

Cover Page



Universiteit Leiden



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A blessing in disguise?!

*Discretion in the context of EU decision-making,
national transposition and legitimacy regarding
EU directives*

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*Discretion in the context of EU decision-making,
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Preface

‘Courage is to have fear but to do it anyway.’
(B. S., 2013)

In August 2010 I was working in a multi-national environment, had nice colleagues, and was fortunate to work in all of ‘my’ three languages. I had just received my first working contract for a full-time position. And yet, I felt that something was missing. I did not feel strongly connected to the content of my work. I don’t consider myself as an academic per se but as someone who likes reading, reflecting, writing and identifying connections between seemingly unrelated things. In a way, I had a feeling of estrangement. However, working in an inspiring and dynamic environment had turned out to be impossible at that time.

Changes often occur unexpectedly, though. Six months later the great opportunity arose to study a really fascinating topic in-depth: the role of discretion in EU negotiations and national transposition processes regarding European directives and the link between discretion and the legitimacy of these directives in national law. Transposition and the problem of non-compliance in this area has been a topic of lasting academic interest. In this dissertation deficient transposition certainly is a relevant part of the story but it remains a sub-plot. The spotlight is on discretion which has everything an intriguing research puzzle needs, involving tensions (discretion and law / legitimacy) as well as seeming contradictions (discretion impeding but apparently also facilitating the transposition of directives into national law). In short, discretion is a topic that in a number of respects matters, not least in the light of the alleged (democratic) legitimacy deficit of the European Union. But apparently research on discretion had left gaps and I was happy to be entrusted with the task to try filling a few of them.

Since then five years have passed. In retrospect, being a PhD candidate was demanding. This was not only due to the content of the job. It was also challenging to work as a ‘non-Dutch’, ‘non-lawyer’, ‘non-Leiden alumni’ in an environment with people mostly sharing one (professional) identity. Looking back, the situation I was then in appears funny to me now. Sure, my personal and academic background was different from many of those around me, which explains why I was considered the ‘vreemde eend in de bijt’ (= ‘the odd one out’). On the other hand, though, I felt a strong connection with my topic. Just like discretion I could not readily be labelled.

Studying discretion was exciting. I liked the polyphony of voices which emerged from academic debates and the interviews I conducted. I liked catchy descriptions of discretion, such as the ‘beauty of vagueness’ – though, in my eyes, discretion turned out to be more than just the implication of a vague or broad concept. My dissertation seeks to underline that its ‘beauty’ exists, namely in the way it enables Member States to integrate EU rules into their own legal framework without necessarily breaking off traditionally

grown structures. Less easy but nevertheless interesting, was tracing discretion in directives' texts. Like a babushka doll, discretion can take many forms therein.

The PhD-period has a special place in my personal biography. It was a privilege to have the means to set up and conduct my own research project for which I am very grateful. I have learned a lot about myself and the world around me. I fully agree that a dissertation is no comfort zone as one of my supervisors once put it – and it should not be one. But every now and then also discomfort can be eased by the help of others. In this respect, I'd like to thank my supervisors, Wim and Bernard, not only for their effort, time, input and flexibility but especially for supporting me in taking postgraduate courses and involving me in research projects. Organising and conducting the field work would not have been possible without the help of Josien Stoop, from the Ministry of Infrastructure and the Environment, who spared no effort in providing me with relevant documents, valuable contacts and knowledge. I am very grateful to all my respondents for sharing their time and expertise with me. Here, I like to thank in particular Rob Duba, working at the Ministry of Infrastructure and the Environment and Bert Jan Clement as well as Melanie van Vugt from the Ministry of Health, Welfare and Sports who were very approachable and cooperative.

Other bright and kind people have supported me in one way or the other, by joining me on this journey. My special thanks go to my sister Jack, for proofreading parts of the book, despite her tight schedule: I am very proud of you! Tom for offering so generously your help from a distance: there should be many more of you in academia. Nathalie, for helping me with tricky layout questions, and joining me in what we both love doing in order to relax: dancing! Additionally, I am very thankful to my colleagues: Hans-Martien for our inspiring conversations in earlier stages of the project, Claar for your continuous involvement in it and belief in me: I still hear you saying: 'Josy, you are going to make it. I know it!' I am very grateful to you, Elly, for supporting me morally: I enjoyed our weekly laughter and chats about the most important thing in life: family; and Marga: you have inspired me and I admire your diligence and will power. Furthermore, I appreciate every input and support of colleagues that took a sincere interest in my research project and me as a person. Finally, I am greatly indebted to my dear friends, close by or far away: friendship does not know any distance! Thank you for enriching my life! Apart from this group I warmly thank Michel for his patience and understanding, and Niek for regularly dropping a line to ask how I am. Last but not least, I am particularly grateful for the support of my mother. Without your daily encouragements and unshaken belief that your 'little' daughter can do it, I wouldn't have made it. You are right, 'the road is tough, but the driver is tougher!'

I like to dedicate this book to my father and stepfather. Both of them passed away unexpectedly while I was working on it, and very sadly, cannot share this special moment with me. Nevertheless, in their very own way, they contributed to this work.

With every ending comes a new beginning. Now I am open for new challenges and the best period (s) of my life still to come!

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List of abbreviations

Acquis	Acquis communautaire
Actal	<i>Adviescollege toetsing regeldruk</i> (Dutch Advisory Board on Regulatory Burden)
BNC	<i>Werkgroep Beoordeling Nieuwe Commissievoorstellen</i> (Working Group Assessment New Commission Proposals)
CDA	<i>Christen Democratisch Appèl</i> (Christian Democratic Alliance)
CFSP	Common Foreign and Security Policy
Commission	European Commission
Council	Council of Ministers
CU	<i>ChristenUnie</i> (Christian Union)
D66	<i>Democraten 66</i> (Democrats 66)
EC	European Community / Treaty establishing the European Community
EEC	European Economic Community
ECER	European Center of Expertise in EU law
EP	European Parliament
EU	European Union
EUR-Lex	Online portal for provision European Union law
Groen Links	Green Left (the 'Greens')
ICER	<i>Interdepartementale Commissie Europees Recht</i> (Interdepartmental Commission)
JHA	Justice and Home Affairs
LAP	<i>Landelijk Afvalbeheer Plan</i> – Dutch waste management plan
NRVD	<i>Koninklijke Vereniging voor Afval- en Reinigingsmanagement</i> – Royal Dutch Association of Waste Management and Cleaning
PvdA	<i>Partij van de Arbeid</i> (Labour Party)
PVV	<i>Partij voor de Vrijheid</i> (Freedom Party)
ROW	<i>Regulier Overleg Warenwet</i> (Regular Consult Food and Non-Food Law)
SEA	Single European Act
TEC	Treaty establishing the European Community
TEU	Treaty on European Union
TFEU	Treaty on European Union and the Treaty on the Functioning of the European Union
VVD	<i>Volkspartij voor Vrijheid en Democratie</i> (People's Party for Freedom and Democracy)

