the officials at the ministries (Administrative legal officer, personal communication, 28 September, 2015; E. Cremers, personal communication, 30 March 2016).

Conclusion: In both cases it is very clear that the quality of the directive was not a problem at all. None of the indicators of a low quality was found in the cases. Because these indicators were not found in both cases, a low quality of the directive cannot have caused non-compliance. Table 5.3.6. shows that result.

control variables			case of definitions	case of a specific provision	difference
3.2. quality directive	11.	Low quality	-	-	-

**Table 5.3.6.** Quality of the directive

### 3.3. Coordination of ministries:

#### 3.3.a. Clear which ministry was responsible

Case of definitions: Despite the fact that a lot of ministries had been involved, does not mean that their influence was big. It was clear from the start that the Ministry of the Interior and

Kingdom Relations was responsible. The Ministry of Justice worked together with the Ministry of the Interior and Kingdom Relations but had a more monitoring function. The division of tasks was very clear in this case (R. Holtmaat, 23 March 2016; Administrative legal officer, personal communication, 28 September, 2015). The other ministers' involvement mainly existed out of answering questions asked about this topic during debates which also included other topics. Their involvement was limited (R. Holtmaat, personal communication, 23 March 2016).

Case of a specific provision: The policy area equal treatment has been spread across multiple ministries. Which makes it sometimes unclear who is responsible for equal treatment (R. Holtmaat, personal communication, 23 March 2016). However, when dealing with equal treatment at work the responsibility was clearly taken by the Ministry of Social Affairs. In this case it was, therefore, clear who was responsible for the directive (E. Cremers, personal communication, 30 March 2016; R. Holtmaat, personal communication, 23 March 2016).

Comparison: Despite the fact that multiple ministries had been involved in the decision-making process, it was clear in both cases who was responsible. In the case of definitions the Ministry of the Interior and Kingdom Relations was responsible and in the case of a specific provision the Ministry of Social Affairs and Employment was responsible. The responsibility for the directive was clear in both cases and therefore it cannot be an explanation for non-compliance. This result is shown in table 5.3.7.

### 3.3.b. Communication problems amongst ministries

In neither of the cases communication problems came forward, not in any documentation from the different ministries or general debates with members of parliament. Moreover, no respondents had heard or had seen anything that could be related to communication problems.

Comparison and conclusion: In both cases there were no communication problems. Therefore communication problems cannot be the cause of non-compliance. Moreover, because the responsibility for the directive was clear in both cases and there were no communication problems, a less intensive coordination amongst the ministries cannot have caused non-compliance. Table 5.3.7. shows both results.

control variables			case of definitions	case of a specific provision	difference
<b>3.3. Coordination</b>	12.	Lack of clarity who is responsible	-	-	-
	13.	Communication problems	-	-	-

**Table 5.3.7.**Coordination

All results of both the variables that belong to the hypotheses and the control variables have been put together in table 5.3.8. The differences between the cases are green. These differences could be related to the outcome of the cases. However, variable number 8 is red. The difference shown between the cases is opposite of the outcome that was predicted by the theory. Because the majority of indicators did not differ, or showed opposite results, H2 and H4 were rejected.

Variables			case of definitions	case of a specific provision	difference	result
<b>1. Preferences</b> <i>1.a. preferences non-governmental actors</i>	1.	Statements opposing the directive	-	X	X	H 1 not rejected
	2.	Preferences for an alternative of the directive	-	X	X	
<b>1. Preferences</b> <i>1.b. preferences governmental actors</i>	3.	Statements opposing the directive	X	X	-	H2 rejected
	4.	Preferences for an alternative of the directive	-	X	X	

	5.	Conflict amongst ministries	-	-	-	
2. Salience 2.a. Media attention	6.	More than ten news items	-	-	-	H 3 rejected
2.b. Importance given	7.	Statements about importance	-	X	X	H 4 rejected
	8.	a priority given to a national policy’	-	X	X (opposite)	
	9.	A lack of administrative capacity	-	-	-	
variables			case of definitions	case of a specific provision	difference	
3.1. Complexity	10.	More than one measure needed	-	X	X	
3.2. Quality directive	11.	Low quality	-	-	-	
3.3. Coordination	12.	Lack of clarity who is responsible	-	-	-	
	13.	Communication problems	-	-	-	

**Table 5.3.8.** results analysis

## 5.4. Summary

In order to answer the research question the two similar cases, with a different outcome have been compared. Different explanations of non-compliance have been tested and have been compared between the case of definitions and the case of a specific provision. Few differences have been found and could therefore be related to why European gender policy has not been implemented by the Dutch government. Preferences of non-governmental actors show the first difference. In the case of a specific provision non-governmental actors did not favour implementing the directive but preferred a different option. These results therefore do not reject hypothesis 1: *Non-compliance was caused by preferences of non-governmental actors*



*who are in conflict with the directive.*

A second difference was found when comparing the preferences of governmental actors between the cases. In the case of a specific provision preferences for an alternative of the directive were found, which were not found in the case of definitions. However, because two out of three indicators of preferences of governmental actors do not differ between the cases, hypothesis 2 has been rejected: (H2) *Non-compliance with EU gender equality policy was caused by contradicting political preferences of governmental actors.*

No difference was found in media-attention between the two cases. This result therefore rejected hypothesis 3: *Non-compliance was caused by the lack of media-attention given to the European policy.* Because two out of the three indicators did not support hypothesis 4: *Non-compliance was caused by the high importance decision-makers attached of issues of European policy,* the results rejected this last hypothesis.

Three control variables have been tested in this research: ‘complexity transposition process’, ‘quality of the directive’ and ‘coordination problems’. These last two variables could not explain non-compliance because they did not differ between the two cases. Complexity of the transposition process, however, could because the implementation of the directive in the case of a specific provision has been more complex than in the case of definitions.

## 6. Conclusion

In the previous chapter the results of this research were presented and analysed. In this last chapter a conclusion is drawn based on the results and the main question of this research will be answered (6.1.). In section 6.2. the research is reflected on and recommendations are given for further research. In section 6.3. recommendations are given to the European Commission based on the results, which can be used to better understand behaviour of Member States in order to motivate Member States to comply with EU gender equality policy.

### 6.1. Main conclusions of the research

In this paragraph the main question of this researched is answered and a conclusion is drawn. The main research question, as stated in chapter one, is: *How can we explain non-compliance with European gender equality policy in the Netherlands?* Given the active Dutch advocacy for gender equality at national and international level, it seems likely that the Netherlands did not have any problems with transposing EU gender laws. It is therefore surprising that the Netherlands has not complied with European gender laws on multiple occasions in the last decade. These examples of non-compliance cause a problem for the European Union's ambitions concerning gender equality. When a Member State with a high level of motivation does not comply with EU gender laws, how can the European Union achieve gender equality in Member States with lower levels of motivation? This research, therefore, looked at what caused the Dutch government not to comply with European gender policy.

In chapter two, the policy framework, it became apparent that gender equality is one of the fundamental principles of the European Union. Gender equality goals are set out in the European Pact for Gender Equality and the Beijing Platform for Action. The European Union uses different measures to achieve these goals. The European Union promotes gender equality through multiple treaties and directives, financial programmes, and a gender equality strategy. The main focus of the European Union is on employment and working conditions in order to

get more women in the workforce and for them receiving equal pay.

The policy framework also made clear that the Netherlands complies with most of EU gender policy. A number of different acts are equivalent to EU gender policy and promote gender equality in the Netherlands. There are, however, few exceptions in which the Netherlands does not comply with EU gender policy. These exceptions relate to the definition of discrimination that is insufficient according to the EC, a numerous of legal exceptions the Netherlands has for an equality act, lack of sanctioning violation of equal treatment legislation and, lastly, not implementing a law that gives employees the right to return to the same or comparable job after taking maternity.

In chapter three, the theoretical framework, four waves of compliance theory were identified. These waves bring forward different factors that explain compliance behaviour. The first wave had a focus on implementation and institutional efficiency. During the second wave researchers argued that success of compliance depends on the fit between European policy requirements and existing institutions at national level. The third wave offers an explanation in terms of national culture, which is called worlds of compliance. In this research theories were chosen derived from the fourth wave. These theories explain compliance behaviour by factors related to the political and institutional landscape. In this research these factors were grouped into two categories: 1) preferences of actors involved and 2) the saliency of the issue. In this research it was tested if preferences of non-governmental actors, preferences of governmental actors, media attention and importance given to the issue caused non-compliance with European gender policy.

This research used a qualitative approach. Qualitative research is best applicable to analyse the complex environment of compliance behaviour, because it assumes a complexity of variables and a difficulty in measuring those variables. It can analyse this environment in detail because it draws data from the context in which events occur. The research method

used for this research is the method of most similar system design. This method, which is a comparison of two cases that are similar but have a different outcome, offers the opportunity to find relevant variables. By means of conducting interviews and analysing a large number of documents that captured the two processes, data for this research had been gathered.

The requirements for a valid comparison when using the method of most similar system design are two cases with a different outcome and external variables in common. In order to do the research two similar cases with a different outcome had been chosen: a case of compliance and a case of non-compliance. The case of non-compliance for this research is the case of the infringement procedure of 2013. This case concerns the European Commission starting an infringement procedure against the Netherlands for not having an explicit right to return to the same or comparable job after having taken maternity leave. The second case had to be as similar as possible. Therefore, the infringement procedure of 2006 had been chosen. In this case the Commission found the definitions of direct and indirect discrimination used in Dutch law not in line with EU law and therefore harmful for gender equality in the Netherlands. The cases are comparable because they both take place in the Netherlands, they both involve equality policy and both led to an infringement procedure. However, the case of 2006 led, from the start of the infringement procedure, to compliance with the European policy and therefore has a different outcome. In order to compare the same phases of decision-making, the analysis of these cases started at the moment the European Commission started the infringement procedure.

The assumption of the method of most similar system design is that the few differences in the explanatory variables have been associated with the differences in the dependent variable. In this research there were few differences found and, therefore, these differences could be associated with non-compliance with European gender policy by the Dutch government. Preferences of non-governmental actors differed between the two cases.

In the case of a specific provision non-governmental actors favoured not implementing the directive and preferred a different option. These results therefore do not reject hypothesis 1: *Non-compliance was caused by preferences of non-governmental actors who are in conflict with the directive.* According to Mastenbroek and Keading (2006) preferences of policy makers, like members of parliament, sub-national authorities, interest groups and stakeholders influence compliance behaviour. In this case the non-governmental actors, whose preferences were involved in the decision-making process, were the members of parliament and two advisory bodies of parliament and the government: The Council of State and the Equal Treatment Commission.

A second difference was found when comparing the preferences of governmental actors between the cases. In the case of a specific provision preferences for an alternative of the directive were found, which were not found in the case of definitions. However, because two out of three indicators of preferences of governmental actors did not differ between the cases, hypothesis 2 was rejected: (H2) *Non-compliance with EU gender equality policy was caused by contradicting political preferences of governmental actors.* It is, however, an interesting difference between the cases, because in both case the governmental actors did not want to implement the directives. The only difference in preferences between the cases was the option for an alternative.

Moreover, hypothesis 3: *Non-compliance was caused by the lack of media-attention given to the European policy,* was rejected. No differences were found of media attention between the two cases. Versluis (2003, p. 329) concludes from her research that media attention for a particular issue, that relates to the European directive, is of great influence on compliance behaviour. She states that when an issue has little media attention, adaption pressure is low and non-compliance is very likely to occur (Versluis, 2003, p. 10, 14). However, the issues related to the European directives got little media-attention in both cases

and yet the outcome differed. Media attention did not have influence on compliance behaviour in these two cases.

Bueno de Mesquita (2000), Leuffen et al. (2014) and Achen (2006) emphasize that a key component of decision making is importance. It explains decision-making processes and outcomes. They stated that if an issue is found important, decision-makers will be sensitive for change and non-compliance is a likely outcome. Indeed, this research showed that the issue in the case that ended in non-compliance was claimed to be important. In the case of compliance the issue was stated to be unimportant. However, this research proved that the other two indicators, showing importance, did not support this theory. Therefore, this research rejects this last hypothesis: (H4) *Non-compliance was caused by the high importance decision-makers attached of issues of European policy.*

Three control variables were tested in this research: ‘complexity transposition process’, ‘quality of the directive’ and ‘coordination problems’. These last two cannot be associated with non-compliance because they do not differ between the two cases. Complexity of the transposition process, however, could because the implementation of the directive in the case of a specific provision is more complex than in the case of definitions.

This research explains non-compliance with European gender equality policy in the European Union. The results show that contradicting preferences of non-governmental actors for the directive correlate with non-compliance of EU gender policy. The preference of non-governmental and governmental actors for an alternative of implementing the directive were remarkable. However, the research also found that the complexity of the implementation process correlates with non-compliance with EU gender policy.

## **6.2. Discussion and recommendation for further research**

In the previous chapter the results of this research were presented. However, there are some limitations as to the validity of these results. In this paragraph, these limitations are discussed

and recommendations for further research are made.

The assumption of the most similar system design is that the cases are very much alike and the difference between the cases explains the different outcomes. However, in this research two differences were found. Both the preferences of the non-governmental actors and the control variable ‘complexity’ are associated with the outcome of non-compliance. In this research, therefore, cannot be concluded non-compliance is associated with only one variable.

Nevertheless, the complexity of the transposition process as a variable raises some questions. The implementation of the directive in the case of a specific provision is found to be more complex than in the case of definitions. However, it is questionable if the complexity of the process could still be a reason for the Dutch government not to implement the directive. It is more likely to be one of the arguments for not implementing the directive in the beginning of the decision-making process. After the process started in 2011 and the directive has not been implemented yet. Moreover, the complexity of the process could have been solved in these five years. It is very unlikely the Dutch government still considers the complexity to be an argument for not complying.

This research tried to provide better insight in compliance behaviour. However, only cases in the Netherlands were analysed. If more Member States of the European Union are analysed, it can be seen if compliance behaviour of Member States within the European Union is associated with the same variables as in the Netherlands.

A third limitation of this research is the possibility of socially acceptable answers from the respondents. Because of the political context, the answers given by the respondents could be changed in order to be socially acceptable. To reduce the risk of socially acceptable answers multiple experts were interviewed, who were not involved in the decision-making process. Furthermore, the data were complemented by analysing a large number of

documentation of the decision-making process, which is an objective reflection of the decision-making process.

### **6.3. Recommendations to the European Commission**

When a Member State with a high level of motivation does not comply with EU gender laws, how can the European Union achieve gender equality in Member States with lower levels of motivation? The objective of this research was to provide better insights in compliance behavior of Member States with European gender policy and therefore offer tools which can be used to motivate Member States to comply in order to achieve more gender equality in the European Union.

This research analysed two infringement procedures. It is striking that in the case that led to compliance, the possible consequences of the infringement procedure were taken very seriously by the Dutch government. The consequences were even mentioned as an argument to implement the directive, despite the fact that actors preferred not to do so.

In the case of the specific provision, the European Commission failed to successfully carry out the next step in the infringement procedure when the Dutch government showed no intention to implement the directive. The next step was taking the case to the European Court of Justice. Because the European Commission failed to do so and no further action was taken, the Netherlands do not have a specific provision yet that guarantees that women can come back to the same or equivalent job after maternity leave (R. Holtmaat, personal communication, 23 March 2016; E. Cremers, personal communication, 30 March, 2016).

It seemed that when the infringement procedure failed, the tendency of the Netherlands to comply with the European directive decreased. The case of definitions also shows that when an infringement procedure is successfully proceeded, a Member State will feel the pressure to comply with European directives. Thus my recommendation to the European Commission is to motivate Member States to comply with gender equality policy



by strictly following the infringement procedure. It seems that when infringement procedures fail, the tendency of a Member State to comply with the European directive decreases.

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