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Adaptation, discretion, and the application of EU animal welfare legislation

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CHAPTER 3

Theorizing post-transposition application

From the literature reviewed in the previous chapter, it is clear that a wide variety of factors have been used more or less successfully in attempts to explain differences in transposition and application across policies and Member States of the EU. While some of the insights gained from qualitative case studies of post-transposition application have been used to inform the transposition literature, which is predominantly quantitative in nature, little effort has been made to apply the insights from the study of transposition to the subsequent stages of implementation. Using the literature reviewed in the prior chapter as a starting point, the current chapter adapts several of the major theoretical approaches from the study of transposition in order to derive testable hypotheses to explain differences in the post-transposition application of EU regulatory policies. Thus I will derive hypotheses related to adaptation pressure, legislative discretion, implementing institutions, and transposition delay. Evidence for these hypotheses will be illuminated in the three case study chapters that follow, and later chapters will subject them to quantitative analysis. These analyses will also include control variables that draw on established hypotheses from the transposition and implementation literatures, but I will discuss these as they appear in the analyses.

Interrelated perspectives on implementation in the EU

The literature review of the preceding chapter identified five major approaches that scholars have used to explain success and failure in transposition and post-transposition application of policy in the EU: goodness-of-fit, implementing institutions (including veto players, with and without formal models), administrative capacity, cultural approaches, and the importance of top-down factors (such as characteristics of the decision-making process that gave rise to the policy to be implemented, policy complexity, and the discretion available to national decision-makers and implementing actors). While in some cases scholars have pitted their pet theory against the others, the majority of the works reviewed within each of these frameworks acknowledges the contributions that each approach makes towards a fuller understanding of this phenomenon. The approach taken here follows along in this spirit by incorporating the most illuminating elements from several of these frameworks, making innovations in these that are suitable to the particular puzzle at hand, and leaving aside others that are less useful for this study.

From the literature review, it is clear that the goodness-of-fit and institutional approaches offer the clearest set of causal mechanisms and intuitively compelling hypotheses. Although the empirical record is mixed for both (as it is nearly everywhere in implementation research), some of this variability in empirical success can be attributed to different approaches to conceptualization and operationalization. The approaches (as the word “approach” in place of “theory” suggests) lend themselves to a diversity of hypotheses that still fall within the framework. Many of these differences were described in the last chapter; what is at stake here is the choice of these approaches for this study in place of others.

The goodness-of-fit approach (which I recast as an “adaptation pressure” explanation of implementation) is particularly appropriate in the EU context (for which it has been developed), where a policy is imposed from above onto the many diverse member states. Viewing the implementation of EU policy as the set of national responses to achieve some kind of international uniformity in policy objectives almost instinctively leads the viewer to consider the differences between the national context and the policy to which it must adapt. This instinctive response may explain why this consideration emerged very early in the study of EU implementation and why it remains (in spite of its detractors) important in the literature. As such, it forms an integral part of the approach taken here. At the same time, several conceptual and methodological aspects of “goodness-of-fit” explanations of implementation in the EU (discussed below) have hindered its application in existing studies and must be addressed in order to apply the approach to a large-n analysis of post-transposition application. The same case can be made for institutional explanations, the second major component of the theoretical approach taken here: although it has substantially illuminated the subfield, it must be adapted to the reality of large-n analysis of post-transposition application.

While the “goodness-of-fit” approach has enriched the study of EU implementation, scholars who use the approach tend to see the “misfit” between national context and the demands of EU policy as the sole source of implementation failure. One exception discussed in the literature review is the interaction between “misfit” and institutional characteristics of the member states (including veto players). These institutional characteristics do not exhaust the possible factors upon which the influence of “misfit” may be conditional. Drawing on the top-down approaches identified in the literature (which, although often also viewed

in isolation of other factors do in fact lend themselves to conditional effects), the theoretical approach taken here examines the interaction between the “goodness-of-fit” approach and one variant of the top-down approach that stresses the importance of policy discretion in shaping member states’ responses to adaptation pressure. The other major top-down factors identified in the literature (policy complexity and the character of the decision-making process that shaped EU policy) are relatively constant within farm animal welfare policy and so will not be considered here.

The final element of the theoretical approach considers the role of transposition delay in influencing post-transposition application. This factor has so far been left out of the study of implementation in the EU. In the relevant section below, I argue why this factor may improve our understanding of the phenomenon. This thesis, which takes as its starting point the potential for the transposition literature to help understand post-transposition application is a natural arena for examining this factor.

Two approaches discussed in the literature review will not be part of the theoretical approach laid out below. The administrative capacity approach is straightforward enough that it offers no new insights into the study of post-transposition application, although it may still be an important part of the puzzle. As such it will be included in the later analyses as a control variable and will be considered alongside other theoretical factors in the case study chapters. The culture of compliance approach, on the other hand, is deliberately excluded. The approach cannot account for the within-country variation in implementation quality across policies and time that this thesis seeks to explain.

Adaptation pressure

In the previous chapter, the review of the “goodness-of-fit” literature concluded that the existence of a wide variety of approaches identifying themselves with this kind of explanation has led in part to a stretching and thus weakening of its theoretical usefulness. Nevertheless, the success that the approach has had empirically, combined with its seeming intuitive appeal, makes it difficult to ignore when attempting to explain variability in the implementation of EU regulatory policy. Instead of viewing this kind of explanation as a single theory to be disproven or not in each round of empirical testing, it may prove fruitful to extract a set of propositions based on its collected wisdom that are applicable to

the empirical question at hand. Because not all dimensions of “misfit” may be applicable within a single sector like animal welfare regulation, some aspects of adaptation pressure will be dismissed as irrelevant. Many aspects are likely immeasurable.

With some exceptions, the several variants of the “goodness-of-fit” or “adaptation pressure” explanations for implementation success or failure adopt a static conceptualization of “misfit” that manifests itself at the national level. There is nothing inherent in the approach itself that requires a static conceptualization. Instead, the cross-sectional manner in which the concept is applied in existing research leads scholars to this static conceptualization. Although encompassing several possible dimensions (institutional, legal, political, etc.), the extent of misfit is a function of the difference between the incoming EU policy and the existing national policy (or lack thereof) that it modifies, replaces, or fills in. Such an approach that compares two snapshots in time treats the difference between them (the concept of interest) as a constant. Even for those that use “observed” adaptation pressure (by counting the number of national implementing measures needed to transpose a directive and by considering their novelty or position in the legal hierarchy), the outcome that is observed is still a function of that static difference, but only the end state is observed.

The concept is inherently multilevel, even if the scope of analysis does not always permit recognition of this fact. If several policies are observed across several member states, then the size of this difference may vary across countries, as countries vary in their preexisting policies. These cross-national differences may be smaller in a policy field already heavily influenced or determined by EU legislation. The size of the difference also varies across policies for this reason and others. Besides cross-policy differences in the extent of preexisting policy harmonization, adaptation pressures may be greater for policies that are more technically complex than others, impose more costs on a larger number of private actors, or require more changes to public actors’ routines and standard operating procedures.

For some of its variants, a static conception of adaptation pressure for use in analyses of transposition timeliness is acceptable on theoretical grounds and may also serve to simplify things methodologically. Although some time exists between the promulgation of a directive and the moment at which a country must have national laws in place to implement it, the factors regarded as creating

misfit, like a country's legal order, its preexisting policy, the constellation of interests affected, or the administrative and political institutions that may facilitate or hinder transposition, are unlikely to change before the deadline. The methodological simplicity afforded by a static conception was mentioned above – scholars need only assess misfit immediately prior to the introduction of new policy. Although not without their challenges, assessing the changes brought about by new EU policies relative to existing national ones or, even simpler, observing the actions taken to adapt is easier than monitoring the ways in which adaptation pressures change over time. The former requires only two snapshots, the latter requires a longer exposure.

This same static conception of adaptation pressure is also compelling for understanding post-transposition application. The “misfit” hypothesis in fact emerged from and was further refined in a set of qualitative implementation case studies. Although later variants of the “misfit” hypothesis added a dynamic component when seeking to explain implementation, the dynamic component referred not to continuing or newly emerging sources of adaptation pressure but to the evolution of a country's response to the same static “misfit” (Knill & Lenschow, 2001). The qualitative approach to understanding the impact of “misfit” in these case studies allowed rich descriptions of adaptation pressures mainly stemming from cross-national differences in existing policies and regulatory styles. Although they are important for understanding the bigger picture, many of these country-level differences have already disappeared in a policy sector like farm animal welfare, which had already matured by the 2000s. The administrative structures necessary for veterinary inspection were put in place in most member states decades earlier, even in the New Member States. As discussed in the policy history chapter, specific animal welfare regulations were promulgated at national and EU levels before the period under investigation in this book. Thus the major sources of adaptation pressure considered here will be those that emerge from the policy level as the policy evolves over time.

Preexisting national policies cannot be completely ignored, however, because there is at least the potential that changes to EU legislation do not mean changes for some member states. This could be the case whether these changes involve additional transposition or not. On the one hand, new or modified requirements may not be applicable to some member states. For example, the requirements for long journey transport of animals by sea introduced in Council Regulation (EC) No

1/2005 do not create adaptation pressure for landlocked member states. On the other hand, requirements may already exist in some member states in advance of their appearance at the EU level. By the time the battery cage ban for laying hens went into effect throughout the EU, they had already been banned in several countries, including Germany, Austria, and Sweden. These instances represent departures from the norm, and rather than developing a separate hypothesis for this kind of “absence” of adaptation pressure, I will take them into account when interpreting the case studies and quantitative analyses that follow.

While the static component of misfit remains important for understanding why implementation is smoother in some countries than in others, particularly in the months or years immediately after transposition, a dynamic conception of adaptation pressure becomes more important when we seek to understand implementation over a longer period and in relatively mature policy sectors. The importance arises from the fact that while the process of transposition largely stops once national implementing measures are agreed and in force, post-transposition application involves continuous action by member states’ administrations, and adaptation continues. National legislation may need to be amended as EU legislation is modified, but analyses of transposition treat these modifications as new transposition “events” to which the same static conception of adaptation pressure could be applied. That is, the transposition of original and amended EU legislation are independent observations in these studies, subject to the same set of explanatory factors. With respect to application, these modifications feed into the ongoing process and represent new sources of adaptation pressure.

Adaptation pressures at the policy level that exert their influence on member state application of EU regulatory policy over time come from one of three sources: amendments, specifications, and phased-in requirements. Amendments to EU legislation introduce new or modify existing requirements in a policy sector in which member states are already applying EU requirements. For directives, these amendments must be transposed into national legislation by a certain deadline and for regulations they apply directly from the entry into force date of the regulation. Amended EU legislation will alter some requirements but leave others unchanged. The amendments to the welfare of farmed pigs directive⁴ introduced and modified both the general requirements for keeping pigs and the specific

⁴ Council Directive 91/630/EEC laying down minimum standards for the protection of pigs, as amended by Council Directive 2001/88/EC amending Directive 91/630/EEC laying down minimum standards for the protection of pigs and Commission Directive 2001/93/EC amending Directive 91/630/EEC laying down minimum standards for the protection of pigs

requirements for pig holdings, but it left unchanged the requirements regarding inspections and the provision of instructions and training to pig handlers.

For regulatory policies such as these, modifications of requirements increase the likelihood of deficient implementation in two ways. First, the private actors whose behavior is being regulated must make changes to their equipment and practices, and these changes may be costly and hence resisted. New equipment, like larger cages for hens, may need to be purchased. Second, state actors must inform the regulated actors about these new requirements and must in turn adapt their inspection procedures to ensure that the required changes are being made. Some amendments may impose changes directly on public actors alone by forcing specific approaches to carrying out inspections or imposing penalties for non-compliance. During the 2000s, most requirements for the welfare of animals during transport were amended, few on farm welfare requirements were amended, and no amendments to welfare during slaughter or killing were made.

The second source of policy-level adaptation processes refers to the further specification of existing requirements through additional EU legislation. The eventual creation of such specifications is usually anticipated in the original Directive or Regulation. For example, Article 7 of the laying hens directive specifies that “Member States shall ensure that the establishments covered by the scope of this directive are registered by the competent authority and given a distinguishing number...The arrangements for implementing this Article shall be determined before 1 January 2002...”⁵ Although missing this deadline, “Commission Directive 2002/4/EC of 30 January 2002 on the registration of establishments keeping laying hens, covered by Council Directive 1999/74/EC” laid down the means for a uniform egg identification system for registered laying hen holdings in the Member States. Under the original Directive (1999/74/EC), the Member States had to establish a registration system for laying hen holdings by 1 January 2002, but by 31 March 2003, this system had to reflect the requirements in Commission Directive 2002/4/EC. Another example of a legislative specification in the farm animal welfare sector is the detailed requirements for inspection contained in the official controls regulation that are meant to further specify how Member States are to carry out the inspection requirements in several of the other directives. Unlike amendments, these specifications do not represent major modifications and are primarily limited to modifying the behavior of state actors. Nevertheless,

⁵ Council Directive 1999/74/EC laying down minimum standards for the protection of laying hens

they represent an additional source of adaptation pressure with which Member States must cope and therefore increase the likelihood of difficulties in implementation.

The final source of dynamic adaptation pressures originating from EU legislation are those requirements that are phased in over time. Anticipating that particular requirements will be costly or otherwise difficult for member states to implement in the short term, EU legislation often stipulates that such requirements will not apply until a certain date after the rest of the requirements become effective. The animal welfare subfield contains many such phased in requirements. The phasing out of battery cages dictated in the 1999 laying hens directive that was not effective until 1 January 2012 is one of the most well-known of all EU animal welfare policies. Although by their nature these phased-in requirements are known to regulated entities in advance, they nevertheless represent a third source of adaptation pressure. The need for an extended deadline suggests that these requirements are particularly difficult to implement and are hence more likely to lead to implementation deficiency. Moreover, while some countries will take proactive measures to ensure that regulated actors comply by the time the requirement applies, others may take a “hands-off” or “wait-and-see” approach that leaves some actors scrambling to make the necessary changes in the final hour. Inspectors in turn must step up their enforcement activities to ensure that these changes are being implemented and the necessary capacity may be lacking. As a result of these tendencies, phased-in requirements may be a significant source of adaptation pressure.

Though hardly trivial, a hypothesis with respect to the effect of adaptation pressure on implementation can be advanced as follows:

H1: Each additional source of adaptation pressure (regardless of its origins in amendments, specifications, or phased-in requirements) increases the likelihood of implementation difficulty.

Discretion

Beyond the extent to which EU policies require difficult and costly changes by the member states, the content of EU legislation may also shape implementation depending on the amount of discretion it grants them. Although the effects of legislative discretion on implementation have often been speculated about, most

empirical analyses of their effects have been restricted to the transposition phase (Steunenberg & Toshkov, 2009; Thomson, 2007; Thomson, et al., 2007). Different studies of transposition timeliness that include legislative discretion as an independent variable have come to different conclusions about its effects. On the one hand, it may complicate transposition by providing more issues that can be fought over during agreement of national implementing measures. On the other, it may ease the transposition by giving the flexibility that allows these measures to more closely match domestic needs and preferences, thereby quickening decision-making. The empirical record is mixed with some studies finding significant results for either direction.

With respect to the application of legislation after it has been transposed, the direct effects of discretion (e.g., other than the possibility that discretion delays transposition and this in turn leads to difficulties in application) may be equally ambiguous. In reducing problems during application, national legislation has already ironed out the details and thus resolved any disagreements over how that discretion should be exercised. Political or administrative actors who were unable to obtain their preferences during this resolution may still complicate application by withholding resources or shifting administrative priorities, but these efforts may be applied equally to issues they initially opposed, for which there had been no room for maneuvering in EU legislation. In the event that disagreement remains unresolved, there is some chance that the discretion in EU legislation is retained in national legislation and thereby passed to administrative actors, but the end result will still be the same. By its very nature, the presence of discretion means that several alternative policies are consistent with the requirements of the directive. Implementation difficulties are fewer because there are more routes to implementation success. Moreover, member states may make careful use of this discretion in order to fit policies to their own circumstances and preexisting policies, thereby lowering adaptation pressures. To give an example of legislative discretion designed explicitly for the tailoring of requirements to national circumstances, the pigs directive requires that provisions are made so that farmed pigs have access to appropriate lighting “allowing for the different climatic conditions in the Member States.”

There is at least one way that legislative discretion may lead to problems during post-transposition implementation. By giving member states the flexibility to choose their own way as long as the objectives of the policy are achieved, some

member states may take the path of least resistance and focus on minimizing the cost of policy adaptation while ignoring or paying only lip service to attaining the required objectives. The presence of ambiguously worded or difficult to measure objectives makes such an approach even more compelling. In the field of farm animal welfare, for example, member states have flexibility with respect to the kinds and sizes of penalties they impose on non-compliant actors as long as these are sufficiently dissuasive. For a penalty to be dissuasive it must influence the regulated actor's calculus of compliance so that, facing a higher probability of larger fines, they are more likely to comply. The regulated actors' calculus of compliance can never be observed, while the observable rates of compliance across the whole sector are determined not only by the dissuasiveness of fines. As a result, achieving the objective of dissuasive penalties is difficult to verify. Knowing this, some member states may make only minimal efforts to ensure dissuasive penalties. It is also worth mentioning that while the pathways to compliance are greater when legislation grants members discretionary authority, the number of possible routes to non-compliance still remain very large in comparison.

This variety of pathways between legislative discretion and final application suggest a conditional effect for the discretion hypothesis that relates the effect of discretion on implementation to the extent of adaptation pressure. Note that such an interactive effect may be expressed in two ways that are semantically different (and different in their emphasis) but are substantially identical:

H2A: As the amount of adaptation pressure increases, discretion decreases the likelihood of implementation difficulty.

H2B: In the absence of discretion, adaptation pressure increases the likelihood of implementation difficulty.

Institutions

Moving from legislative factors, I consider next the national institutional characteristics that are likely to influence implementation success and failure. In the transposition literature, much of the focus has been on political veto players and their preferences. As summarized in the literature review, the preference-less approach to veto players predicted that as the number of veto players increases, the likelihood or length of transposition delay increases as well. Because more

actors have the ability to block the adoption of legislation unless they are satisfied, then all things equal, agreements on implementation measures are more difficult. A preference-based account controls for these actors' preferences so that actors with similar preferences over the shape of policy will not be equally likely to slow transposition. The logic behind both these approaches operates through the negotiation of the content and form of implementation measures and as such focuses almost exclusively on partisan veto players. The influence of partisan veto players on application is less clear and at most an indirect one.

Others working in a similar vein point out the importance of ministerial veto players and interministerial coordination during transposition (Mastenbroek, 2003; Steunenberg & Toshkov, 2009). As above, the more ministries involved in transposition, the greater the length and likelihood of delay. Because these actors play a major role in post-transposition implementation, it is reasonable to expect that the number of such actors involved during transposition may also have an effect at this stage. On the one hand, the inclusion of several ministries during transposition may result in balanced national legislation that takes into account the preferences and priorities of several disparate actors. Including multiple actors at this stage is particularly important if all share in the responsibility for implementation. Otherwise, authorities may have little motivation or face difficulties when implementing legislation forced upon them without their input. Yet on the other hand, disagreement among transposing ministries may result in ambiguous national implementing measures that are difficult to apply. The inability to resolve some contentious issues during transposition may lead to vaguely worded legislation that grants significant discretionary authority to actors directly responsible for implementation. Without clear legal guidelines, a broader range of implementation outcomes can be expected, with deficient outcomes among them. Including multiple actors during transposition may also increase the legal complexity of implementing legislation, creating the possibility for self-contradictions and unworkable provisions. Compromises during the planning stage may not be realistic for civil servants to apply. The inability to compromise might favor a literal approach to transposition, copying nearly word for word the text of EU legislation into national measures, preventing adaptation to national circumstances that would otherwise reduce adaptation pressures. This leads to my first institutional hypothesis:

H3A: As the number of actors responsible for transposition increases, the likelihood of implementation difficulty increases.

While the ministries participating in transposition have the potential to shape implementation through the legislation they create, the division of authority among actors responsible for application should have a more direct effect. There are two dimensions to this division of authority: horizontal and vertical. The horizontal division of authority refers to the sharing of responsibility for post-transposition implementation among different ministries or authorities. In the field of animal welfare policy, as in other policy sectors where the EU has competency, EU legislation requires that member states designate one competent authority to serve as a contact point for implementation. For most member states, the competent authority is the ministry, agency, or authority that plays the most significant role during application. The competent authority selected for farm animal welfare is usually the agricultural ministry or a state veterinary service within it or veterinary service existing independently. Depending on the nature of the policy and institutional characteristics of the member state, however, additional authorities may play some role. In some cases, ministries of justice have responsibility for administering penalties in the event of non-compliance. Customs inspectors or agents from the transport ministry may play an important role in enforcing animal welfare during transport legislation. Inspectors from the state veterinary service may share competence for slaughterhouse inspections with inspectors from a food safety authority. In several cases, there is no single national authority responsible for implementation and these tasks are divided among independent and coequally responsible subnational authorities, as in Spain.

The need for sharing responsibility among different authorities in a member state reflects national legal and institutional characteristics as well as the particularities of the policy being implemented. With more actors involved and no hierarchical relationships among them, problems of coordination and cooperation may lead to implementation deficiencies. Although each actor may have a well-defined role in implementing a particular policy, not all may carry out their role adequately. If responsibility is equally divided among several subnational authorities, then a diseconomy of scale creates problems. Not all regions will be equally endowed with resources for proper training, equipment, and personnel,

and some may lack the political will to implement policies conferred upon them by a distant government in Brussels. Coordination problems are no less important when responsibility is shared among equal national authorities. A state veterinary service generally possesses personnel with adequate training and skill to verify whether animal welfare requirements are being met. For inspectors within such an authority, this kind of work is one of their core competencies and veterinarians generally self-select into the profession and employment in a public agency because of their interest in the wellbeing of animals. Police or inspectors from a transportation ministry may not share the same value or possess adequate training to carry out such tasks. Moreover, their core tasks may take priority over enforcing animal welfare legislation. In a more basic way, the smooth operation of a policy implemented by several authorities may be more complicated as the number of authorities increases because extra effort is needed on the part of all to effectively communicate and coordinate their activities. The need for effective coordination among implementation authorities is underscored by the fact that among its operational criteria for competent authorities, the official controls regulation actually requires effective and efficient coordination between authorities involved (Article 4(3)). This leads to my second institutional hypothesis:

H3B: As the number of actors horizontally coordinating implementation increases, the likelihood of implementation difficulty increases.

The vertical dimension of the division of implementation authority is likely to affect implementation in a similar way. By vertical dimension, I mean the division of responsibility for application within a single competent authority among regional offices, or the degree of centralization. Two things matter: the number of regional offices and the relative degree of autonomy that the regional offices possess. The size of a country (both in land area and population) as well as the geographic distribution of the regulated activity (e.g., animal farming, transportation, and slaughter) determine the number of regional divisions within the competent authority. As with the horizontal dimension, a larger number of regional offices strains the ability of the central competent authority to carry out effective controls uniformly across the entire territory. The importance of this too is anticipated in the official controls regulation, which requires that competent authorities “ensure the impartiality, quality and consistency of official controls at all levels” (Article 4(4)) and that “when, within a competent authority, more than

one unit is competent to carry out official controls, efficient and effective coordination and cooperation shall be ensured between the different units” (Article 4(5)). This leads to my third institutional hypothesis:

H3C: As the number of geographic divisions within the central competent authority increases, the likelihood of implementation difficulty increases.

The effect that the number of regional offices has on implementation may be mediated by the distribution of authority among them, but it is uncertain whether this leads to greater problems for implementation. On the one hand, if regional offices possess more autonomy, then problems of coordination will likely increase. Extra effort will be required to ensure that each office correctly applies the provisions of EU policy. On the other hand, granting more autonomy to regional offices allows the personnel to use their expert local knowledge in order to tailor policies to the circumstances of their area. The degree to which regional authorities possess autonomy for carrying out animal welfare inspections varies. In some cases, the choice of inspection targets (inspection intensity) and the actual selection of farms or operators to be inspected are carried out at the central level. More autonomous regional offices select who they will inspect and in some cases the number of inspections they will carry out each year. Despite the theoretical uncertainty, it seems reasonable to suspect that the effect that the number of regional offices has on implementation depends in part on the degree of autonomy that these offices possess. This leads to my fourth and final institutional hypothesis:

H3D: The decentralization of implementation authority from the central office to regional offices increases the likelihood of implementation difficulty.

Transposition delay

The final major factor for explaining variation in the implementation of EU regulatory policy that I will consider here is the direct effect that transposition delay may have. Although some of the factors considered above may contribute independently to problems during transposition and application, problems during transposition may themselves complicate later implementation. Most importantly, transposition delay prevents member states from implementing EU policies when others have already begun to do so. Countries that transpose EU

legislation on time have a head start over those that do not, allowing more time to adapt to new policies and help regulated actors prepare for upcoming deadlines. Thus my final hypothesis:

H4: The greater the delay in transposing EU legislation, the greater the likelihood of implementation difficulty.

Summary

This chapter presents a set of complementary hypotheses for explaining cross-national and cross-policy variation in the successfulness of regulatory implementation. These have been drawn from the transposition literature discussed in the previous chapter. The transposition literature serves as a starting point for deriving hypotheses for post-application implementation for two reasons. First, the transposition literature, perhaps given the narrow range of outcomes that it has attempted to explain, is both more concentrated and cumulative than the general implementation literature or work that considers post-transposition implementation in the EU specifically. Thus relying on this literature as a stepping stone helps focus attention to a small number of potentially interesting explanatory factors. Some of the works discussed in the previous chapter, though dealing with transposition, draw on more general implementation scholarship. Second, and following the spirit of cumulative social scientific research, I have argued that the transposition literature can generate insights beyond its narrow concerns with explaining variation in transposition rates and delays. Although the domain of activity to be explained is different, several of the mechanisms can be reasonably applied from the study of transposition to understanding post-transposition application. The purpose of this chapter has been to draw out those factors that can be applied in both domains.

These factors are the degree of adaptation pressure, the amount of discretionary authority delegated to the member states, and the institutional characteristics influencing implementation. To these three factors I have also added the effect of transposition itself on post-transposition application. The hypotheses derived from these factors are complementary in the sense that each can have an effect on implementation that is independent from the other. Nevertheless, several of these factors might influence implementation in conjunction with one another. The empirical analyses that follow, in addition to separately testing the hypotheses

advanced above will explore the possibility of interactions between these factors in those cases that seem most likely to exhibit interaction effects.

