Part II

The timing of transposition
Chapter 4:
A theoretical framework for apt transposition

‘Good things come to those who wait’ – Proverb

4.1 Introduction

As has been argued in the literature review chapter of this book, comparative politics literature on implementation is rich in sociological (Dimitrova and Rhinard, 2005) and, to a lesser extent, historical institutionalist (Haverland, 2000) explanations. The few rational choice contributions that do exist represent the beginning of what in all likelihood will become a burgeoning field (Treib, 2003; Franchino, 2005; Steunenberg, 2006; 2007). Here, in the second main part of the study, I engage in the theoretical debate on transposition, in particular, by drawing from a simple bargaining model, in particular, that has a number of appealing features: war of attrition games. In this light, it refers to the transposition outcome as a bargaining between groups of actors of administrative and political nature who must agree on a new national policy. That is, actors are able to weigh every choice against its alternatives, and they invariably choose the most preferred option. Since their demands are incompatible, the actors can either reiterate the previous demand and waiting for the opponent to lower his demand or lower her own demand. Two parties choose the lengths of time to hold out for the prize in question. Waiting, i.e. delaying national transposition processes, is one of the actors’ strategies, but can be costly.

Formal war of attrition models have subsequently been applied by economists to a variety of economic conflicts, such as price wars and economic reforms (Alesina and Drazen, 1991; Drizen and Grilli, 1993; Rodik, 1994; Haggard, 1990; Casella and Eichengreen, 1994; Sachs, 1994). Recently, a small group of political scientists has also begun using the war of attrition games, in a more informal way, to describe proliferation and warfare (Fearon, 1998; Smith and Stam, 2004; Adamsky, 2005). In comparative studies, however, no study has yet applied the underlying logic of those war of attrition models to societal problems. In the following I will present the basic concepts of war of attrition reasoning.

This book will identify three main groups of dynamics that influence timely transposition, such as European specific variables. Having an effect on the cost structures, also examined are member states’ individual transposition forms, including the number of actors, and member states’ individual methods,
including the national transposition package approach\textsuperscript{17}, general elections, the allotted transposition time and the so-called ‘deadline effect’. As a third set of factors this study leans on Hirshman’s research (1985) which suggests that crises play an important role in determining when to cooperation in bargaining. Following his argument, here, I assess the effect of timeliness of transport-related accidents across member states.

This chapter is structured as follows. First, it presents the foundations of formal war of attrition games. To determine the outcome of the game (when and who ends the game?) it is necessary to determine the players’ expected payoffs, i.e. the difference between benefits and costs. Then, I briefly discuss the individual components of the cost and benefit functions affecting the overall payoffs. Hereupon, the chapter bridges to the transposition setting in member states presenting a theoretical framework. It argues that transposition is a bargaining process over the sprawling rent-seeking costs, the rent proportion and time. Eventually, six hypotheses are generated to explain the timing effects of a) the number of veto players in the national transposition process, b) the amount of discretion granted by the directive’s provisions (number of issues), c) the fixed transposition deadline in the directive, d) the so-called national transposition package approach, e) general elections, and f) transport-related accidents.

4.2 War of attrition games – The basic model

Political decision-making is often fundamentally a bargaining problem about who gets when and what. A bargaining problem, hence, is the essence of strategic decision-making between states, parties, bureaucrats, leaders, players – groups of actors. It refers to a situation where actors are confronted with a dilemma. There are multiple agreements or outcomes that would be preferred by all actors to no agreement, but the actors disagree in their ranking of the mutually preferable agreements (Fearon, 1998: 274). A second characteristic of bargaining problems is that they are resolved through time, in sequences of offers and counteroffers or with one or both parties ‘holding out’ in hope that the other will make concessions (Rubinstein, 1982). A final significant aspect of bargaining problems is that they typically involve uncertainty about the minimum that the other side would accept or private information about what the other side’s true preferences and payoffs are. In this section, I describe the foundations of the bargaining model which account in particular for ‘waiting’ as one of the actors’ strategies often referred to as war of attrition.

\textsuperscript{17} Understood as using one national implementing measure to transpose numerous EU directives.
To start there are two players who try to maximize their expected payoff. In the beginning, both players announce simultaneously what they want from themselves. Player 1 demands her share to be \( x \) offering \( 1-p1 \) to player 2. If \( p1+p2=1 \), the demands are called compatible and the players will split the money at the middle of their proposals (divide-the-dollar). When the demands are incompatible, the players proceed to the war of attrition stage. The actors are assumed to have conflicting preferences over two issues. Both would prefer coordinating on either one of the two outcomes to noncooperation, but they differ over the ranking of their preferred outcome. So the players’ strategies are concerned with the moment when they decide to stop the game. Bargaining over which of two possible deals they will implement the players decide simultaneously what to do out of two options: Reiterating her previous demand and waiting for her opponent to lower his demand, or lowering her own demand. Eventually, the aim of the game is to find a player who ends the game at a specific date \( a \) (agreement).

Who and when the game ends, depends on the players’ expected payoffs, i.e. the payoff to the actors for choosing a particular waiting time. The expected flow of payoffs to an actor \( i \) equals to the difference between benefits and costs: the benefits \( (Bi) \) based on the interval from the point of agreement \( (a) \) to infinity and the costs \( (Ci) \) based on the interval from the start of the negotiations \( (0) \) to the moment of agreement \( (a) \).

\[
\begin{array}{c|c|c}
\text{\( C \)} & \text{\( B \)} & \text{time} \\
0 & t = a & \infty
\end{array}
\]

Benefits: The aim of negotiations is rent sharing. Before the deal, actors earn a proportion of the full rent and they want their share (benefit) to rise. If player 1 gets his way through, then, he wins a reward—which is private information to player 1 at the beginning of the game. The rationale behind this is that each individual picks a time that they are willing to display for and that when the lesser of these has elapsed the corresponding individual leaves and the other collects the reward (Hendricks, Weiss and Wilson, 1988). Here, the motto is: the earlier the better. The flow of benefits to actor \( i \) for choosing a particular

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18 Originally, the war of attrition games was introduced by Smith (1974) in his study of the evolutionary stability of certain patterns of behaviour in animal conflicts. In particular, he notes that they often engage in a fight over prey. If one animal were to back down, its opponent would obtain the prey. If both animals were to back down simultaneously, then each would have an equal chance of obtaining the prey. Smith also notes that, in the animal kingdom, delaying cooperation entails fighting which is costly in terms of energy output and personal injury. Because fighting results in the diminution of strength, each animal prefers as short a fight as possible.
waiting time is positively related to the rent proportion, \( pa \), and negatively related to time, \( t: Bi (pa, t) \).

*Costs:* Next to benefits, costs represent the second element of actors’ payoff functions. Actors pay so-called rent-seeking costs. As Tullock (1967) has pointed out for market-distorting effects of monopolies, the real costs of acquiring rents can be much bigger than the ‘second-order triangle losses from allocative distortions’; the big losses from an existing policy might not be the reduced trade in monopoly settings, but the *cost of the battle* to gain the monopoly. So-called rent-seeking costs emerge when players use advertising to increase their influence. Informative advertising has some social benefits, but to the extent that advertising is just ‘gloss and glitter’, it represents wasted resources. Studies, meetings, legislative hearings, and floor debates are all part of the political process needed to make expropriation threats credible whenever milder bills are proposed or the other way around. Hiding resources to avoid their expropriation likewise imposes deadweight losses (Shughart II and Razzolini, 2004: 387). Competition for benefits will cause scarce resources to be diverted from other, more socially valuable purposes and the cost to society of this *competition* might be as large as the value of the benefits themselves. Furthermore, these costs represent the costs of the status quo. The players’ costs depend on the rent-seeking cost determinant, but also have to be paid per unit of time as long as the actor competes and until the second actor has quit. So, the flow of costs is determined by the player’s cost determinant, \( Xi \), and time, \( t: Ci (Xi, t) \).

*Expected payoff:* The actors’ payoff structures consist of both, benefits and costs while both elements are affected by particular factors. Whereas both include the time component determining the flow of benefits and costs respectively, they vary in terms of additional elements which determine the actors’ payoff flow. Generally speaking, the expected payoff of both players depends on the benefit indulged by the new policy and the total amount of time the player can expect to wait during the encounter. In addition, it is the rent-seeking costs, i.e. the cost of the battle in the pursuit of these benefits. The players’ payoffs are similarly affected by the amount of time they wait. Waiting is assumed to be costly to both players for a number of reasons. Payoffs decrease over time. For the time being and simplicity, I assume that the loss in payoffs of both players while waiting is a linear function of the total amount of time they wait during the encounter. However, last but not least, however, players discount future payoffs. If the discount factor is low, the future cost/benefits are currently perceived as almost negligible; if the discount factor is high, future cost/benefits are perceived as being similar in value to the current ones.

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\mu_i = [B_i (p_{ij}, t, d) - C_i (X_{ij}, t, d)] \text{ with }
\]
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\[ t = \text{time}; \]
\[ p_i = \text{is player } i \text{ rent proportion}; p_i' = \text{the player } i \text{ rent proportion before agreement}; p_a = \text{player’s } i \text{ rent proportion claiming after agreement}; \]
\[ a = \text{moment of agreement (when a player takes decision to accept his opponent claim)}; \]
\[ X_i = \text{rent-seeking cost determinant}; \]
\[ d = \text{the percentage rate required to calculate the present value of a future payoff}; \]
\[ B_i(p_a, t) \text{ is the benefit function positively related to } p_a \text{ and negatively related to } t; \]
\[ C_i(X_i, t) \text{ is the player } i \text{ rent seeking cost function positively related to } X_i \text{ and negatively related to } t. \]

In order to maximise the payoff, each player must choose a moment of agreement \( a \) at which he plans to concede in the event that the other player has not already conceded. An actor quits on time (\( a \)) which determines how long he will incur the rent-seeking costs in the hope of getting a better deal, because at any time player \( i \) earns a higher return if the other concedes first. The actor conceding first is normally referred to the leader (\( L \)), whereas the actor who does not end the game is the follower (\( F \)). The follower’s payoff function is:

\[ F = B(p_0, t) - C(X_i, t, d); \]
if \( p_0 + p_a = 1 \) then \( p_0 = 1 - p_a \) and \( F = B(1-p_a, t, d) - C(X_i, t, d) \)

As a leader the player receives an expected payoff of:

\[ L = B(p_a, t, d) - C(X_i, t, d) \]

All four payoff parameters, \( p, X, t, d \), affect the benefits and costs of player \( i \) differently. Both actors choose lengths of time to hold out for the reward in question (here, the better cooperative deal) i.e. waiting in the hope that the other will make some significant concession first (back down). The first player to quit the contest cedes the reward to the other side. Increasing the rent proportion \( p \) increases the benefits and increases the risk of waiting. The point of waiting is to let someone else volunteer first, but waiting can be costly. Increasing the cost determinant increase the cost-side of the difference and decreases the likelihood of a complicated and time-consuming negotiation process. Increasing the waiting time \( a \) of the player increases the waiting costs with every additional unit per time while reducing the benefit. In this respect, discounting the future plays an additional important role. Players discount the future flow of payoffs affecting the perception of them. With a discount rate close to 1, the less player discount future payoffs and the more future cost/benefit payoffs are perceived as similar in value to the current ones. On the other hand, a discount rate close to 0 entails cost/benefits to be almost negligible.
In the following, I apply this waiting game logic to the EU’s transposition problem without any claim for formalisation since there are a few difficulties in the basic war of attrition model which would make a formalisation very cumbersome. On the one hand, the assumed two actors’ logic does not apply to most real applications in political science; in particular, it bears almost no relation to national transpositions of EU directives. The transposition process at the national level, for example, normally involves more than two actors. The need to forge a parliamentary majority in both chambers in case of legislative acts or a domestic consensus among relevant bureaucracies and other transposition actors may make it very costly for a state in general and ministers in particular to generate a new policy that they had signed at the Council of Ministers meeting. In addition, actors often bargain about more than two issues with EU directives’ number of articles varying between a few to dozens (Kaeding, 2006). Furthermore, national transposition processes are constrained by so-called transposition deadlines set in the EU directive. So, we must add an additional factor that reflects the ability of the EU to legally open cases, and impose sanctions on the players, after the passing of the deadline in the directive.

Examining the timeliness of national transposition processes across member states, the following theoretical framework will adapt some of the basic components of the basic game described here, follows its reasoning in broader terms. In summary, this study will account for a transposition deadline that alters the payoff structure of $n$ transposition actors. Furthermore, these actors, who are administrative and political in nature, are said to deal with several policy issues at once. Finally, I determine additional factors that may affect the players’ expected payoffs, namely: effects of national transposition packages, general elections and external shocks. The next section reviews the study’s theoretical framework.

4.3 The timing of transposition – what makes national transposition processes timely? – The theoretical framework

As an empirical matter of fact, Fearon (1998) argues that international bargaining often take the appearance of a war of attrition – two sides holding out, waiting in the hope that the other will make some significant concessions first. I argue that this holds also true for the transposition of EU legislation across the Member States. Member states must comply with new legislative measures passed by the Council of Ministers. Compliance is achieved through both the legal transposition process and the practical implementation of new, national legislation. In the following, this study focuses exclusively on the first stage, the legal transposition process which ‘denotes the process of transforming directives into provisions of national law by the competent national legislative body or bodies’ (Prechal, 1995: 5) within the margins of discretion.
guaranteed and the transposition deadline in the EU directive. In the following, I address every single component of the transposition bargaining process, namely: number of actors, set of possible deals, the transposition deadline and other effects on the expected payoffs determining the timeliness of national transposition processes.

*Number of actors:*
To start, this study argues that a transposition process normally induces policy change at the national, member state level. This policy change must be implemented by national transposition actors, who must come to an agreement of how to implement policy in a manner complying with EU legislation. Transposition actors are administrators and politicians, responsible for the adoption of national legislation. Whereas ministers and political appointees sign the ministerial orders and control the interpretation of the content of the directive, respectively, it is the ministry’s administration that provides the technical and juridical know-how in the legal transposition stage.

The number actors on the state is contingent on the chosen type of national transposing instrument. Whereas member states transpose EU directives by using national implementing measures, the types of the legal instruments differ. Questions about how many ministries to be involved, and how many national legal instruments needed may depend on strategic calculations or may be preconditioned by national trajectories. Predicated mostly on administrative and ministerial traditions, one legal instrument is preferred over another. For example, in France the choice of an instrument to transpose an EU directive is affected by the question of whether its contents requires ‘legislative’ or ‘executive’ actions, that is, the introduction of law, or the introduction of government regulations. It is the State Council of France that determines to which branch the content of a directive belongs (Steunenberg and Voermans, 2005). Based on this advice, preparations to transpose a directive can begin. In Denmark, the bulk of transposition, about 85% of all directives, takes place by means of Ministerial orders. Over time, the trend has been to ‘use more and more delegation to a Minister to pass certain provisions’ (Steunenberg and Voermans, 2005: 83). In Italy, laws and legislative decrees represent 40% of all implementing measures, whereas ministerial orders are applied in about 60% of the cases. In 2004, for example, 52 of 87 notified Italian transposition measures were ministerial orders, 31 were ordinances, and only 1 was a law (Steunenberg and Voermans, 2005: 190). Obviously, the number of transposition actors varies considerably and not seldom go beyond two.

In general terms, the classical war of attrition literature, however, has focused on games with only two players, competing for rewards which is private information by actor i from the beginning of the game. While many of the examples do involve only two players, multiple player games are important. In line with Bulow and Klemperer (1997), I consider a generalised war of attrition in which n-persons are competing for n-rewards, so that n-1 players must con-
cede for the game to end. More players, however, create coordination problems (Shepsle and Boncheck, 1997). So to say, n-games are more complicated to resolve due to problems common to group interaction (Raiffa, Richardson and Metcalfe, 2002: 390):

- ‘People talk at the same time. No one can make himself heard or, worse, hear anybody else;
- People don’t listen carefully. They think about their next input;
- Too much time is spent on trivia and not enough on substance;
- Often the discussion breaks down into several parallel meetings, reaching inconsistent understandings’.

Imagine a handful of groups of transposition actors that want to pick an interpretation of an EU directive. Player A wants to opt for a and player B want to defend b. It might be possible to link those two. But now add some more parties, who will impose additional restrictions on the decision. Player C wants to push c; player D wants d. Now it does not seem very easy to make everyone happy. The difference is that in a game with two players we get down to one actor immediately, and so only have to incur costs running through the highest value of actor A and highest value of actor B. In a n-actors setting, all possibilities must be run through in real time, and the amount of time required for the transposition actor to shake down from n-actors to the remaining winner (follower) may far exceed the time needed to get from 2 to 1. To put it differently, complexity increases with the number of players. A deal between two players is less complex than a deal with four because the number of possible combinations is much greater. Complexity can delay the process considerably. The more actors involved the more time needed for policy change.

Set of issues:
A directive has to be transposed into national legislation, which requires ‘the adoption of general measures of a legislative nature’ (Prechal, 1995: 5). A directive’s text determines the baseline policy and the latitude enjoyed by the member state in the transposition of the policy (Steunenberg, 2006). In accordance with Article 249, third paragraph, EC, a directive is binding in terms of the result to be achieved in each member state to which it is addressed. But, directives leave the choice of form and methods to the national authorities. The leeway afforded to member states in this regard, however, invariably depends on the result that the Council or the Commission wish to see achieved, i.e. the set of issues granting some degree of discretion.

National transposition actors, regardless their number, cannot modify the policy in ways that are substantially different from the draft adopted by the Council of Ministers. Otherwise, their action can be subject to infringement procedures (Art. 223) and, eventually, a Court’s judgment of failure to comply with Treaty obligations. Since Maastricht (1992), member states can also expect to be charged with penalty payments. However, the Commission only challenges adopted national implementing measures that take extreme liberty with the competence, also known as margins of discretion, assigned to
member states by the directive. Hence, if already existing national measures lie within the margins of discretion, then no new national transposing instrument has to be agreed upon. The member states simply notify the Commission directly about the existing legislation before the deadline of transposition. Whereas most transposition processes require new national implementing measures, i.e. the national policy status quo lies outside the directive’s margins of discretion, the new European policy determines each member state’s ability to interpret a directive’s provisions.

But transposition bargaining often deal with more than two issues (points on which actors may disagree). EU Directive 2001/14/EC of the European Parliament and of the Council of 26 February 2001 on the allocation of railway infrastructure capacity and the levying of charges for the use of railway infrastructure and safety certification, for example, left the transposition actors with a comparatively high amount of discretion. It was for the transposition actors to decide whether the infrastructure manager were to provide all necessary information on the charges imposed (Article 7), whether member states were to levy mark-ups on the basis of efficient transparent and non-discriminatory principles (Article 8), whether member states were to establish a framework for the allocation of infrastructure capacity (Article 14), whether applications for infrastructure capacity were to be made by railway undertakings and their international groupings and member states were to allow other applicants to apply for infrastructure capacity on their territories (Article 16), and, finally, whether member states were to require railway undertakings to be involved in assuring the enforcement and monitoring of their own compliance of the safety standards and rules (Article 29). Hence, this example illustrates that transposing this specific EU directive raised six issues with considerable leeway for interpretation. If we apply a dichotomous interpretation, alone they already stand for 6! (240) different combinations – policy combinations that have to be addressed one by one which is very time-consuming and rent-seeking cost-intense.

Again, the coordination of different interpretations are cumbersome and complicated. Those at a meeting may fail to agree on the purpose of their gathering. They do not agree on what they should be talking about at any particular moment – what they need to decide, what information to share and so on. Combined with a growing number of actors the negotiations are easily sidetracked, and time wasted on irrelevancies. Each additional person has a new interpretation of an issue to discuss, and the same arguments are rehearsed again and again, ‘without persuading anyone’ (Raiffa, Richardson and Metcalfe, 2002: 392).

Transposition deadline:
Whereas most war of attrition models allow negotiations ample time as infinity, most real applications of the war of attrition models simply cannot allow infinity. i.e. there is a change in the payoff structure after some moment in
time. This also holds for the transposition of EU directives. After being adopted at the European level, EU directives must be transposed within a specific allotted timeframe set in their texts that can be normally found under the penultimate article of the EU directive. Therefore, this study takes a fixed deadline into the timing game (Ponsati, 1995) into consideration, which yields a discontinuity in the payoffs that actors can enjoy over time by leaving the assumed constant-cost but allowing costs to shoot up with the expiry of the deadline.

As long as the transposition actors have not settled their bargaining game, the status quo can prove very costly for the government. After the deadline has expired lawsuits at the national or European level become a real threat – representing additional costs to the already existing rent seeking costs of player $i$. A well-known example of such a lawsuit is the Francovich case. The costs of being among the non-transposers of a European directive, individual transposition actor’s costs of holding out which may differ for actors, i.e. delaying the transposition of the EU directive, include the private costs of enduring pressure from the administration, and the public costs, borne by all actors, of delaying passage of the legislative text. The delay increases public frustration with the political process, delays the legislative text’s benefits, increases the probability of the text failing and left the actors less time to work on the rest of their agenda.

To put it differently, whereas in an infinite time horizon rent-seeking costs per unit of time are constant until the date of agreement, with the expiry of the transposition deadline the pattern changes. Additional costs of noncooperation occur reflecting the potential threat of a likely infringement procedure which is cumbersome, time-consuming, image damaging, distracting and with a possible costly outcome.

Both, the constant and variable element form part of the cost-side of the payoff function. Whereas until now players would spend an amount smaller than the benefit in their pursuit of the benefits, costs to society of this competition might be as large as the value of the benefits themselves or could even exceed the benefits. Introducing a deadline allows the rent-seeking costs to rise exponentially.

So, altering the game to one in which individuals must meet a deadline entails two consequences. One consequence: evolving around the fixed transposition deadline itself. The second consequence is the length of the transposition period granted in the EU directive. A fixed transposition deadline adds to the assumed constant rent seeking cost function a second cost component; This

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19 Additional examples include, among others, Commission vs. UK, Case C-218/02, Commission vs. Ireland, Case C-494/01; Commission vs. Belgium, Case C-27/03.
component reflects the potential national court and European infringement costs (Conant, 2002). Furthermore, the length of the transposition period defined by the EU directive has an impact on the date of agreement. The longer the transposition timeframe the more costs accumulate per unit. This accumulation leads to an agreement while costs exceed the benefits of delay. The flow of benefits to actor \( i \) for choosing a particular waiting time is negatively related to time. Whereas a comfortable generous timeframe allows the actor to transpose timely and correct, consequently, the less transposition time guaranteed by the directive, the more prevalent are the players’ benefits – leading to more complex and time-consuming bargaining.

**Additional effects on players’ expected payoffs**

**Effects of national transposition packages:**
European directives rarely require more than one national transposing measure in order to be adequately implemented. But member states often use one national legal instrument to transpose a handful of EU directives at the same time, in what is known as a national transposition package approach. These national transposition packages can include two or more EU directives whose full transposition is, quite often, not due in the same year. They are applied to reduce coordination costs within the ministries since they allow to transpose a couple of directives with only one national legal instrument. Decisions on whether to apply the package approach, and how many EU directives the package would include, are made by the same institutional actors who decide what national legal instrument to use and how many are needed in terms of correct transposition. For example, in France, the decision-makers are the SGCI (Secrétariat Général du Comité Interministériel pour les questions de coopération économique européenne), who consult with the State Council and the SGG (Secrétariat Général du Gouvernement); in Spain, the Potestad Reglamentaria (Article 23 of ley 50/1997 de 27 noviembre, del Gobierno) is responsible for indicating what circumstances require a law (Steunenberg and Voermans, 2005: 129).

Due to its endogenous character a national transposition package should only positively affect the transposition speed assuming that member states always try to meet the deadlines. However, to what extent the package approach accounts for the timeliness of the national transposition process is contingent on when it occurs (timing). Since a transposition settlement will be reached as soon as the costs of non-transposition surpass the benefit of the existing policy, the package approach will trigger policy change at different pace by increasing the costs of non-transposition steadily. Depending on the position of the EU directive within the national transposition package, the costs may remain for a longer period below the costs for policy change. However, a break-even point will occur when costs of maintaining the status quo surpass the rent-seeking costs of implementing the new policy. Hence, the usual time margins of transposition are set by the deadlines in the first and last directives in the package. Depending on those and following the earlier
mentioned logic of an additional ‘infringement threat’ cost component, the accumulated costs may increase considerably for the first EU directives after the deadlines and remain relatively low for the last directive whose allotted timeframes are longer.

Effects of general elections:
Elections are the usual mechanism by which modern democracy fills offices in the legislature. They are universally accepted as a tool for selecting representatives in modern democracies. Elections can be set and postponed by Presidents and Head of States, and they vary in frequency and time needed for execution. Because elections attract a lot of attention by voters and office seekers, they have an impact on the internal policy-making procedures in a member state. Whereas elections can cause political crises, as in the case of Ukraine general elections in 2004 or the Italian general elections in 2006, elections are often characterized as destabilizing and disequilibrating factors in a country’s policy-making system. Incumbent decision-makers perceive general elections as a threat to the status quo to which a responsive decision is necessary (electoral campaign). It unbalances the regular heartbeat of day-to-day politics and directly affects the size of actors’ rent-seeking costs.

National general elections reduce rent seeking efforts of government officials by channelling all their attention away from day-to-day policy-making toward the electoral campaign (keyword: parliamentary recess). With regard to transposition, depending, however, on when a general election occurs in the point in time of the transposition process (timing), a general election can have either a retarding or accelerating affect. For analytical reasons, I distinguish between general election falling at two points during a national transposition process: either at the beginning, or at the end. Although elections reduce rent-seeking costs in general, elections that fall at the end of a national transposition process increase the cost of waiting dramatically. The underlying reason, here, is with the potential threat of infringement costs, which coincide with the ‘legislative deadline’. Future payoffs shadow on the national transposition process with a discount factor close to 1. National implementation procedures that have not been finalized by the end of the parliamentary term often expire and must be re-tabled in the new legislative term. If they are not adopted before the end of the legislative term, however, they automatically extend the duration of a national transposition process considerably. Any legislative project that the institutions have not passed by the ‘legislative deadline’ must be reconsidered from scratch, which is a time-consuming endeavour. Considering the potential infringement costs after the expiry of the transposition deadline, such reconsideration represents a financial and image maring threat. Therefore, on the one hand, it is the national administrations that use the ‘political vacuum’ to push their efforts of special interests in order to obtain preferential treatment by using the machinery of government – regulations and legislation. A member state’s administration increases its standing with other ministries if it takes the lead in more and more dossiers from
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Brussels. On the other hand, politicization of public administrations across political systems has become a ‘reality of modern government’ (Peters and Pierre, 2004: 288). Some positions in the public service will always be political which makes administrations very much dependent on politics and general elections respectively.

To the contrary, general elections that fall at the beginning of a national transposition process do not encounter infringement costs in the short run. Politicians still have all the legislative term ahead and, first, probably prioritise election pledges. Administrators have less incentive to maximize their influence at the beginning of a legislative term compared to the end of a legislative term. Generally speaking, they regard transposition of EU law as a low priority, not in the least because they associate it with a lot of additional workload from Brussels. This work is believed, and rather accurately so, to be in terms of prioritizing and coordinating across different units (of one or more ministries).

Effects of external shocks:
Exogenous shocks that aggravate economic conditions increase the cost of not adopting reforms and thus prompt a solution to the bargaining problem (Drazen and Grilli, 1990; Alesina and Drazen, 1991). Regardless of the kind of crisis, considerable influence is enacted on the timeliness of the transposition process by such upsets. According to Brecher’s definition (1977:32) a crisis is a sudden and unforeseen ‘situational change in the external or internal environment which creates in the minds of the incumbent decision-makers of a state a perceived threat from the external environment to the basic values to which a responsive decision is deemed necessary.’ (italic added)

In the context of transposition, crisis add to the constant rent-seeking costs additional costs of external shocks. A crisis that immediately shoots up overall costs, increases the cost of non-transposition more general, and thereby increases the probability of a fast settlement.

Thus, the external shock costs reduce the benefits, settles bargaining issues, and increases the probability of settlement in even the most conflicted bargaining processes. In line with this theoretical framework, the following section proceeds with the presentation of seven testable hypotheses.

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20 The word crisis comes from the Greek word krinein meaning ‘to decide.’ It is defined as a crucial time, a climax, or a juncture and is often depicted by the Chinese symbol that means danger and opportunity. This paper argues that crisis may raise welfare if it is the only way to induce necessary policy change.
4.4 Hypotheses

Number of veto players:
Depending on the form of the national transposing instrument, the number of actors varies, and this affects the timeliness of transposition in general. A Dutch Ministerial Order, for example, is faster than statutes or orders in Council, because consultation of advisory boards is very rare, and neither the Council of State nor the Parliament needs to be consulted (Bekkers, Bonnes, De Moor van Vugt, Schoneveld and Voermans, 1995: 412). In France, a Legislative Act with the format of an omnibus bill that transposes a number of directives, preferably in one policy area, requires the State Council’s advice and a parliamentary approval with a simple majority. A ministerial order, however, represents a provision issued by the minister without explicit authorization through a law, and requiring nothing more than a signature by the minister. National governments that must satisfy many coalition partners, as well as other veto players, have through all possibilities in real time requiring a lot of time for the actors to shake down from \( n \) to one player. Since waiting i.e. delaying is costly, the model suggests, in line with Haverland (2000); Giuliani (2003); Steunenberg (2006), that policy change is adopted later in countries with more political fragmentation.

**Veto-player matters – hypothesis:** The fewer actors involved in the making of a legal instrument, ceteris paribus, the less likely a delayed transposition process.

Level of discretion:
The more discretion guaranteed in the EU directives reflected by the amount of issues, the more difficult it will be to find an agreement across the numerous transposition actors. The higher the directive’s number of issues, guaranteeing a certain degree of flexibility, the more complex the transposition process, i.e. the more issues to be pondered and negotiated, the more strategic and time-consuming bargaining involved, the longer it will take for an agreement to be reached. Since waiting is costly (and a considerable number of issues given leeway in interpretation entail longer rounds of bargaining), there is a positive relation between the number of issues, member states’ discretion and the timeliness of national transposition processes.

**Discretion matters – hypothesis:** The higher the amount of discretion, ceteris paribus, the more difficult to settle an agreement on time.

Time set for transposition:
Two effects on timeliness with regard to the transposition time set in the directives are important. First, the length of the transposition time matters. Especially highly detailed and complex directives are transposed slowly (Ciavarini Azzi, 2000: 56) and need to grant more time for transposition than fairly straightforward directives. This is especially true when technical decisions about complex directives are decided in implementation committees.
A theoretical framework for apt transposition

after the directive has been accepted. For example, changes to labelling requirements should allow sufficient time to exhaust existing label stocks. With longer transposition timeframes the flow of benefits to actor $i$ for choosing a particular waiting time decreases and with it this overall utility. To the contrary, a short transposition time set in the EU directive limits the rent seeking costs of actor $i$ and increases the benefits. Member states are more likely to comply in case of longer deadlines.

Transposition time matters- hypothesis: The more time a member state has to transpose a directive, ceteris paribus, the swifter the national transposition process.

Furthermore, a comfortable transposition timeframe increases the probability that the adoption of the national transposing measure will occur around the deadline. In politics, each actor chooses the time at which he or she intends to concede his or her position. In situations where there is a known final period, or even when the number of negotiation rounds is known, a settlement is agreed upon around the time of the deadline. Whereas the average benefits of bargaining without a deadline are close to zero (since conceding means giving up almost all the surplus), a deadline, and especially an early deadline, yields positive average benefits. Whereas the costs of non-transposition remain constant before the deadline, they shoot up after the expiry of the deadline by adding the ‘infringement cost’ component. The costs of non-transposition increase considerably after the deadline because, after that set date, citizens and businesses can file costly court cases in hopes of eking out their rights. Since delays are so costly, this study predicts that introducing a deadline with the directive results in a so-called deadline-effect (Carré, 2000). This study argues that there is a positive, unidirectional, probability of a compromise at the transposition deadline set by the Council of Ministers.

Transposition deadline effect – hypothesis: Actors come to an agreement around the date of expiry.

Coherence of national transposition package:
First directive in the national transposition package: Delaying effect
Normally, a European directive is followed by more directives on the same issue at hand, so the costs for the first directive are relatively high compared to the costs of maintaining the existing status quo. As long as the responsible unit is aware of the fact that forthcoming amendments are common to recently adopted directives, the costs of the status quo are bearable because the possibility of future EU legislation illuminates the actual costs of non-transposition. Ministries may strategically delay engaging in a cumbersome transposition process. As long as the costs of the existing policy remain lower than the costs for policy change – which, however, decreases with every additional directive in the transposition package – the settlement of transposition bargaining for the first instrument in the package will be delayed.
Last directive in the national transposition package: Accelerating effect

In most cases the national transposition process is already underway when the last European directive (of a transposition package) has been adopted by the EU Council of Ministers, so the national package approach will have an accelerating effect on the last directive in the perceived transposition package. While time will have helped to settle allocation quarrels about the costs before the adoption of the last European directive, costs of non-transposition will have surpassed the costs for policy change.

National transposition package approach – hypothesis: A national package approach increases the probability of a delayed settlement of the first European Directive in the package, whereas, in turn, it accelerates a settlement of the last European Directive.

Timing of general elections:
Beginning of transposition process: Retarding effect

Ministers are office seekers. To get (re-)elected, politicians must please and spend time with their constituency. Although they are not always Member of Parliament, due to their popularity Ministers spend much of their campaigning time with their constituency. Consequently, during general elections, ministers who are key players in the legal transposition process have less time for day-to-day policy-making. Electoral concerns that occur in the beginning stages of the transposition process may persuade policy makers to stick with the status quo. At the beginning of a transposition process the costs are lower than the benefits from possible re-election. When the discount factor for future payoffs is comparatively low the overall utility to settle an agreement low. If the timing of general elections falls within the starting phase of a national transposition process the drafting process of new legislative instruments, hence, will be retarded. In addition, a change in domestic political circumstances may lead government leaders to see new potential gains from alternative policy options, as when a political party with stronger commitments to liberalizing trade come to power or the implementation of a European directive generates new domestic political pressures (Börzel and Risse, 2003). For administrators a new legislative term means increased workload. This workload includes all non-adopted legislation from the former legislative term that must be re-considered from scratch as well as delving into new legislative texts that have not yet seen the light of day.

End of transposition process: Accelerating effect

The end of a legislative term coinciding with a national transposition process has the opposite effect. At the end of a legislative term the so-called ‘legislative deadline’ triggers the need to act fast. Directives that have not been transposed by the end of the parliamentary term expire or have to be tabled new. Since, here, the threat of additional infringement costs with the date of expiry is potentially high, the discount rate is almost equal to 1, national transposition processes are very likely to be adopted on time. If transposition is not concluded before the next legislative term, a general election will shelf it,
along with all legislative projects that have not been adopted before the next legislative term. Hence, all non-adopted legislation in the concluding legislative term would have to be re-introduced in the forthcoming term, which would increase the costs unbearably for politicians and administrators alike. Administrators profit from a political vacuum; it increases their influence in day-to-day policy-making. The certainty of a legislative deadline makes transposition before the end of the legislative period possible.

_Election matters – hypothesis:_ Whereas a general elections falling at the beginning of the transposition procedure decreases the probability of a problem-free settlement, a general election at the end of a transposition process accelerates the adoption of new national legislation.

_Transport related accidents: Accelerating effect_
Considering the findings of the transport chapter, accidents apply to transport sub-sectors in particular. 21 This study has identified a crisis-driven approach behind the overall European development of transport. EU policies for all modes of transport, (maritime, air, inland waterways, road, and rail) have been often initiated by accidents and crises, leading to the adoption of numerous packages in the transport sub-sectors by the Ministers of Transport. So, accidents in all modes of transport have not only shaped the development of EU transport policy in general, but have also kicked off reform efforts by increasing the costs of delayed non-transposition of the new EU legislation. The greater the costs of non-cooperation for the group in general, the more likely is an agreement, since these costs will erode the expected pay-offs. External shocks add costs to the utility equation, resulting in an increase of general overall costs. Additional costs decrease the utility and increase the urgency of a settlement and, eventually, accelerate the settlement of a bargaining conflict. Consequently, the players are forced to settle earlier.

This study argues that a member state in the midst of transposing EU legislation, and in particular legislation in the transport sub-field, has an increased probability of reaching a settlement when an accident occurs.

_Accidents matter – hypothesis:_ An accident increases the probability of a timely settlement.

4.5 Summary of predictions

Table 4.6 summaries three groups of factors that affect the timeliness of national transposition processes across member states. It shows, as argued, that the EU directive’s level of discretion may have a retarding effect on transposition timeliness. On the contrary, the more transposition time set in the directive,
the more swift and problem-free the national transposition process. Furthermore, the adoption of new legislative instruments should accumulate around the transposition deadline. At the national level, national forms and methods of transposition play an important role as well as the timing general elections. When more veto players are involved, the transposition process is slower. The package approach alters the pace of policy change by affecting the distribution of adjustment costs of a new European policy. General elections may have a either a retarding or an accelerating effect on transposition, depending on when they occur in the transposition process. Last but not least, external shocks increase the cost component in the cost/benefit equation considerably. Transport related accidents push for fast implementation of the content of the new EU directive.

Table 4.6: Effects on transposition speed.

<table>
<thead>
<tr>
<th>Effect on transposition speed</th>
<th>Retarding</th>
<th>Accelerating</th>
</tr>
</thead>
<tbody>
<tr>
<td>EU directive related factors</td>
<td>The more discretion in the text, the more difficult timely transposition.</td>
<td>The more transposition time set in directive, the more problem-free transposition. The more likely Member States are to comply.</td>
</tr>
<tr>
<td>1. Level of discretion guaranteed by the directive</td>
<td></td>
<td></td>
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<tr>
<td>2. Length of transposition deadline of the directive</td>
<td></td>
<td></td>
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<tr>
<td>Form and method of national transposition process</td>
<td>The more veto players involved, the more delayed the transposition process.</td>
<td></td>
</tr>
<tr>
<td>3. Number of veto players</td>
<td></td>
<td></td>
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<tr>
<td>5. General elections</td>
<td>General elections scheduled at the beginning of transposition process</td>
<td>General elections scheduled at the end of the transposition process</td>
</tr>
<tr>
<td>6. Transport related accidents</td>
<td></td>
<td>Accidents during the transposition period</td>
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<td>Internal and external situational change</td>
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</table>
4.6 Conclusion

In this chapter I have provided a theoretical framework to address the research question of why member states wait to adopt new legislation causing missed deadlines when transposing Internal Market directives in the field of transport. This framework is informed by findings of war of attrition models on the effect of costs and benefits on the settlement of bargaining problems. Assuming that a newly adopted EU directive affects the transposition actors’ utilities, the national transposition process is not a zero-sum game. Instead is understood as a bargaining between political and administrative groups of actors, who must reach an agreement about the distribution of cost and benefits. Applying the logic of war of attrition models to the transposition problem, this study generated six hypotheses. In the remainder of the book, all six hypotheses will be tested. In the following chapter, which introduces the third part of the study, I present and discuss the data and methods used to test the hypotheses on the timeliness of national transposition processes.