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EUROPEANISATION AND POLISH COMPETITION POLICY

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A THESIS SUBMITTED FOR THE DEGREE OF DOCTOR OF PHILOSOPHY TO

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DECLARATION

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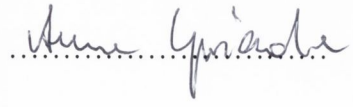

SUMMARY

In this thesis I analyse the impact of the European Union (EU) on domestic policies in Poland when it was a candidate country for EU membership. The impact of the European Union on domestic policies is called Europeanisation. I examined how Poland complied with EU accession criteria and responded to Europeanisation. EU membership and technical pre-accession assistance depended upon compliance with accession criteria, i.e. political, economic and *acquis* criteria as laid down by the Copenhagen European Council in June 1993. In particular, the *acquis* criterion was important as it implied the transposition of the entire Community law, called *acquis communautaire,* into national law.

In this thesis, I explained variation in compliance with EU accession requirements in antitrust policy and state aid policy in Poland in the years 1994-2000. There was non-compliance with EU requirements in state aid policy while there was compliance with EU requirements in antitrust policy in Poland. Non-compliance with EU accession requirements could lead to prolonged accession negotiations or in the worst case to the denial of EU membership. When explaining compliance, I used a comparative method and utilised data from semi-structured interviews with policy-makers, deputies and civil servants, and from document analyses.

I explained the institutional outcomes from the perspective of rational choice institutionalism. I analysed the number of political actors (i.e. Veto Players) who could veto legislation *unilaterally* and block harmonisation of domestic law with EU law. I argued that compliance with EU accession requirements was a result of a few Veto

Players, whose policy preferences were consistent with EU preferences. Instead, non-compliance resulted from many Veto Players with inconsistent preferences.

In empirical terms, the most important finding of this study was that compliance with international obligations was highly conditioned by domestic politics. Assessing the evidence, I came to the conclusion that compliance was the result of consistency of policy preferences of domestic actors. In state aid policy some domestic actors did not agree on compliance with EU requirements because their policy preferences were not consistent with the EU, in antitrust policy domestic actors agreed on compliance. Moreover, the temporal dimension was relevant to the extent that decision-makers manipulated 'time' by delaying decisions and sequencing the process of adaptation to EU requirements. Furthermore, as regards the Polish party system in the 1990's, one of its characteristics was a high degree of defections and a proliferation of parties. Fourthly, at the end of the 1990's there were clear signs of a degree of euro-scepticism occurring in Poland.

This thesis is an important contribution to the literature on Europeanisation. I addressed an empirical neglect in the research on Europeanisation and I concentrated on a candidate country for EU membership from Central and Eastern Europe. Moreover, a valuable contribution of this research was a detailed analysis of the EU conditionality game of accession at the domestic level. It was a case study of how accession criteria were met at the domestic level. This is a perspective which is difficult to see from Brussels or by those unfamiliar with Poland's domestic policy processes.

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I also want to thank Pasquale for his support, understanding and affection.

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ABBREVATIONS

AWS	*Akcja Wyborcza Solidarność*, Solidarity Electoral Action
BBWR	*Bezpartyjny Blok Wspierania Reform*, Nonparty Bloc in Support of Reforms
CEEC	Central and East European Country
CPI	Consumer Price Index
DG	Directorate General
EC	European Community
ECU	European Currency Unit
EEC	European Economic Community
EU	European Union
FDI	Foreign Direct Investment
GDP	Gross Domestic Product
IGC	Intergovernmental Conference
ILO	International Labour Organisation
IPE	International Political Economy
KDP	*Koalicja dla Polski*, Coalition for Poland
KPN	*Konfederacja Polski Niepodległej*, Confederation for an Independent Poland
MN	*Mniejszość Niemiecka,* German Minority
NPPA	National Programme for the Adaptation of the *Acquis*
NSZZ	*Niezależny Samorządny Związek Zawodowy "Solidarność,"* Independent Self-Governing Trade Union "Solidarity"
OCCP	Office for Competition and Consumer Protection
OCEI	Office of the Committee for European Integration

PHARE	*Pologne-Hongrie: Assistance à la Restructuration des Économies,* Poland and Hungary Aid for Economic Reconstruction
PKND	*Poselskie Koło "Nowa Demokracja",* Deputies' Circle "New Democracy,"
PKR	*Parlamentarne Koło Republikanie,* Parliamentary Circle "the Republicans"
PP	*Porozumienie Polskie,* Polish Agreement
PPS	*Polska Partia Socjalistyczna,* Polish Socialist Party
PRS	*Polska Racja Stanu,* Polish Vested Interest
PSL	*Polskie Stronnictwo Ludowe*, Polish Peasant Party
ROP	*Ruch Odbudowy Polski,* Movement for the Reconstruction of Poland
SLD	*Sojusz Lewicy Demokratycznej,* Democratic Left Alliance
TAIEX	Technical Assistance Information Exchange Office
TEU	Treaty on European Union
UKIE	*Urząd Komitetu Integracji Europejskiej,* Office of the Committee for European Integration
UOKIK	*Urząd Ochrony Konkurencji i Konsumentów,* Office for Competition and Consumer Protection
UP	*Unia Pracy,* Labour Union
UW	*Unia Wolności,* Freedom Union

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Introduction

Europeanisation mattered for countries of Central and Eastern Europe[1] before they became European Union member states. Europeanisation, defined as the impact of the European Union (EU) on domestic political economies, became significant in the countries from Central and Eastern Europe when they signed association agreements and applied for EU membership in the 1990's. The EU accession conditionality was a tool of Europeanisation. It implied that EU membership and technical pre-accession assistance would depend upon compliance with accession criteria, i.e. political, economic and *acquis* criteria as laid down by the Copenhagen European Council in June 1993. In particular, the *acquis* criterion was important as it implied the transposition of the entire body of Community law called *acquis communautaire* into national law.

Consequently, developments at the European level and EU accession requirements affected the substance of domestic policy in a candidate country for EU membership and the ability of a national government to translate its policy preferences into authoritative action. EU accession conditionality affected both the ability of executive governments to enact their legislative programmes as well as the ability of other actors such as interest groups or opposition parties to influence legislative outcomes. Nevertheless, compliance with the EU accession criteria depended on domestic institutional arrangements and a partisan composition of government and legislature. The extent of transposition of EU law into national law was conditioned by domestic factors and a process of systemic transformation taking place in the countries of Central and Eastern Europe.

[1] I refer to Bulgaria, the Czech Republic, Estonia, Hungary, Latvia, Lithuania, Poland, Romania, Slovakia and Slovenia.

In this thesis, I want to explain variation in compliance with EU requirements in antitrust policy and state aid policy[2] in Poland in the years 1994-2000. The degree of compliance was different in the two constituents of domestic competition policy. While antitrust law was gradually harmonised with the EU *acquis*, inertia initially occurred in harmonisation of state aid control legislation. Compliance was achieved quicker in antitrust policy than in state aid policy. Indeed, the Commissioner for Competition pointed out "the problem of incompatible State aid measures in the candidate countries. A lack of proper State aid discipline seems to be the major stumbling block for those candidate countries for which the competition chapter has not yet been provisionally closed" (Monti 2001, 4). In contrast, in the area of antitrust: "Poland's legislation contains the basic principles of Community antitrust rules, concerning restrictive agreements, abuse of dominant position and merger control" (European Commission 2001). Hence, the main puzzle this thesis addresses is why in Poland EU antitrust policy was agreed quickly while state aid policy was agreed only at the last minute.

In this thesis I explain the institutional outcomes from the perspective of rational choice institutionalism. Borrowing from Tsebelis' theory of veto players and theories of coalitions, I argue that compliance with international obligations is a function of the structure of domestic Veto Players and Pivotal Actors combined with their preferences. A Veto Player can veto legislation unilaterally while Pivotal Actors might block legislation by setting up a coalition. The chances of compliance are high when a high degree of compatibility of policy preferences exists among the External Actor and Veto Players as well as Pivotal Actors. The explanations provided employ the reasoning of rational choice institutionalism which emphasises a relationship between rational action and institutional constraints. This theoretical approach allows us to understand policy outcomes as

[2] State aid policy refers to the control and monitoring of aid granted by the State or through State resources.

emerging from the preferences of the political actors and the institutional set-up. This approach is a heuristic device for analysing a policy process in a decade of important systemic changes resulting from transformation and Europeanisation.

In this thesis a comparative method is employed as a research technique. This epistemological strategy is case-oriented. The rationale was that only through comparison with several cases were hypotheses secure. The aim was to explain the outcome of several discretely identified episodes where a compliance decision was required. The data comes from semi-structured interviews and document analyses. I interviewed policy-makers, deputies and civil servants in a total of fourteen interviews in Poland between September 2002 and September 2003. As regards document analyses, I examined roll-call votes on antitrust and state aid bills, the Sejm committee transcripts and political parties' statements, as well as European documents: for example, the European Commission's reports and Accession Partnerships.

Analysing Polish competition policy in the context of Europeanisation offers important, and to some extent, unique insights into dimensions of domestic policy change. Firstly, the conceptual and empirical research on Europeanisation and domestic change has been restricted to the EU member states (Börzel and Risse 2000; Radaelli 2000; Schmidt 2001; Cowles, Caporaso and Risse 2001; Börzel 2001) while candidate countries have been neglected. Secondly, there has been no theoretically-driven analysis of compliance with EU requirements in countries aspiring for EU membership. The issue of compliance is relevant both to candidate countries for EU membership and to EU member states. As regards candidate countries, there was a degree of non-compliance with the EU regulations, although the transposition of the entire Community law into national law was one of the EU requirements. As regards EU member states, the European Commission considers deficiencies in compliance on the part of member states to be one of the greatest

challenges to the proper functioning of the Single Market. However, very little is understood about the degree to which there is compliance with EU directives and decisions. Thirdly, "overlooking the importance and positive contribution of competition policy in the process of transition and structural change would be an opportunity lost" (Monti 2001, 2). Finally, Polish competition policy is an interesting case for analysis because there was compliance with EU requirements in antitrust policy while there was non-compliance in state aid policy.

This thesis contributes to two areas. Firstly, in the international-domestic domain, it analyses how domestic actors responded to the imposition of external institutional regimes, i.e. the EU *acquis* criteria and how they rationally used timing and sequencing of new policies to be adopted. In general, it reveals who got to determine public policy outcomes. Secondly, on the domestic level, it presents the domestic policy-making process in Poland and actors who participate in the process. Policy-making and the implementation of decisions in Poland have not been systematically analysed (Jabłoński 1999, 146).

This thesis is divided into four main parts. The first part is a general introduction to the research project entitled 'Europeanisation and Polish competition policy.' The second part clarifies concepts and presents a rationalist model of compliance which stems from the theory of veto players and coalitions and which is based on rational choice institutionalism. The third part is an empirical analysis of Polish state aid and antitrust policies. Finally, the concluding part summarises the findings of the empirical chapters in view of the theoretical and conceptual framework of the thesis. Moreover, it includes the most recent developments in Polish and EU competition policies.

Throughout the thesis I use the concept of Europeanisation to denote the impact of the European Union on domestic policies. Moreover, for the sake of consistency I have

adopted the usage EU as standard to refer to the EEC, EC and EU.[3] Nevertheless, the concept of 'Community' might be used with the reference to EC law or Community law.

The *raison d'être* of the thesis

The scholarly reasons for this thesis are manifold. First and foremost, this research project allows a research deficit in the area of Europeanisation and domestic policy change to be addressed. While there is an extensive body of literature that examines Europeanisation in EU member states there has been no comprehensive analysis of Europeanisation in candidate countries for EU membership. Consequently, the focus on Polish competition policy in the years 1994-2000 yielded some more insights into the theory and practice of Europeanisation.

In what follows, I will present the justification of the thesis following its main themes, namely, Europeanisation, competition policy and Poland as a case study.

- Why Europeanisation?

The conceptual and empirical research on the impact of Europeanisation on domestic change has been restricted to the EU member states (Börzel and Risse 2000; Radaelli 2000; Schmidt 2001; Cowles, Caporaso and Risse 2001; Börzel 2001) while candidate countries for EU membership have been neglected. Theoretical and empirical analyses are essential because "we do not know enough about the processes of Europeanisation and its

[3] The Treaty on European Union, which was signed in Maastricht on 7 February 1992, entered into force on 1 November 1993. The Maastricht Treaty changed the name of the European Economic Community (EEC) to simply the European Community (EC) (http:/www.europa.eu.int). The Treaty on European Union introduced the term European Union – a concept comprising the European Communities, as well as other forms of cooperation. The Treaty of Amsterdam which entered into force on 1 May 1999, amended and renumbered the EU and EC Treaties.

effects" (Radaelli 2000, 1). Hence, the aim is to shed more light on the impact of the European Union on domestic politics and political economy in a candidate country for EU membership. Consequently, this is a contribution to current theoretical and empirical debates on Europeanisation.

Very little is understood about the degree to which there is compliance with the international commitments [i.e. EU directives and decisions]. This research examines factors which influence the speed and extent of compliance with EU requirements in the candidate countries from Central and Eastern Europe. In the case of candidate countries, there was a degree of non-compliance with EU requirements, although the transposition of the entire Community law into national law (the *acquis* criteria) was the prerequisite for accession to proceed. In general, the issue of compliance is relevant both to candidate countries for EU membership and to EU member states. The EU Commission warns that "differences in the pace of national compliance with EU legislation pose serious problems for business, as do persisting barriers to trade, particularly in the form of the state subsidies and public procurement procedures" (European Commission 1998b). The European Commission considers deficiencies in compliance on the part of Member States to be one of the greatest challenges to the proper functioning of the Single Market. None of the major surveys of EU institutions seriously address the extent to which Member States comply (Haas 1998, 18).

Compliance may be induced by external incentives and coercion as well as domestic pressures. Hence, domestic political economy matters and domestic factors play an important role in explaining compliance or a lack of compliance. In contrast, Grabbe (1999) claims that "CEE policy-makers are often constrained more by EU conditions than by their domestic polities. [...] the domestic level is playing only a very limited role." Recognising that EU accession conditionality was important for compliance in candidate

countries I will, nevertheless, show that the domestic context was important when explaining compliance.

Theoretically, I look at the institutional outcome in a rational choice institutionalist manner. This approach is a heuristic device for analysing a policy process in a decade of important systemic changes resulting from transformation and Europeanisation. Moreover, I extend veto players' theory and accommodate external aspects. Tsebelis (1995) concentrates only on domestic politics. The interaction between domestic politics and international political economy is explored. Furthermore, I analyse the case in which the approximate direction of policy change is known.

Similarly, there is a need to look at a policy level of analysis in Europeanisation research. Theoretical analyses of a macro dimension have often neglected the meso dimension and there are very few theoretically informed comparisons between policy areas. Most studies of EU enlargement politics focus almost exclusively on macro politics, with few suggestions about the implications of their insights for substantive policies. Their failure to link their explanatory factors to substantive policies limits their contribution to a more general understanding of the context to which the preferences of certain actors condition substantive outcomes (Schimmelfennig and Sedelmeier 2002, 523).

- Why competition policy?

Firstly, Polish competition policy was an interesting case for analysis because there was compliance with EU requirements in antitrust policy while there was non-compliance in state aid policy in the years 1994-2000. Non-compliance with state aid control requirements resulted in prolonged accession negotiations in the area of competition policy. This outcome was surprising given competition policy in transition countries was

the antithesis of the policy of the former Communist regime. Before 1989 competition policy was unnecessary. Under central planning there was no market mechanism and companies usually had to meet quantitative objectives with a set allocation of resources. The control of state aid was also unnecessary because the state existed to distribute state aid. After 1989 the legislation and institutions of competition policy became crucial for economic reforms. Hence, one could have expected that competition policy would have become the priority and that both antitrust and state aid policies would be introduced immediately after the change of economic system from a planned economy to a market economy. This was not entirely true; antitrust policy was swiftly implemented while the control of state aid was introduced only in 2000.

Secondly, competition policy in itself is unique amongst other EU policies; it represents the first truly supranational policy, one where the EU institutions have been the most active (McGowan and Wilks 1995, 142). On the other hand, competition policy has traditionally been seen as a purely national prerogative (Moussis 2002, 340).

Thirdly, existing approaches to analysing competition policy, either legal or economic, have lacked an explicit emphasis on the relationship of politics to economic policy decisions, such as the electoral link between groups bearing the cost of compliance decisions, and the officials who make the decisions. The interaction of actors with political institutions is seldom analysed by economists.

Fourthly, although competition policy is recognised as important for structural change, disagreements exist over the degree of state involvement in the economy. There is no doubt that "overlooking the importance and positive contribution of competition policy in the process of transition and structural change would be an opportunity lost" (Monti 2001, 2). However, the broad thesis is that there remains a continuing tension between international pressures for economic liberalism and domestic pressures for continuing high

levels of state intervention in the economy and social policy (Millard 1998, 204). Similarly, Mayhew (1998) claims that in the 1990's in countries of Central and Eastern Europe the process of economic reform towards the market economy was not complete. Hence, many in these countries maintained that adopting a strong competition policy and controlling state aid would lead to the demise of many local companies which, if exposed to full competition, would not survive.

Fifthly, in the context of the Europeanisation debate, EU law has been a source for domestic competition policy not only in EU member states but also in candidate countries for EU membership. Hence, this research raises an important empirical question regarding the degree to which EU competition *acquis* shapes domestic antitrust and state aid policies. There is a clear tendency for national competition laws to converge towards Community rules. However, the mechanisms are different. For instance, in the case of competition policy, candidate countries were obliged to harmonise their domestic law with EU law by reason of Article 63 and 68 of the Association Agreements while the EU member states themselves have the right to choose their own style of domestic legal regime. EU law is only directly applicable in the cases of "practices which may affect trade between member states" [Article 81, EC Treaty]. The direct effect doctrine means that provisions of EC law are found to be capable of application by national courts. Direct applicability of EU competition rules makes law approximation unnecessary for member states. However, a high level of harmonisation of domestic competition laws has already occurred spontaneously in EU member states. There is a process of quiet harmonisation of substantive law in Member States because of its rather informal and spontaneous character and no direct pressure from the Commission (Laudati 1998, 383).

In a wider context, harmonisation of domestic competition regimes has wider implications. There are attempts to internationalise competition provisions and to facilitate

convergence of competition policy among states in order to create an international competition regime including both antitrust and state aid control provisions. In the area of antitrust policy, the process has been facilitated by the EU, the Organisation for Economic Cooperation and Development (Competition Policy and Law Division), the World Trade Organisation (WTO Working Group on Competition Policy), the United Nations Conference on Trade and Development (Commission on Investment, Technology and Related Financial Issues; Competition Law and Policy). In the area of minimising domestic and international distortion in competition and trade stemming from granting aid from public funds, two most elaborated systems of such control are the WTO Agreement on Subsidies and Countervailing Measures and the European Union state aid policy.

- Why Poland?

Poland was chosen as a case study for two reasons. Firstly, because of its size and importance for the enlarged Union. Poland was – by far – the largest of the candidates from Central and Eastern Europe in the EU enlargement to the East. The country with a population of 38.6 million had to undergo a scale of adjustment way beyond that of other candidates of the region and, potentially, its economy had a more significant impact on the EU internal market. According to Wallace and Mayhew (2001) Poland is simply too important to be treated as "just one of the candidates for EU enlargement. Its scale and size throw all the accession issues that apply to all other candidates into sharp relief" (Wallace and Mayhew 2001, 6). Secondly, policy-making and implementation of decisions in Poland have not been systematically analysed (Jabłoński 1999, 146). Hence, there is a need to enhance knowledge in institutional arrangements of policy-making in Poland.

Part I. Europeanisation and Competition Policy

Part I introduces the context of the research project on Europeanisation and Polish competition policy. The objective is to set the background to the research question. The puzzle this thesis attempts to solve is why EU antitrust policy was quickly agreed in Poland while state aid policy was agreed only at the last minute. Despite EU accession requirements, the degree of Poland's compliance was different in the two constituents of domestic competition policy. Consequently, in Part I, I examine EU accession conditions and the Polish political context. Moreover, I present literature which is relevant to explaining the research question.

Chapter 1 concentrates on the evolution of relations between the European Union and countries of Central and Eastern Europe in the 1990's. Furthermore, it examines Polish integration policy and the political economy of Poland. In addition, it analyses the EU antitrust and state aid policies which significantly framed domestic competition regimes in Central and Eastern Europe.

Chapter 2 presents a theoretical overview of the existing literature in the field of rational choice institutionalism dealing with rational actions and institutional constraints. Moreover, it presents an overview of Europeanisation literature which mainly deals with the EU impact on domestic structures.

Chapter 1. Europeanisation, Competition Policy and Poland

Chapter 1 focuses on Europeanisation in countries of Central and Eastern Europe. *Europeanisation* is defined as the impact of the European Union; in particular, the impact of the European Union on domestic policies in both EU member states and candidate countries for EU membership. This understanding of the concept of Europeanisation focuses on changes in domestic institutions which result from the development of European-level institutions and policies. This thesis concentrates on Europeanisation in Poland at a stage when it was a candidate country for EU membership.

Chapter 1 is important because it sets the context of Europeanisation of Polish competition policy. It explores the impact of the European Union and its accession criteria on the candidate countries for EU membership. Moreover, Polish political economy in the years 1994-2000 is examined and the transition debate with the particular emphasis on state aid is presented. Furthermore, competition policies in the European Union and Poland are analysed.

1.1. Europeanisation in Central and East European countries in the 1990's

The European Union has influenced domestic political economies in Central and East European countries (CEECs) since the beginning of the 1990's. Europeanisation began to matter when the countries signed association agreements and applied for EU membership.[4] Relations developed in several stages: from trade-related issues to full membership. Decisions taken at the European Council meetings were a major impetus in defining the

[4] Dates of application for EU membership: Turkey – 14 April 1987; Cyprus – 3 July 1990; Malta – 16 July 1990; Hungary – 31 March 1994; Poland – 5 April 1994; Romania – 22 June 1995; Slovakia – 27 June 1995; Latvia – 13 October 1995; Estonia – 24 November 1995; Lithuania – 8 December 1995; Bulgaria – 14 December 1995.

general political guidelines of the European Union towards Central and Eastern Europe. The EU Council also put forward the requirements which the candidate countries had to fulfill in order to join the EU. Although no exact accession dates were proposed in the 1990's, candidate countries for EU membership had to comply with accession criteria before joining the EU.

The relations between the European Union and ten Central and East European countries evolved in several distinctive phases. Initial contacts were made before 1989 while the final important pre-accession decision taken by the 2002 Copenhagen European Council was to accept eight Central and East European states as EU member states in May 2004. According to Grabbe (1999) there were three phases in which the EU has progressively extended its relations and conditions (Grabbe 1999, 9). The first phase of relations in the years 1989-1993 moved from aid and trade-related issues to the prospect of membership. Soon after the fall of the Berlin Wall in 1989, there was a natural tendency for the Central European countries to look westwards. The consensus was that the road to economic recovery and the institutionalisation of liberal democracy lay through membership of the North Atlantic Treaty Organisation and the European Community/Union (Cordell 2000, 3). On its side, the European Community first established diplomatic relations and the first cooperation agreements were negotiated with Hungary in September 1988, Czechoslovakia in December 1988 followed by Poland, Bulgaria and Romania in 1989 and 1990. Nonetheless, these agreements had very short active lives and were soon overtaken by the demand for new types of association agreement (Mayhew 1998, 9). During the first phase, the EU created two key instruments to direct post-communist transformation in CEECs: the Europe Agreements (association agreements) and the Phare aid programme. The second phase in the years 1994-1997 was the time of the first pre-accession strategy. The pre-accession strategy was based on three

main elements: implementation of the Europe Agreements, the Phare Programme of financial assistance, and a 'structured dialogue' bringing all member states and candidate countries together to discuss issues of common interest. The third phase which began in mid-1997 was, in fact, the accession process. In July 1997 the Commission published its opinions on the applicants' progress in meeting the Copenhagen conditions and proposed a reinforced pre-accession strategy based on Accession Partnerships. This phase ended with the accession of new states in the EU.

Europeanisation mattered for the reason that EU membership required applicants to harmonise their domestic laws in full with the *acquis communautaire*. Hence, preparations for accession to the European Union implied major policy changes for the candidate countries. The EU governance structures and regulatory models were to be accepted in these countries. The adoption of the *acquis* added constraints to the freedom of governments to make policy (Orlowski and Mayhew 2001, 8). On the other hand, the Phare programme was the channel for EU aid to Central and East European countries. On its establishment in 1989, its primary instrument was direct grants, used to fund technical assistance in a very wide range of areas. Following revision of the pre-accession strategy in 1997, its focus was narrowed to funding accession preparations alone through the Accession Partnerships (Grabbe 1999, 10).

Europeanisation proceeded in a context of systemic transformation of countries of Central and Eastern Europe. Competition, privatisation and price liberalisation were the most important features of transition to a market economy. Governments in all the former socialist economies faced the same task of creating the institutions indispensable to the functioning of the market system (Ojala 1999, 87). Mayhew (1998) pointed out: "there is no dispute that the introduction of competition rules and the control of state aid has been a very important part of the move to the market economy, and has underpinned economic

growth. In fact, the path of transformation was heavily conditioned by criteria, rules and obligations set by the EU according to its own *acquis* (Lippert and Becker 1998, 21). Tokarski and Mayhew (2000) pointed out that countries of Central and Eastern Europe were still in the process of establishing and confirming the institutions and administrative practices required for the transition to a market economy and their opening to the world economy. The twin processes of transformation and accession preparation required fundamental legal, economic and social change on an unprecedented scale (Tokarski and Mayhew 2000, 4).

Between 1991 and 1996, the European Community and its Member States progressively concluded Association Agreements with ten countries of Central and Eastern Europe, which were called 'Europe Agreements' in order to underline their importance. The Europe Agreements provided the legal foundation for bilateral relations on the basis of an association according to Article 310 of EC Treaty [ex 238 of the EEC Treaty].[5] Association agreements "formed the fundamental legal basis of the relationship today" (Mayhew 1998, 21). They covered trade-related issues, political dialogue, legal approximation and various other areas of co-operation. In several respects the Association Agreements marked a turning point in the process of European integration. They represented a large step forward in formalising relations and creating the institutional framework within which it was to deepen relations. They were a further step on the road to trade liberalization in industrial products (Mayhew 1998, 23). The general principles of the agreement established that respect for democratic principles and human rights and the principles of the market economy constitute the essential elements of the agreement (Mayhew 1998, 47).

[5] The EEC Treaty - the Treaty establishing the European Economic Community - was signed in Rome on 25 March 1957, and entered into force on 1 January 1958. The term Treaty of Rome is often used with the reference to the EEC Treaty.

Although the European Union took several major political steps to open the way towards greater integration of Central and East European countries it was unwilling to set a date for its enlargement. From the Copenhagen summit in 1993, enlargement obtained a sort of inevitability without a timetable (Mayhew 1998, 164). While after the Nice European Council meeting in December 2000, enlargement of the Union became more certain, the exact details of how and when it would take place remained unclear (Orlowski and Mayhew 2001, 6). Only when the negotiations came to an end on 13 December 2002, was the date of accession, that is, 1 May 2004, confirmed. However, on the side of candidate countries, there was always expectation of accession in the year 2002 or 2003.

Decisions taken at the European Council meetings are a major impetus in defining the general political guidelines of the European Union including decisions about EU enlargement. The European Council brings together the Heads of State or Government of the Member States of the European Union and the President of the European Commission. The European Council is hosted by and takes place in the Member State holding the Presidency of the Council, and punctuates the political life and development of the European Union by meeting at least twice a year. "The Copenhagen and Essen European Councils, together with the follow-up given by the Cannes Summit in June 1995, the Paris meeting on the Stability Pact, the decisions of the Madrid summit and Agenda 2000 [...] had the effect of creating the expectations of accession in the medium term" (Mayhew 1998, 178). Finally, it was in 2002 that the Copenhagen European Council confirmed that ten countries would join the European Union on 1 May 2004.

Essential decisions regarding eastern enlargement of the European Union were taken at the Copenhagen European Council in June 1993. The European Council held a thorough discussion on the relations between the Community and the countries of Central and Eastern Europe with which the Community concluded Europe Agreements

("associated countries"), on the basis of the Commission's communication prepared at the invitation of the Edinburgh European Council (European Council, 1993). The EU member

Table 1. Milestone Decisions of European Councils in Eastern Enlargement

June 1993	Copenhagen European Council put forward the accession criteria.
December 1994	Essen European Council presented the pre-accession strategy.
June 1995	Cannes European Council welcomed the Commission's White Paper on preparation of the associated countries for integration into the internal market of the Union.
December 1997	Luxembourg European Council decided to start accession negotiations in 1998 with Cyprus, Hungary, Poland, Estonia, the Czech Republic and Slovenia.
March 1999	Berlin European Council agreed on Agenda 2000 and future financial framework.
December 1999	Helsinki European Council decided to start accession negotiations in 2000 with Romania, the Slovak Republic, Latvia, Lithuania, Bulgaria and Malta.
December 2000	Nice European Council agreed for an EU institutional reform.
December 2002	Copenhagen European Council confirmed the date of accession of ten countries on 1 May 2004.

states took a decision that "the associated countries in Central and Eastern Europe that so desire shall become members of the European Union. Accession will take place as soon as an associated country is able to assume the obligations of membership by satisfying the economic and political conditions required" (European Council 1993). The Copenhagen European Council reinforced the commitment to accession by asking the Commission to come forward with proposals to open up Community programmes to the associated countries and to set up a new task force on the approximation of laws (Mayhew 1998, 164).

While the Copenhagen European Council underwrote the objective of accession to the Union, the Essen European Council at the end of 1994 designed a strategy for the associated countries to follow in achieving this goal. A pre-accession strategy was to prepare the countries of Central and Eastern Europe for EU membership. "The European Council decided to boost and improve the process of further preparing the associated states of Central and Eastern Europe for accession. The key element in the strategy to narrow the gap was preparation of the associated States for integration into the internal market of the Union" (European Council 1994). The pre-accession strategy was based on three main elements: implementation of the Europe Agreements, the Phare Programme of financial assistance, and a 'structured dialogue' bringing all member states and candidate countries together to discuss issues of common interest. Moreover, the 1994 Essen strategy recognised three key areas for action: competition policy, the control of state aid and the *acquis communautaire* relating to the internal market (Mayhew 1998, 166). Furthermore, the Cannes European Council in June 1995 confirmed that the White Paper was an essential element of the pre-accession strategy. "The submission of the White Paper on the preparation of the associated countries for integration into the internal market constituted the major development in the strategy for preparing them for accession" (European Council 1995).

At the Madrid European Council in December 1995, while potential benefits of enlargement were stressed, it was also noted that a prerequisite for accession was adoption of the Community *acquis* at the date of accession. "The European Council also confirmed the need to make sound preparation for enlargement on the basis of the criteria established in Copenhagen and in the context of the pre-accession strategy defined in Essen for the CEECs" (European Council 1995b). Moreover, the Council requested that the opinions on the membership would be made available. The Madrid Council's request for the

Commission to prepare its opinions on the applications for membership of the associated countries and to look at the impact of enlargement on the policies of the Union launched the next concrete step on the road to accession (Mayhew 1998, 175).

In July 1997 the Commission presented Agenda 2000 which was agreed upon by the Berlin European Council in March 1999. Agenda 2000 was a single framework in which the broad perspective for the development of the European Union and its policies beyond the turn of the century were outlined, for example, the impact of enlargement on the EU as a whole and the future financial framework beyond 2000, taking into account the prospect of an enlarged Union. Attached to it were the Commission's opinions (avis) prepared on the basis of the Copenhagen accession criteria, on membership applications from Bulgaria, the Czech Republic, Estonia, Hungary, Latvia, Lithuania, Poland, Romania, Slovakia and Slovenia. Moreover, the Commission put forward proposals for a reinforced pre-accession strategy based on the Accession Partnership which set out the priorities for the candidate countries and brought together all the different forms of EU support within a single framework.

In December 1997 the Luxembourg European Council "decided to convene bilateral intergovernmental conferences in the spring of 1998 to begin negotiations with Cyprus, Hungary, Poland, Estonia, the Czech Republic and Slovenia" (European Council 1997). In December 1999 the Helsinki European Council decided to convene bilateral intergovernmental conferences in February 2000 with a view to opening negotiations with Romania, the Slovak Republic, Latvia, Lithuania, Bulgaria and Malta.

The Nice European Council of December 2000 stressed that with the entry into force of the Nice Treaty and the institutional changes it entailed, the European Union would be able to receive the candidate countries that were ready from the end of 2002, enabling them to participate in the 2004 European elections. However, it was emphasised

that "the candidate countries are requested to continue and speed up the necessary reforms to prepare themselves for accession, particularly as regards strengthening their administrative capacity, so as to be able to join the Union as soon as possible" (European Council 2000b). Moreover, it introduced an important element in the negotiation strategy, namely, a detailed road map which provided for a clear sequence of tackling difficult chapters for negotiations throughout the course of 2001 and 2002.

The accession process was given a new impetus by the European Council of Göteborg in June 2001. The heads of state and government clarified that provided progress towards meeting the accession criteria continued at an unabated pace it should be possible to complete negotiations by the end of 2002 for those countries that were ready so that they should participate in the European Parliament elections of 2004 as members. The Göteborg European Council in June 2001 confirmed that "the ratification process for the Treaty of Nice will continue so that the Union is in a position to welcome new Member States from the end of 2002" (European Council 2001).

In December 2001, the Laeken European Council reconfirmed the line taken by the European Council of Göteborg in June 2001, declaring that "the European Union is determined to bring the accession negotiations with the candidate countries that are ready to a successful conclusion in 2002, so that those countries can take part in the European Parliament elections in 2004 as members." Moreover, the candidate countries must continue their efforts energetically, in particular to bring their administrative and judicial capabilities up to the required level (European Council 2001b).

In June 2002 the Seville European Council reaffirmed that "if the present rate of progress in negotiations and reforms is maintained, the European Union is determined to conclude the negotiations with Cyprus, Malta, Hungary, Poland, the Slovak Republic, Lithuania, Latvia, Estonia, the Czech Republic and Slovenia by the end of 2002, if those

countries are ready. It would seem reasonable to expect that the Treaty of Accession could be signed in spring 2003. The objective remains that these countries should participate in the elections for the European Parliament in 2004 as full members. However, this common aim can be realised within the time frame envisaged only if each candidate country adopts a realistic and constructive approach" (European Council 2002, 6).

Finally, on 13 December 2002 the Copenhagen European Council confirmed the date of accession. The Presidency Conclusions read:

> "The European Council in Copenhagen in 1993 launched an ambitious process to overcome the legacy of conflict and division in Europe. Today marks an unprecedented and historic milestone in completing this process with the conclusion of accession negotiations with Cyprus, the Czech Republic, Estonia, Hungary, Latvia, Lithuania, Malta, Poland, the Slovak Republic and Slovenia. The Union now looks forward to welcoming these States as members from 1 May 2004" (European Council 2002b).

1.1.1. EU accession criteria and the assessment of compliance

The conditions for EU membership have been set out in Treaty Articles, European Council statements, and legal agreements between the EU and candidate countries (Smith 2003, 109). In fact, the Copenhagen criteria and conditions put forward in the association agreements were the most essential accession requirements to be met by candidate countries for EU membership in Central and Eastern Europe.

However, EU accession conditionality was evolving. The European Union progressively extended its conditions for membership, both substantively in what was demanded in terms of political and economic reforms, and also functionally in what became a condition rather than a subject for negotiations (Grabbe 1999, 9). This was due

to the fact that the *acquis* was interpreted in a maximalist way and the *acquis* itself grew constantly throughout Treaty change, the adoption of new legislative measures, and the evolving jurisprudence of the European Court of Justice.

EU accession conditionality encompassed requirements to be fulfilled but it also provided for assistance to countries from Central and Eastern Europe. It implied that EU membership and pre-accession benefits were "conditional on respect by a candidate country of its commitments under the Europe Agreement, further steps towards satisfying the Copenhagen criteria and in particular progress in meeting the specific priorities of Accession Partnership" (European Commission 1999). Incentives attached to the EU accession conditionality consisted in pre-accession benefits such as aid (Phare programme) and technical assistance (TAIEX) financed by the European Union in order to assist the applicant countries of Central and Eastern Europe in their pre-accession preparations. EU membership was the ultimate prize for compliance with the EU requirements.

A successful implementation of Europe Agreements was regarded as a precondition for EU membership. Europe Agreements were sets of formally structured trade relations, with a mixed content of both political and economic provisions. They were intended to create a free trade area and to implement the four freedoms of the Single Market (free movement of goods, services, capital and labour) over a ten-year timetable, and they also provided a general framework for political and economic cooperation, including approximation of legislation (Grabbe 1999, 12).

The key accession criteria were proposed at the Copenhagen European Council in June 1993. The Council laid down political, economic and *acquis* criteria for accession. However, it was also recognised that "the Union on its part must have the capacity to absorb new members, while maintaining the momentum of European integration. It is also an important consideration in the general interests of both the Union and the candidate

countries" (European Council 1993, 13). Hence, institutional adjustments in the EU were necessary and the operation of the Union institutions had to be strengthened and improved.[6]

The three major Copenhagen criteria consist of the following:

- The political criterion stipulates that a candidate country has achieved "stability of institutions guaranteeing democracy, the rule of law, human rights and respect for and protection of minorities."
- The economic criterion stipulates that membership requires "the existence of a functioning market economy as well as the capacity to cope with competitive pressures and market forces within the Union."
- The *acquis* criterion refers to "candidate's ability to assume the obligations of membership - that is, the legal and institutional framework, known as the *acquis,* by means of which the Union implements its objectives." *Acquis communautaire* consists of primary legislation (EC Treaties), secondary legislation (regulations, directives), and jurisprudence of the European Court of Justice as well as a variety of non-binding acts (recommendations, guidelines, etc).

While the first criterion provided for democratic principles and the second for economic principles, the third criterion aimed at legal approximation of domestic legislation with EU law. The first Copenhagen criterion provided for political principles such as free and fair elections, political pluralism, freedom of expression, and freedom of religion, the need for democratic institutions and independent judicial and constitutional authorities, respect for human rights and respect for minorities. However, democracy was the most fundamental condition (Smith 2003, 114). The second condition referred to a functioning market

[6] Intergovernmental conferences aimed at revising the Treaties. However, Amsterdam Treaty was a disappointment (Smith 2003, 113). Yet, the Nice Treaty which came into force in 2003 provided for institutional arrangements which could accommodate new members.

economy and the readiness of the candidate countries to cope with the competition and market forces within the EU Internal Market. Agenda 2000 enumerated some of the requirements for a functioning market economy such as liberalised prices and trade, the absence of significant barriers to market entry and exit, macroeconomic stability and a well-developed financial sector. The capacity to withstand competitive pressures necessitated a functioning market economy, government policy which enhanced competition and a sufficient amount of human and physical capital (Agenda 2000, 42-43). The third condition referred to the ability to take on the obligations of membership including adherence to the aims of political, economic and monetary union. The second and the third Copenhagen criteria were closely linked. Not only does the market economy form part of the *acquis*, so that the adoption of the full *acquis* necessitates the ability to abide by the broad economic policy guidelines formulated within the Union system; it also involves opening up domestic economies to free competition (Cremona 2002, 261).

The Copenhagen *acquis* condition referred to the adoption and implementation of Community laws, regulation and policies. A rationale for approximation of domestic law into EU *acquis* was expressed in terms of economic development, future prospects of accession and the smooth operation of the Union. The Commission stressed: "In the short term, a legal environment compatible with Community law is a major incentive for foreign investment, a vehicle for improved access to Community markets and a guarantee of undistorted and fair trade. In the longer run, it represents an indispensable preparation of the associated countries for their future accession to the European Union" (European Commission 1994). Hence, the objective was to prepare the candidate countries for future membership. It was considered important because there could be no extension of Community law to candidate countries as was in the case of EU member states through the direct effectiveness doctrine. Hence, such approximation was deemed to be necessary to

ensure a level playing field and the smooth operation of the Union. However, Mayhew (1998) emphasised that the adoption of the *acquis* was likely to be far more complex than either the candidate countries or the Union originally thought. The process was not simply a legal one of approximating legislation. It was changing both the legal framework in which society and the economy operated and revolutionising the institutions of the state (Mayhew 1998, 362).

Compliance with the third Copenhagen criterion, which was the ability to undertake the obligations of membership, including adoption of the *acquis*, was not merely a matter of agreeing to accept the *acquis* during the negotiations, it also required a demonstration of progress in actual implementation. In Agenda 2000 the Commission underlined the importance of effective incorporation of Community legislation into national legislation, and the even greater importance of implementing it properly in the field, via the appropriate administrative and judicial structures. In emphasised the vital importance of the candidate countries' capacity to effectively implement and enforce the *acquis*, and added that this required important efforts by the candidates in strengthening their administrative and judicial structures. Moreover, both the Helsinki European Council and the Feira European Council emphasised that "progress in negotiations must go hand in hand with progress in incorporating the *acquis* into legislation and actually implementing and enforcing it." (European Council 1999b, 11).

EU accession conditionality was a tool of Europeanisation in countries of Central and Eastern Europe. By putting forward conditions, the EU influenced policies in the CEECs. EU accession conditionality implied that EU membership and technical pre-accession assistance were dependent on the extent to which an applicant country complied with the requirements prescribed by the European Union. EU accession conditionality also implied that if the state did not comply with requirements, sanctions such as a delay in

enlargement (or in the worst case non-enlargement), reducing or suspending the aid might be applied. Consequently, EU accession conditionality extended the reach of EU influence considerably more deeply into domestic policy-making in Central and Eastern Europe than it had done in the member states, which only had to implement policies resulting from "the obligations of membership" and had never been judged on the other two conditions [i.e. political and economic] (Grabbe 2003, 308). If enlargement is to be used as an instrument of Union policy, designed to stabilise and restructure Europe, then conditionality is key to its success (Cremona 2002, 281). Conditionality is an important incentive to reform in the preparation for EU integration (Mayhew 1998, 368). The EU and its policies of association, pre-accession and "accession-partnership" count as factors which are likely to determine the process of transformation (Lippert and Becker 1998, 21).

Although the cornerstone of EU accession conditionality was accession criteria put forward at the Copenhagen European Council in 1993, numerous EU documents pinpointed the importance of national law approximation to EU law: the Europe Agreement (1991), the White Paper (1995), Agenda 2000 (1997), the Accession Partnership (1998) and annual Commission reports. The Copenhagen conditions were followed by the formal launch of a "pre-accession strategy" at the Essen European Council in December 1994 which incorporated earlier agreements and commitments such as the Europe Agreements and Phare, and added some new elements such as the Single Market White Paper and the Structured Dialogue (Grabbe 1999, 13). Instead, Mayhew (2003) claims that the pre-accession strategy launched at Essen was not about conditionality but focusing on priorities.

The 1995 White Paper was considered to be important for the pre-accession strategy. In May 1995, the European Commission adopted the White Paper on Preparation of the Associate Countries of Central and Eastern Europe for Integration into the Internal

Market of the Union. It set out the legislation which the candidate countries would need to transpose and implement in order to apply the *acquis communautaire*, and identified elements essential to the implementation of the single market which would need priority attention. "It contains recommendations about which measures should be tackled first in the spirit of guidance and not instruction, focusing on the legislation which is essential for the functioning of the internal market" (EU Newsletter 1995). Progress in taking on the measures in the White Paper was judged in the Commission's *avis* as a key element in assessing ability to take on the obligations of membership. The White Paper, thus, became *de facto* a part of EU conditionality for the applicants, despite its status as a document for guidance rather than a legal framework for relations (Grabbe 1999, 14). However, Fingleton et al. (1996) believe that the European Commission's White Paper considered a more specific compatibility of national law with EC law. The Commission took a view that the candidate countries should adopt as national law, not only EC rules but also EC case law. In this respect, the White Paper demanded more of the CEECs than of the EU member states. On the other hand, according to Toth, the White Paper was a policy paper adding nothing to the law harmonisation obligation arising from the Europe Agreement in legal terms. Its recommendations could not be enforced legally but "only" on a political or diplomatic level (Toth 1998, 362).

Formally, there were two stages at which compliance with the accession criteria was assessed. The first phase was when the European Council on the basis of the opinion prepared by the Commission took the decision to open accession negotiations. The second phase was at the conclusion of the negotiations, when the Council adopted its final decision on the accession of countries to the European Union. In practice, however, the assessment was more of a continuing process, as the European Commission committed itself to its initial opinion and communication on enlargement, Agenda 2000, to the

preparation of regular reports, assessing progress on the basis of the Copenhagen criteria and the goals set by the Accession partnership with each candidate country (Cremona 2002, 273). Moreover, the Commission used an assessment strategy during negotiations. The extent of compliance with accession requirements impinged on the progress in negotiations.

As regards the assessment of compliance, annual European Commission's reports and Accession Partnerships were crucial. The Commission agreed in Agenda 2000 to report regularly to the European Council on progress made by each of the candidate countries of Central and Eastern Europe in preparations for membership and that it would submit its first report at the end of 1998. Moreover, the European Council in Luxembourg decided that "from the end of 1998, the Commission will make regular reports to the Council, together with any necessary recommendations for opening bilateral intergovernmental conferences, reviewing the progress of each Central and East European candidate state towards accession in the light of the Copenhagen criteria, in particular the rate at which it is adopting the Union *acquis*" (European Council 1997). The first report was produced by the Commission in 1998 and the last one in 2002. The Commission examined the implementation of existing obligations under the Europe Agreements, progress in achieving the White Paper's programme of approximation (in particular in key single market measures) and progress in other areas (Cremona 2002, 275). Likewise, Accession Partnerships assessed the degree of compliance. The purpose of the Accession Partnership was to set out in a single framework the priority areas for further work identified in the Commission's Regular Report on the progress made by a candidate country towards membership of the European Union, the financial means available to help a candidate country implement these priorities and the conditions which will apply to that assistance. The European Council decided that the Accession Partnership would be the key

feature of the enhanced pre-accession strategy, mobilising all forms of assistance to the candidate countries within a single framework (European Commission 1999, 2).

1.1.2. Formal accession procedures

The formal procedures governing the admission of new members to the European Union are set out in Article 49 (ex Article O) of the Treaty on European Union (as amended by the Treaty of Amsterdam signed on 2 October 1997 which entered into force on 1 May 1999). Article 49 stipulates that "any European State which respects the principles set out in Article 6(1) may apply to become a member of the Union." Article 6(1) refers to "the principles of liberty, democracy, respect for human rights and fundamental freedoms, and the rule of law, principles which are common to the member States." Hence, the Treaty of Amsterdam which amended the Treaty on European Union added a political criterion, and the sheer fact of being a European State which was the requirement before 1997 was not sufficient.

A decision to open negotiations and set the accession process in motion is taken by the Council, in practice, the European Council, after the European Commission has issued its opinion on the application. Commission opinions on applications for membership are technical assessments of the applicant country's capacity to be a member. Table 2 presents stages in the process of accession to the European Union. According to Article 49 TEU, the Council is to act in response to the application by a unanimous decision, after consulting the Commission and after receiving the assent of the European Parliament, which must act in accordance with an absolute majority of its members. Moreover, the Council decides on the successful conclusion of the negotiations which may happen only after all the relevant membership criteria have been met.

The accession negotiations determine the conditions under which each applicant country may join the European Union. They focus on the terms under which the candidate country will adopt, implement and enforce the *acquis*, and, notably, the granting of possible transitional arrangements, although these transitional arrangements must be limited in scope and duration. The negotiations are held in bilateral accession conferences between the EU member states and each of the applicants. Each applicant country draws up its position on each of 31 Chapters covering all areas of the *acquis* and appoints a Chief Negotiator, with a supporting team of experts. The negotiations with each country proceed on their own merits. The pace of each negotiation depends on the degree of preparation by each applicant country and the complexity of the issues to be resolved (European Commission 2003).

The European Commission, Council and Parliament play a key role in taking decisions on enlargement and assessing compliance with the membership criteria. Moreover, under Article 46 TEU the Court of Justice has jurisdiction in respect of Article 49 TEU. In principle, therefore, the Court would have jurisdiction to determine whether or not the procedures laid down in Article 49 have been followed. The European Commission plays the role of an intermediary between the candidates and EU member states. It carries out the screening exercise with the applicants, conducts the negotiations and draws up draft negotiating positions for the member states. The Commission also monitors the progress made by candidate countries and checks whether the commitments they made during negotiations have been followed in practice. The Directorate General for Enlargement is responsible for the accession agenda and the Commissioner for Enlargement is the main representative of the European Commission in this area.

The Presidency of the Council of Ministers presents the negotiating positions agreed by the Council and chairs negotiating sessions at the level of ministers or their deputies. The General Secretariat of the Council provides the secretariat for the negotiations. The European Parliament is kept informed of the progress in negotiations and once they finish, it gives its assent to the final Treaty of Accession [Art. 49, TEU]. After Parliament's signature, both the member states and applicant countries ratify the accession treaty, in

Table 2. The process of accession to the European Union

A European State submits application for EU membership to the European Council
↓
The Council asks the European Commission to issue its opinion on the application
↓
The European Commission issues the opinion called avis
↓
By a unanimous decision the Council takes a decision to open accession negotiations
↓
The European Council under the leadership of the Presidency of the European Council conducts negotiations with candidate states
↓
The European Commission proposes EU common negotiating positions which are to be approved unanimously by the Council
↓
The Union and candidate states agree on the draft Treaty of Accession
↓
The final Treaty of Accession is submitted to the Council for approval and to the European Parliament for assent
↓
The European Parliament gives its assent to the Treaty of Accession
↓
The European Council unanimously approves the Treaty
↓
EU member states and candidate states officially sign the Treaty of Accession
↓
EU member states and candidate states ratify the Treaty of Accession
↓
Upon ratification the Accession Treaty becomes effective: the candidate states become a member of the European Union

Source: Chancellery of the Prime Minister, *Negocjacje Członkowskie,* Warsaw, 1999,

some cases by referenda. Then, the treaty takes effect and the applicant state becomes a member state (European Commission 2003).

1.2. Competition Policy

1.2.1. What is competition policy?

Competition policy constitutes one of the key elements of economic policy in countries with a market economy. Competition policy refers to "those tools of public policy that lay the foundation for markets or facilitate the creation and growth of efficient and competitive firms that can both deliver goods and services and engage in trade and competition in international markets" (Fingleton, et al. 1996, 2). In a narrow sense, competition policy only encompasses antitrust policy. In a broader sense, it includes state aid policy as well.

While a narrow definition confines competition policy to antitrust provisions, a broader understanding of competition policy also encompasses state aid policy. In a narrow sense, competition policy is a set of rules governing the conduct and transactions of enterprises, commonly known as anti-trust rules. Competition policy entails rules about the conduct of firms or the structure of industries. The former aims to prevent abuse of a monopolistic position. The latter seeks to prevent monopolies from arising (Begg et al. 2003, 244). Fingleton, et al. (1996) claim that in its broader sense, competition law would encompass all aspects of the proposition that neither governments nor commercial enterprises shall inhibit market competition. It would prohibit or limit government powers in the following areas: in imposing tariffs and non-tariff barrier to trade; in restricting foreign investment and the freedom of establishment of business; in controlling prices and

adopting overly broad trade-restraining laws; and in granting state aid. In the case of formerly planned economies, questions of privatisation and restructuring would thus come under any broad definition of competition policy (Fingleton et al. 1996, 3).

In the area of state aid policy, states attempt to reduce intervention in the economy in order to prevent undue distortion of trade and competition. While the main economic rationale for the state to use aid is that it rectifies a market failure and may be a useful policy instrument that can increase welfare, there is also the distinct possibility that state aid may enable policy-distortion or internal rent shifting. As a result this requires some control on state aid (Fingleton 2001). One of the basic reasons for having a system of state aid control is the risk of a subsidy race where EU member states might outbid each other. This would not only be a waste of public money, but also in the long term weaken the competitive position of European industry (Bilal and Nicolaides 1999, 14).

Competition policy has as its central economic goal the preservation and promotion of the competitive process, a process which encourages efficiency in the production and allocation of goods and services and, over time, through its effects on innovation and adjustment to technological change, a dynamic process of sustained economic growth (OECD 1984). It is beyond the scope of this study to elaborate on the history of the concept of 'competition' in economic theory[7], yet it should be noted that there is a consensus that competition is the principal regulator of commercial forces in a capitalist market which yield substantial efficiency benefits. In fact, the economic arguments for competition policy stipulate that the implementation of competition policy leads to improvements in allocative, technical and 'X'- efficiency. Allocative efficiency means that there is no way in which resources can be reallocated between factors of production which will lead to an increase in welfare. Technical efficiency exists when factors of production

[7] For an overview of the concept of competition in economic theory see High (2002).

are used in a way which minimizes production costs. 'X'-efficiency refers mainly to managerial efficiency which comes from improvements in managerial techniques, very often because of competitive pressures (Mayhew 1998, 107).

In fact, competition policy has no single unifying objective and there is a variety of objectives pursued in its name. The main school of thought today in terms of competition policy are the Chicago and the Brussels schools of thought (Willimsky 1997, 55). The Chicago school of thought, developed in the 1950's, gives priority to economic efficiency which should be the sole pursuit of the competitive process, and antitrust policy should only seek to prevent the inefficient allocation of resources. Socio-political considerations ought to be excluded from competition policy and a "pure" approach to the maximisation of efficiency taken. On the other hand, the Brussels School is concerned with a more "balanced" view of competition. "The EU pursues a policy which is to a far greater extent interventionist, with the fundamental, broad objective of market integration underlying all policy considerations" (Willimsky 1997, 55). Willimsky (1997) claims that there are a number of Chicago arguments which the European Commission firmly rejects, such as the Chicago view that very low predatory pricing is beneficial to consumers. The Commission is generally far more concerned about entry and expansion barriers and their potential to hinder intra-community trade.

1.2.2. Competition policy in the European Union

EU competition policy, which consists of antitrust, merger control and state aid control, is enshrined in Treaty provisions, Council regulations and the whole body of case law. Article 3 (g) of the 1957 EEC Treaty stipulates that "the activities of the Community shall include a system ensuring that competition in the internal market is not distorted".

Moreover, the competition provisions are given expression under Articles 81- 89 of the EC Treaty.[8] They refer to anticompetitive practices which "affect trade between Member States" and which may have an influence, direct or indirect, actual or potential on the pattern of trade between EU member states. Directorate General (DG) Competition of the European Commission classifies competition policy to include antitrust, merger control and state aid control.[9] However, it is often the case that mergers are regarded as a part of antitrust policy. While EU antitrust rules are directed at individual companies, and enforcement operates in a decentralised way as companies confront each other in private law suits, EU state aid rules are directed at the member states, and the control of state aid is centralised and implemented by the European Commission alone (Ehlermann and Everson 2001, xxii).

EU competition policy aims not only at fostering competition but aims at achieving other goals as well. McGowan and Wilks (1995) point out that, although maintaining and encouraging competition is one of the goals, competition is not regarded as an end in itself, but a means towards the fundamental aim laid down in the Rome Treaty:[10] the establishment of an internal market; the approximation of economic policy; the promotion of harmonious development between the member states; economic expansion; and a higher standard of living for consumers (McGowan and Wilks 1995, 141). Similarly, the Competition Commissioner in the years 1985-1989, Mr. Peter Sutherland, emphasised: "Competition is [...] not to be pursued for its own sake, but rather because it is an instrument for promoting a harmonious and balanced expansion, and an accelerated raising

[8] Article 12 of the Treaty of Amsterdam, signed on 20 October 1997 and in force on 1 May 1999, provides for the renumbering of the Articles of the EEC Treaty. For the competition provisions renumbering is the following: Article 81 [ex 85], Article 82 [ex 86], Article 86 [ex 90], Article 87 [ex 92] Throughout the thesis I use the new numbers of the articles.

[9] European Commission, Directorate General Competition
http://www.europa.eu.int/comm/competition/index_en.html

[10] The EEC Treaty - the Treaty establishing the European Economic Community was signed in Rome on 25 March 1957, and entered into force on 1 January 1958. The term 'Treaty of Rome" is often used with the reference to the EEC Treaty.

of standards of living."[11] Consequently, a number of differing objectives may lay at the heart of competition policy, not all of which are mutually compatible (Craig and De Búrca 2003, 936).

The development of European competition policy has been crucial for several reasons. First of all, competition policy is essential for the achievement and maintenance of the European Union internal market. Hence, restrictions on competition and practices which jeopardize the unity of the single European market are prohibited. Community rules are needed because only they can create a level playing field for all enterprises throughout the European Union (Willimsky 1997, 52). The Single Market programme, based on the free movement of goods, persons, services and capital, combined with EU competition policies, has promoted a neo-liberal deregulation: the removal of tariff barriers and the liberalisation of most sectors of the European economy. The European Union has forced its member states to reduce their intervention in the economy. Governments are no longer permitted to use trade barriers, state aid or special operating licences to protect their industries from competition from other EU member states. The emphasis is put on liberalisation as a means of strengthening the integration of European markets. Opening up new markets for competition inevitably enlarges the scope of state aid control. It has to be ensured that after liberalisation the previous restrictions on competition are not replaced by new distortions in the form of state aid (Bilal and Nicolaides 1999, 14). Secondly, enhancing efficiency in the sense of maximising consumer welfare and achieving the optimal allocation of resources is another goal of competition policy (Craig and De Búrca 2003, 936). Competition enables European enterprises to continuously improve their efficiency which is the prerequisite for the steady improvement in living standards and employment prospects in the EU. Thirdly, protection of consumers and smaller firms from

[11] Cited in Willimsky (1997, 52-57).

large aggregation of economic power, whether in the form of the monopolistic dominance of a single firm or of prohibited agreements, is another objective of EU competition policy (Craig and De Búrca 2003, 937).

The European Commission is the core EU competition policy institution. It has a Directorate in charge of competition matters known as DG COMP (formerly DG IV). The Council of Ministers gave wide-ranging powers to the Commission to enforce competition rules in the Council Regulation No. 17 of 1962. With effect from 1 May 2004 this Regulation was replaced by the Council Regulation 1/2003, the so-called 'Modernisation Regulation,' which radically changed the way in which antitrust rules are enforced (details are presented in Chapter 9). From an institutional and policy-making perspective, the degree of independence possessed by the European Commission with regard to competition policy is striking. In contrast to other policy areas it is not obliged, when taking decisions, to seek approval from the Council of Ministers nor has it had to concern in earnest itself with the views of the European Parliament (McGowan and Wilks 1995, 148). The Commission has wide investigative power. However, firms or member states which are the subject of a Commission decision may challenge the decision before the Court of First Instance and the Court of Justice in Luxembourg. The European Court of Justice, under Articles 172-7 of the Rome Treaty, has unlimited jurisdiction concerning decisions made by the Commission. Moreover, the Court of First Instance was established in 1988 in order to assist with competition cases.

National competence and Community competence are autonomous and parallel in the field of competition policy. While national rules apply in situations where markets within the boundaries of a single member state are involved, Community competence is defined by the criterion of the effect of trade among EU member states. The Community level rules applicable to restrictions of competition and abuses of a dominant position were

designed to apply only to situations where an appreciable effect on "trade between the Member States" [Article 81, EC Treaty] can be established. In merger cases, those transactions which satisfy threshold requirements fall within the exclusive jurisdiction of the Commission; others are subject to member state controls. "In a concrete case there may be a juxtaposition of the validity of European law and national law. In such a case, European law takes precedence over national law" (Moussis 2001, 311).

Antitrust and cartels

The most important provisions in the field of antitrust and cartels are Articles 81 and 82 of the EC Treaty which deal respectively with restrictive trading agreements and the abuse of a dominant position. Moreover, both case law and documents published by the European Commission need to be analysed in the context of Treaty Articles.

Article 81 of the EC Treaty prohibits restrictive agreements and concerted practices between undertakings which "may affect trade between the Member States and which have as their object or effect the prevention, restriction or distortion of competition within the common market." Restrictive agreements between two or more firms entail adopting a specific type of conduct. The *Quinine Cartel*[12] shows that less formal agreements can be caught under Article 81. On the other hand, concerted practices involve coordination among firms which falls short of an agreement proper. The *Sugar Cartel*[13] case shows that there can be a concerted practice even though there is no actual plan in operation between the parties.

In general, certain types of agreements and concerted practices are prohibited, almost without exception. They are the following: agreements that fix prices directly or

[12] Cases 41, 44&45/69, ACF Chemiefarma NV v. Commission [1970] ECR 661.
[13] Cases 40-48, etc./73, 'Suikar Unie' v. Commission [1975] ECR1663.

indirectly; agreements on conditions of sale; agreements that isolate market segments, such as those concerning price reductions or those that seek to prohibit, restrict or, on the contrary, promote imports or exports; agreements on production or delivery quotas; agreements on investments; joint sales offices; market-sharing agreements; exclusive collective markets; agreements leading to discrimination against other trading parties; collective boycotting and voluntary restraints (agreements not to engage in certain types of competitive behaviour). The ban applies to both horizontal and vertical agreements. Horizontal agreements refer to the same stage of production, processing or marketing and are those that prevent rivalry about the fundamental dynamics of market competition, price and output. Vertical agreements refer to the firms operating at different stages of the economic and commercial process. Vertical agreements try to control aspects of distribution. An agreement which is caught by Article 81(1), and which does not satisfy the criteria of Article 81(3), is automatically void in respect of its offensive provisions.

Article 81(3) provides for the possibility of authorising agreements prohibited under Article 81(1). Under Regulation 17/62, the Commission has sole power, subject to review by the Court of First Instance, to apply Article 81(3). In both prohibiting restrictive agreements and allowing for their exemption, the law gives DG Competition officials scope to apply their policy flexibility, permitting each case to be dealt with on its own merit. There are four conditions for an agreement to gain exemption under Article 81(3). It must improve the production or distribution of goods or promote technical or economic progress; consumers must receive a fair share of the resulting benefit; it must contain only restrictions which are indispensable to the attainment of the agreement's objectives; and it cannot lead to the elimination of competition in respect of a substantial part of the products in question (Craig and De Búrca 2003, 963). The European Commission gives individual exemption or a block exemption applicable to a category of agreements.

Some agreements are even excluded altogether from the Article 81(1) ban. The so-called *de minimis* rule refers to agreements of minor importance. The agreement must affect trade between EU member states and the free play of competition to an appreciable extent in order to come within the prohibition imposed by Article 81. This is what the Court of Justice ruled in the case - *Beguelin Import v. G L Import Export.*[14] The criterion is that agreements between undertakings do not appreciably restrict competition where the aggregate market share held by the parties to the agreement does not exceed 10 per cent on markets where the parties are actual or potential competitors. The relevant figure is 15 percent for the cases where the parties are not competitors on the relevant markets (Craig and De Búrca 2003, 937).

Another device developed by the Court in order to reduce the constraints imposed on business by Article 81 and to reduce the burden on the Commission is called a rule of reason. The rule of reason implies balancing an agreement's beneficial effects against any restrictions on competition which it contains as suggested in the case *Société Technique Minière v. Maschinenbau Ulm.*[15] Moreover, certain types of cooperation are considered to be positive, such as agreements which contribute to improving the production or distribution of goods or to promoting technical or economic progress and, thus, they may be exempt. This may include licensing agreements for technology transfer; specialisation and R&D agreements; franchise agreements and agreements in the insurance sector.

The control of market power is provided for in Article 82 of the EC Treaty. It states that "any abuse by one or more undertakings of a dominant position within the common market or in a substantial part of it shall be prohibited as incompatible with the common market in so far as it may affect trade between the Member States." Such abuse may mean "directly or indirectly imposing unfair purchase or selling prices or unfair trading

[14] Case 22/71 [1971] ECR 949, para 16. See also Case 5/69 Volk v. Vervaecke [1969] ECR 295.
[15] Case 56/65 [1966] ECR 235.

conditions; limiting production, markets or technical development to the prejudice of consumers; applying dissimilar conditions to equivalent transactions with other trading parties, thereby placing them at a competitive disadvantage; making the conclusion of contracts subject to acceptance by the other parties of supplementary obligations which, by their nature or according to commercial usage, have no connection with the subject of such contracts." Unlike Article 81 of the Treaty, there is no exemption available for abuse of a dominant position.

Article 82 does not prohibit market power or monopoly *per se* but the "abuse of dominant position." As a result, the Commission must prove the existence of a dominant position which has a negative impact on competition, consumer welfare, or market integration. Article 82 does not provide a definition of dominance and relevant market. Before the Commission can decide whether a firm holds a position of dominance, it has to define a relevant market. There are three dimensions to the Community's market analysis: assessment of the product market, the geographical market and the temporal market. Moreover, market power establishes the position of the firm in both quantitative and qualitative terms in that relevant market. It was first defined in the *Sirena v. Eda* case[16] in 1971 as "the ability or power to prevent effective competition in an important part of the market." The Commission published a Notice on the Definition of the Relevant Market for the Purposes of Community Competition Law.[17] It was an important notice because the Commission clarified that the definition would be viewed differently depending upon the nature of the competition inquiry: an investigation into a proposed concentration is essentially prospective, while other kinds of investigation may be concerned primarily with an analysis of past behaviour (Craig and De Búrca 2003, 937).

[16] Case 40/70 [1971] ECR 49.
[17] [1997] OJ C372/5, [1998] 4 CMLR 177.

Article 82 has direct effect as judged in the case - *Compositeurs et Editeurs (BRT) de Musique v. SV SABAM and NV Fonior.*[18] The roles of the Commission and the national authorities correspond to their roles in Article 81 of the Treaty. The national courts can, therefore, apply Article 81(1), 82, and the block exemptions. However, national courts did not, prior to the modernisation reforms, have authority to give rulings on Article 81(3). However, when the new Council Regulation came into force on 1 May 2004, the position of national courts was transformed. National courts and national competition authorities are now empowered to apply the entirety of Article 81.

In 1999, the European Commission proposed a radical reform of the existing system of implementation of Articles 81 and 82 of the EC Treaty which is laid down in Council Regulation no. 17/1962. The Council adopted a new Regulation implementing Article 81 and 82 of the EC Treaty which replaced Regulation 17/62 on 1 May 2004 (the new regulation is presented in detail in Chapter 10). The new proposal involves the termination of the centralised system of notification to the Commission of agreements between enterprises. The reform proposal is based on the fact that many notified agreements do not involve serious problems for competition.

Merger control

The control of mergers and acquisitions is one of the pillars of EU competition policy. Merger control was absent from the EEC Treaty mainly due to the generally held view in the 1950's that the objective of economic expansion promoted by the EEC Treaty would necessitate large concentrations of economic power. However, in the following decades attitudes changed and the demands of industry for the creation of a "level playing-field" for

[18] Case [1974] ECR 51.

merger control were heard.[19] Nevertheless, it was only in 1989 that the Council Regulation provided for the merger regulation.

The Council Regulation No. 4064/89 of 21 December 1989 on the control of concentrations between undertakings[20] provided for merger control. Article 2 of the Council Regulation stipulates that a concentration with a Community dimension "which creates or strengthens a dominant position as a result of which effective competition would be significantly impeded in the common market or in a substantial part of it shall be declared incompatible with the common market." As defined in Article 3 of the Regulation a concentration is when "two or more previously independent undertakings merge, or one or more persons already controlling at least one undertaking, or one or more undertakings acquire, whether by purchase of securities or assets, by contract or by any other means, direct or indirect control of the whole or parts of one or more other undertakings." Moreover, "the creation of a joint venture performing on a lasting basis all the functions of an autonomous economic entity, is a concentration."

Hence, there can be three kinds of mergers. Horizontal mergers are those between companies which make the same products and operate at the same level of the market. Vertical mergers are those between companies which operate at different distributive levels of the same product market. Conglomerate mergers are those between firms which have no connection with each other in any product market (Craig and De Búrca 2003, 1035).

The European Commission has exclusive power to investigate mergers with a "Community dimension." The Commission can prohibit mergers which create or strengthen a dominant position in the Common Market. Article 1(2) of the Regulation defines a concentration to "have a 'Community dimension' where the combined aggregate

[19] For arguments against mergers and in favour of mergers see Craig and De Búrca (2003).
[20] Official Journal L 395, 30.12.1989, pages 1-12.

world turnover of all the undertakings concerned is more than ECU 5,000 million, and the aggregate Community turnover of each of at least two of the undertakings concerned is more than ECU 250 million." The Council Regulation No.1310/97 amended the Council Regulation No.4064/89 and altered the merger thresholds: the Commission can block mergers where the aggregate worldwide turnover of the companies involved exceeds 2.5 billion euro, and the EU-wide turnover of at least two of the companies exceeds 100 million euro (unless both companies derive more than two-thirds of their EU-wide turnover within one member state). On 11 December 2001, the Commission adopted a Green Paper on the Review of Regulation (EEC) No. 4046/89 (which is described in detail in Chapter 10). The idea of a "one-stop shop" within the European Union for the examination and control of concentrations having a Community dimension will be preserved.

A central element of the Merger Regulation is, hence, the idea that mergers which have a Community dimension should, in general, be investigated only by the European Commission. This policy finds expression in Article 21(1) which states that only the Commission may take the decision covered by the Merger Regulation. This "one-stop-shop" system meets the needs for effectiveness since it makes it possible to examine a transaction having cross-border effects, which might otherwise avoid individual scrutiny by the national courts (European Commission 2003a).

Appeals from the Commission's decisions under the Merger Regulation are heard by the Community courts. Applicants who wish to challenge such decisions will, however, have to satisfy the normal criteria for annulment under Article 230 (Craig and De Burca 2003, 1059).

State aid control

State aid control is the area of EU competition policy regulated in Articles 87 to 89 of the EC Treaty and, at a secondary level, by both case law and documents published by the European Commission. Article 87 prohibits any aid granted by a member state or through State resources in any form which distorts or threatens to distort competition by favouring certain firms or the production of certain goods. In general, any advantage granted by the State or through state resources is regarded as state aid where it confers an economic advantage on the recipient; it is granted selectively to certain firms or to the production of certain goods; it could distort competition or it affects trade between member states. Yet, the concept of aid is not precisely defined in the EC Treaty. The European Court of Justice and the European Commission have adopted a broad view of what constitutes state aid. It may include: direct subsidies, tax exemptions,[21] exemptions from parafiscal charges, preferential interest rates, favourable loan guarantees, the provision of land or buildings on special terms and preferential terms of public ordering. The European Court of Justice has also clarified that the concept of aid covers not only positive benefits, such as subsidies, but also actions which mitigate the charges an undertaking would normally bear, such as the supply of goods and services at a preferential rate, a reduction in social security contribution,[22] or tax exemptions (Craig and De Burca 2003, 1141).

The EC Treaty allows exceptions to the ban on state aid where the proposed aid schemes may have a beneficial impact in overall Union terms. In fact, Article 2 of the Treaty states that one of the Community's tasks is to "promote throughout the Community a harmonious and balanced development of economic activities" and, given that economic development differs from one member state to another and from one region to another, this

[21] Case C-387/92, Banco de Credito Industrial SA v. Ayuntamiento de Valencia [1994] ECR I-877.
[22] Case C-75/97, Belgium v. Commission [1999] ECR I-3671.

task may require specific government intervention. Article 87(2) and Article 87(3) provide for a number of exemptions. Article 87(2) lists three types of aid which are deemed compatible with the common market: aid having a social character, granted to individual consumers; aid to make good the damage caused by natural disasters or exceptional occurrences and aid granted to areas of Germany affected by the division of the country. Exceptions listed in Article 87(3) are discretionary which means that the following aid may be deemed compatible under this article: aid designed to promote the economic development of underdeveloped areas to promote the execution of an important project of common European interest or to remedy a serious disturbance in the economy of a Member State; to facilitate the development of certain activities or areas, to promote culture and heritage conservation (where, in the last two cases, such aid does not affect trading conditions and competition in the Community to an extent that is contrary to the common interest).

State aid control is the area of EU competition policy where exclusive authority for scrutinising state aid schemes of EU governments was conferred on the European Commission by the Member States. Article 88(1) stipulates that "the Commission shall, in cooperation with Member States, keep under constant review all systems of aid existing in those States." Moreover, the Commission was endowed with a procedural command of the basis of the Council Regulation No.659/1999. The Commission has the power to require that illegally granted aid be repaid by recipients to the public authorities which granted it. The Member State must recover the aid immediately in accordance with domestic procedures. The Commission decisions are subject to a judicial review. Challenges to Commission decisions are normally brought under Article 230 to annul the decision. The European Court of Justice and the Court of First Instance will be mindful of the fact that assessment of the exceptions may entail complex evaluations of social and economic data,

and they will not, therefore, substitute their view for that of the Commission (Craig and De Burca 2003, 1138).

In fact, procedural rules derive from the relevant Treaty articles, the case law of the European Court of Justice and the Court of First and the Regulation No.659/1999. Articles 88 and 89 of the EC Treaty provided for procedural rules. The cornerstone of the control system is the obligation to notify to the European Commission about all plans to grant or alter aid, and the prohibition against putting them into effect before the Commission has authorised them (a standstill clause). The procedure to examine a notification is divided into two stages: a preliminary examination and a formal examination for cases which raise doubts as to their compatibility with the common market. In 1973 the European Court of Justice decided in the *Lorenz* case[23] that the Commission should conclude its preliminary examination within a period of two months. If no decision is taken within this time limit, the member state may grant notified aid. After the preliminary examination of the notified measure, if the Commission has doubts as to its compatibility with the common market, it opens formal investigation in accordance with Article 88(2). If any existing aid is found to be incompatible with the common market as the result of the review under Article 88(1) then it will be unlawful from the date set for compliance with that decision. The Court has, not surprisingly, held that, as a matter of principle, illegal state aid should be repaid, this being the logical consequence of a finding that the aid was unlawful as judged in *Deufil v. Commission* case[24] (Craig and De Burca, 2003; 1160). Article 89 empowers the Council to make any appropriate regulations for the application of Articles 87 and 88.

In general, there is no need of notification of state aid in two cases: *de minimis* and individual awards of aid on the basis of an approved aid scheme. However, both the European Court of Justice and the Commission have been less than clear in their approach

[23] Case 120/73 *Lorenz* [1973] ECR 1471.
[24] Case 310/85, *Deufil* [1987] ECR 901.

to the application of a *de minimis* rule to state aid (Quigley and Collins 2003, 64). Nevertheless, the Commission has long acknowledged that minor cases of aid had no appreciable effect on competition. In 1992, the European Commission adopted guiding principles for small and medium-sized enterprises which exempted from the notification requirement aid to small and medium-sized enterprises up to ECU 50,000 over a three-year period.[25] In 1996 the guidelines were amended and the Commission also issued a notice on the *de minimis* rule for state aid with a ceiling for aid covered by the *de minimis* rule of ECU 100,000.[26] The Regulation (EC) No. 69/2001 continues the policy; the total *de minimis* aid granted to any one independent enterprise must not exceed EUR 100,000 over any period of three years (Quigley and Collins 2003, 67).

1.3. Poland

1.3.1. Europeanisation in Poland

The impact of the European Union in Poland has been significant for more than a decade now. Some key events were crucial for Europeanisation in Poland. First of all, the Europe Agreement was signed in 1991. Then, the Polish government applied for EU membership in 1994. Subsequently, the accession negotiations began in 1998 and were concluded in 2002. The pre-membership period was market by important institutional adjustment driven by EU accession conditionality. In the 1990's EU integration policy in Poland encompassed institutional coordination at several levels: internal adjustments, law approximation, accession negotiations, management of pre-accession funds as well as

[25] OJ 1992 C213/2.
[26] OJ 1996 C68/9.

administrative coordination resulting from the Europe Agreement (Pyszna and Vida 2002, 23). Finally, Poland's accession to the European Union took place in 2004.

Europeanisation in Poland began when the country signed its first agreements with the European Union at the end of 1980's. Diplomatic relations were established in September 1988. The year 1989 was crucial in mutual relations because the Mazowiecki government signed the Trade and Cooperation Agreement - the first agreement between Poland and the European Community. That year was also important in terms of Poland's presence in Brussels: the Polish Mission to the European Community was set up, led by Jan Kułakowski, who became Chief Negotiator for EU accession nine years later (Pyszna and Vida 2002, 14). In December 1989 the Council of Ministers of the European Communities established a legal basis for a PHARE programme which comprised economic assistance to Hungary and Poland later extended to other countries of Central and Eastern Europe. In the first half of 1990, the Polish authorities began to take steps towards more association with the Community and submitted an application to begin negotiations for an association agreement. On 16 December 1991 the Association (Europe) Agreement was signed between the European Communities and their member states, and the Republic of Poland.

The signing of the Europe Agreement imposed on Poland the need for a speedy establishment of institutions able to carry out Community policies. The position of the Government Plenipotentiary for European Integration and Foreign Assistance was established in January 1991. Its responsibilities included initiating, organising and coordinating measures related to the process of adaptation and integration with the EU. The Europe Agreement was the milestone in the process of adjustment of Polish administration to EU-oriented policy. It implied the creation of joint EU-Poland institutions such as the Association Committee, Association Council and Parliamentary

Committee (Pyszna and Vida 2002, 20). In order to improve implementation of the Europe Agreement and the development of pre-accession policy, the government reorganised its structures in October 1996. The Committee for European Integration took over the responsibilities of the Government Plenipotentiary in 1996. It had steering functions and decision-making power in the area of European integration issues. The Office of the Committee for European Integration assessed all legislative proposals for compatibility with EU legislation.

According to the Committee for European Integration, membership of the European Union was a strategic objective of Poland and one of the main challenges facing Polish politics and the economy (Committee for European Integration 1997, 9). Integration into Western political and security structures has been the main goal of successive Polish governments since 1989 (European Commission 1997, 8). Poland's first post-Communist President, Lech Wałęsa, highlighted his support for the multilateral integration of Poland into Western structures, calling them "institutions that have proven their efficacy in resolving the problems of their members" (Riedel 2000).

The Europe Agreement of 1991

The Europe Agreement[27] which established an association between the European Communities and their member states, on the one part, and the Republic of Poland, on the other part was signed on 16 December 1991 and came into force on 1 February 1994. Its trade provisions had already entered into force on 1 March 1992 under an Interim Agreement. The Interim Agreement provided for "the consolidation of earlier trade

[27] Europe Agreement Document 293A1231(18); OJ L 348, 31.12.1993.

concessions as well as the gradual and asymmetrical establishment of a free trade area over ten years."

The Europe Agreement was a legally binding association agreement whose aim was to "provide an appropriate framework for Poland's gradual integration into the Community. To this end, Poland shall work towards fulfilling the necessary conditions" [Article 1]. In exchange, "the Community shall provide Poland with technical assistance for the implementation of these measures" [Article 70]. Hence, the aim of the Association Agreement was to provide a framework for political dialogue, to promote the expansion of trade and economic relations between the parties, provide a basis for Community technical and financial assistance and an appropriate framework to support Poland's gradual integration into the Union (European Commission 1997).

EU conditions encompassed in the Europe Agreement provided that Poland would make its legislation compatible with that of the Community under Articles 68 and 69. Article 68 stipulated that "the Contracting Parties recognize that the major precondition for Poland's economic integration into the Community is the approximation of that country's existing and future legislation to that of the Community. "Poland shall use its best endeavors to ensure that future legislation is compatible with Community legislation." Hence, the grounds for fully fledged first accession conditions were laid down in the Europe Agreement. Article 69 stipulated: "the approximation of laws shall extend, in particular, to the following areas: customs law, company law, banking law, company accounts and taxes, intellectual property, protection of workers at the workplace, financial services, rules on competition, protection of health and life of humans, animals and plants, consumer protection, indirect taxation, technical rules and standards, transport and the environment." It should be noted that this enumeration did not have an exhaustive

character but might rather be considered as a very specific type of guidelines (Lazowski 2001).

In competition area, the Europe Agreement encompassed both international and domestic dimensions. While the former referred to trade relations "in so far as they may affect trade between the Community and Poland" (Article 63), the latter referred to harmonisation of national laws with Community rules as provided in Articles 68 and 69. The chapter dealing with competition provisions formed part of the Title V on payments, capital, competition and other economic provisions and approximations of laws. Competition provisions concerned both industry and service activities but did not apply to agricultural and fishery products.

The Europe Agreement competition provisions were based on the criteria of Articles 81 and 82 of the EC Treaty, which deal with agreements between undertakings and abuses of dominant position, and Article 87 (ex 92) on state aid. Implementing rules in these fields were to be adopted within three years of the entry into force of the Agreement. The provisions dealing with competition matters were also contained in the interim agreements and the competition rules had already entered into force by virtue of the interim agreements in March 1992. The Europe Agreements did not contain any provisions on mergers. In the field of restrictive practices and concerted practices, Article 63(i) of the Europe Agreement provided that all agreements between undertakings, decisions by associations of undertakings and concerted practices between undertakings which have as their objects or effect the prevention, restriction or distortion of competition are declared incompatible with the functioning of the Agreement. Moreover, the same Article 63(ii) provided that "abuses by one or more undertakings of a dominant position in the territories of the Community or of the other signatory as a whole or in substantial part thereof" was regarded as "incompatible with the proper functioning of the Agreement." The Europe

Agreement also contained provisions on state monopolies of a commercial character and public undertakings. Moreover, Article 63(iii) provided that "any public aid which distorts or threatens to distort competition by favouring certain undertakings or the production of certain goods" is incompatible with the functioning of the agreement. Furthermore, according to Article 63.IV "Each Party shall ensure transparency in the area of public aid, *inter alia,* by reporting annually to the other Party on the total amount and the distribution of the aid given and by providing, upon request, information on aid schemes."

Poland's 1994 application for EU membership

The Government of the Republic of Poland headed by the Prime Minister Waldemar Pawlak submitted an application for membership of the European Union on 5 April 1994. Pawlak was Prime Minister of the Social Democrat-Peasant coalition of the Alliance of the Democratic Left (SLD) and the Polish Peasant Party (PSL). He was followed by two SLD Prime Ministers: Mr Oleksy and Mr Cimoszewicz. These would not be the governments actually embarking on formal negotiations with the European Union but they were responsible for preparing for the start of these negotiations in 1998.

Polish political elites saw EU membership as a political and economic imperative and a key element of the much heralded "return to Europe." Each government and every successive foreign minister reiterated Poland's strong commitment to the EU (Millard 1999a). Although there were clearly varying degrees of enthusiasm and nuances in their different approaches, no major Polish political grouping or actor questioned the objective of EU membership at the beginning of the 1990's. The process of integration has been supported by the main political forces and economic circles and has been one of the top

priorities of every Polish Government since 1989 (Committee for European Integration 1997, 9).

The issue of EU membership acquired a higher profile after Poland formally submitted its application in 1994 (Szczerbiak 2001). President Kwaśniewski in his address at the College of Europe in Natolin in November 1996 stressed: "the transformation in Poland launched after the historic breakthrough in 1989 consists not only in reforms of the economy but also in opening up to the world. For us, the prospect of European integration is a historic challenge. We are thinking not only of the benefits we will gain from accession to the European Union. We are also aware of the obligations incumbent upon us from our role in the unification of the continent." Moreover, "integration with the Union will help to accelerate economic growth, modernise the economy and the legal system, and eliminate the technological gap. National interest explains the Polish determination to become a member of the Union. The balance of costs and benefits of membership shows that the positive effects are much more substantial than the negative (Committee for European Integration 1997).

For the Polish government, the most important documents referring to compliance with the *acquis* criteria included the National Strategy for Integration and the National Programme for the Adoption of the *Acquis*. The cabinet led by SLD Prime Minister Cimoszewicz adopted a National Strategy for Integration on 28 January 1997. The programme systematised the existing integration efforts and defined adjustment tasks in the period directly preceding accession. It aimed at preparing for EU accession and for the adoption of the Community directives listed in the European Commission's Single Market White Paper. In March 1998, the Council of Ministers of the Republic of Poland adopted a National Programme for the Adoption of the *Acquis* (NPAA). NPAA set out a timetable for achieving adaptational priorities resulting from the Accession Partnership as well as the

potential economic and administrative impact. It covered both the legislative aspects of the approximation activities and also the implementation implications, including possible administrative changes and financial expenses. The document emphasised the importance of a number of key pre-accession policies. The Polish government submitted a revised version of its National Programme for the Adoption of the *Acquis* in May 1999, 2000 and June 2001 in which it outlined its strategy for accession including how to achieve the priorities contained in the Accession Partnerships.

EU membership has always required applicants to harmonise their domestic laws in full with the *acquis communautair*e. Approximation of Polish law to European law played a fundamental role in the accession period (Mayhew 1998; Ojala 1998; Czaplinski 2002). The third Copenhagen condition also indicated that the major work of adjustment of domestic legislation and policy must take place prior to accession, and not afterwards. In exceptional cases, time-limited transition periods were negotiable. The aim was not to undermine the principle of the integrity of the *acquis* as a whole. Similarly, Poland was required to ensure compliance of its national legislation with the EU *acquis.* The obligation to comply with the EU regulations stemmed from Poland's commitment to the Association Agreement and to fulfill all the accession criteria as presented by the Copenhagen European Council in 1993.

The concept of approximation (called also adaptation, incorporation or harmonisation) may be interpreted differently. As Fingleton et al. (1996) pointed out there could be a broad and general significance of the word, such as to bring into general harmony. By this interpretation it would be sufficient for the countries to incorporate and carry out the general principles of EC law (Fingleton et al. 1996, 55). Another interpretation is that the approximation task should mean an obligation to incorporate the respective Community rules into the legal order of the associated country to the fullest

extent possible as an important condition of membership in the Union (Piontek 1997, 73). In fact, the latter interpretation seems to be applicable in the case of candidate countries from Central and Eastern Europe because the scope of approximation activities was much wider than this [policy areas enumerated in Article 69] and included the whole *acquis communautaire.* Taking into account continuing development of EU law we may conclude that the approximation process had a very dynamic character (Lazowski 2001).

The European Commission assessed compliance with accession criteria continuously. Formally, a decision to begin accession negotiations and, then, to close them was the indication of a degree of compliance. However, the Commission's opinion on Poland's application for EU membership and the so-called Accession Partnership followed by the Commission's annual reports were subsequent Union documents relating directly to the assessment of complying with the accession criteria. The *avis* judged candidates' progress in conforming to the pre-accession strategy set out by the EU, and also in meeting the Copenhagen conditions (Grabbe 1999, 15). Moreover, the Accession Partnerships launched on 15 March 1998 provided a single framework for basic components of pre-accession strategy: priority areas in which the Community *acquis* was to be adopted; programming the Union's financial assistance; the terms applying to this aid: compliance with the obligations under the Europe Agreements and progress in meeting the Copenhagen criteria. In fact, the Accession Partnerships were not legally binding for candidate states, as they were unilateral EU measures, but they made the Copenhagen conditions a quasi-legal obligation by establishing a control procedure and system of sanction and they became the main instrument governing EU-CEEC relations, making them a strong influence on CEEC policy-makers (Grabbe 1999, 16). Moreover, the Commission submitted reports to the European Council each year on the progress made by each of the candidate countries of Central and Eastern Europe in preparations for

membership. The reports served as a basis for the Council to take decisions on the conduct of negotiations or their extension to other candidates on the basis of the accession criteria.

Accession negotiations in 1998-2002

Accession negotiations between the European Union and its Member States, and Poland began in March 1998 and came to an end in December 2002. They began under the premiership of Jerzy Buzek of the post-Solidarity (AWS) and liberal (UW) coalition government and came to an end with the Social-Democrat Prime Minister, Leszek Miller. Before negotiations started the Polish government adopted 31 December 2002 as the date on which Poland would be prepared for the accession to the European Union (Council of Ministers 1998). This was the time framework for the process of harmonisation and implementation of Community law. Simultaneously, the European Union emphasised that progress in negotiations depended on the extent of compliance with the accession criteria.

During negotiations the political leadership of the negotiations was given to the Prime Minister and supported by the Minister of Foreign Affairs and the Government Plenipotentiary for Poland's Accession Negotiations to the EU. The institution of the Government Plenipotentiary was created by the decision of the Council of Ministers on 24 March 1998, before the negotiation talks started. The institutions that supported the activities of the Plenipotentiary were the Chancellery of the Prime Minister, the Ministry of Foreign Affairs and the Office of the Committee for European Integration. Mr. Jan Kułakowski was appointed as a first Government Plenipotentiary (Chief Negotiator) and stayed in the role until October 2001. His successor, Jan Truszczyński, took the office of Chief Negotiator in October 2001, following the change of government. In October 2001

the Chief Negotiator was appointed the Under-Secretary of State in the Ministry of Foreign Affairs (Pyszna and Vida 2002, 25).

The negotiations were held in bilateral accession conferences between the Member States and Poland, on the basis of 31 Chapters covering all areas of the *acquis*. The negotiations determine the conditions under which each candidate country could join the European Union. On joining the Union, applicants are expected to accept the *acquis*, i.e. the detailed laws and rules adopted on the basis of the EU's founding treaties. The negotiations focused on the terms under which the applicants would adopt, implement and enforce the *acquis*, and, notably, the granting of possible transitional arrangements which had to be limited in scope and duration. The initial phase of negotiations which started in April 1998 and lasted until mid-1999, was an analytical examination of the *acquis* (called screening) and a review of Polish law in view of its compatibility with EU law. Simultaneously, talks commenced in eight relatively unproblematic areas.

There were both easy areas (chapters) for negotiation as well as difficult ones. Mayhew (2000) classified the chapters for negotiation as the chapters which did not pose any problems for the negotiations because they covered areas where there was hardly any Community regulation (Science and research, Education and training, Statistics); chapters with negotiating problems of limited significance (telecommunications and information technology, the Common Foreign and Security Policy, consumer protection and health, Economic and Monetary Union); and chapters with serious sectoral policy concerns (free movement of goods, free movement of services, taxation, competition policy and state aid) and the 'end-game' negotiating problems (agriculture, environment, justice and home affairs, free movement of person, finance and budget and possibly institutional questions).

Appendix 2 presents all chapters for accession talks and the period of time during which the chapters were negotiated. No harmonisation problems occurred and no

transitional arrangements were requested by Poland in several areas, for example, Science and Research, Education and Training, Consumers and Health Protection. The reasons were of varied character. Firstly, the *acquis* did not require any major transposition in the domestic legal order, for example, in the field of science and research. Secondly, alignment with the *acquis* may already have been significant. This was the case in the area of consumer protection in which alignment was advanced and an administrative capacity has seen a reasonable development. In contrast, in a few areas transposition of the *acquis* and implementation of the Community law required major changes in the policy area. State aid (competition chapter), Regional policy, Agriculture, Environment and Fisheries were the most difficult areas for negotiations because of the problems associated with the adoption of the *acquis*. The negotiations on the competition chapter lasted long. The negotiation area of competition policy consisted of two separate topics: competition rules applicable to undertakings (antitrust) and competition rules applicable to the state (state aid). Poland's Position Paper in the area of competition policy stated: "Poland accepts and will implement in full the *acquis communautaire* in the area of competition rules applicable to undertakings and it will not request derogations or transition periods concerning the *acquis* in the area. However, Poland will request derogations in the area of state aid, in particular, some forms of state aid granted to entrepreneurs in Special Economic Zones where Poland requests a transition period until the end of 2017" (Council of Ministers 1998).

In assessing whether the candidate countries can comply with the competition *acquis* and withstand the competitive pressures of the internal market resulting from the full application of this *acquis*, the Commission examined whether undertakings operating in the candidate countries were accustomed to operating in an environment such as that of

the Community.[28] Before competition negotiations were provisionally closed, three elements had to be in place in these countries: the necessary legislative framework for antitrust and state aid; the necessary administrative capacity; and a credible record of enforcement of the competition *acquis.* These three factors had to be met well before accession (European Commission 2001b).

1.3.2. The Polish economy in the 1990's

Poland was one of the few transition economies which experienced substantial and sustained growth although it did not avoid negative effects of fluctuations in the economy. Real GDP increased by 6.0% in 1996, 6.8% in 1997 and 4.0% in 2000 but then it decreased substantially in 2001 to 1.1% (European Commission 2002, 34). The adverse impact of the Russian crisis of August 1998[29] (lost exports and negative multiplier effects on domestic output) may be held responsible for up to 1 or 1.5 percentage points (that is 50% to 66%) of the growth rate loss Poland suffered in 1998 (a deceleration of the GDP growth from 6.8% in 1997 to 4.8% in 1998) (Rapacki 2001, 114). The ILO-compatible unemployment rate was above 18% in 2000. Since the 1998 Russian crisis, a new round of labour shedding had taken place. Inflation was dropping consistently. In September 2001, the consumer price index (national CPI) fell to 4.3% over the corresponding period in 2000 from 8.5% in December (European Commission 2001, 28).

According to Belka (2001) business activity in Poland after 1989 could roughly be divided into four phases. The first stage was transformation recession in 1990-92. It was in 1990 that a transformation process from a centrally planned economy to a fully-fledged market economy began. This initial period was followed by an early revival from mid-

[28] See http://www.europa.eu.int.
[29] In 1998 Russia faced unsustainable public debt dynamics and low international liquidity (Pinto, B. et al.2004).

1992 to late 1994. A recovery proceeded and acceleration continued between 1994 and mid-1998. Then, subsequent slowdown occurred and the economy entered a recession (Belka 2001, 21).

The transformation recession resulted from the introduction of the stabilisation package of 1990, followed by the collapse of Comecom trade. In 1990, the Mazowiecki government began a comprehensive reform programme to replace the centralized command economy with a market-oriented system. In September 1989, Leszek Balcerowicz became Deputy Premier and Minister of Finance in the first non-communist government in Poland. Balcerowicz carried out the plan of rapid stabilisation and transformation of the Polish economy, generally known as the "Balcerowicz Plan." The economic reforms introduced in 1990 removed price controls, eliminated most subsidies to industry, opened markets to international competition, and imposed a strict budgetary and monetary discipline. While the results overall were impressive, many large state-owned industrial enterprises, particularly the railroad and the mining, steel, and defence sectors, remained resistant to the change and downsizing required to survive in an open market economy. Recorded GDP fell by around 18% but real wages decreased by 30% and the unemployment rate climbed from what was perceived as 0% to over 10%.

Poland was the first former centrally planned economy in central Europe to end its recession and return to growth in the early 1990s. The Polish economy started to grow in 1992 and returned to its pre-transition output level in 1995 and by 1998 it had exceeded it by about 20 per cent (OECD 2000, 25). Growth acceleration during 1995-98 produced rates of GDP expansion in the range of 6-7% annually. Poland entered a phase of intensive modernisation. Real investment outlays grew regularly at rates surpassing 20% per annum, albeit from a relatively low level. After the final resolution of foreign debt rescheduling (London Club in 1994), FDI started flowing in. Growth slowdown took place in late 1998

but GDP for the whole year grew by a healthy 4.8% before decelerating further in 1999 to just 4.1%. It is difficult to say whether this was fully the consequence of the Russian crisis and the subsequent loss of export markets in the rouble-related area or whether the 1998 macroeconomic policy stance (aimed at cooling the economy) was the reason. The 2001 Commission's report emphasised that Poland was experiencing a significant slowdown, primarily attributable to domestic factors. "Real output expanded by 4% in 2000, with economic activity slowing markedly. In the context of strong export performance, the deceleration of output reflects a slowdown in domestic demand, and in particular private consumption, in the face of tighter monetary policy, moderate growth in real wages and rising unemployment" (European Commission 2001, 26). The fall in inflation and the fast recovery of the 'zloty' in the aftermath of the Russian crisis allowed a series of interest rate cuts.

Poland has already reached a considerable degree of economic integration with the EU, as reflected in the large scale (two-thirds) of its trade with the Union and the massive direct investment flows originating from EU countries. At the end of the 1990's Poland was the seventh trade partner of the European Union. Since 1989 EU exports to Poland have increased by more than 300%, and amounted to ECU 15 billion in 1995. EU imports from Poland increased by more than 200% over this period, and amounted to ECU 12.2 billion in 1995. The EU had a trade surplus of ECU 2.8 billion in 1995 (European Commission 1997).

The end of the 1990's was marked by important structural reforms in the neglected sphere of social services financed predominantly from the budget. Public administration, pensions, education and health care were target areas for reform. The so-called "budgetary sector" to a large extent survived as a non-market enclave with characteristic immanent inefficiency and stagnation. In 1999 the European Commission emphasised that the

biggest economic challenge which Poland faced was to press ahead with reform and privatisation, particularly in agriculture, while pursuing fiscal consolidation in the medium term. Continuing economic reforms will be required in order to foster private sector growth (European Commission 1999, 27).

1.3.3. Polish antitrust and state aid policies in the 1990's

The earliest antitrust legislation[30] in Poland was enacted in 1933. The political system following the Second World War rendered the earlier legislation superfluous. The state itself began to engage in monopolistic economic activity. By definition, competition policy was unnecessary under central planning since there was no market and companies usually had to meet quantitative objectives with set allocation of resources. The control of state aid was also unnecessary because the state existed to distribute state aid (Mayhew 1998, 107). However, during the "Solidarity" period of 1980-81, many authors argued against socialistic monopolies as being harmful to the national economy. As a result of these arguments, an Act[31] against monopolistic practices in the national economy was enacted on 28 January 1987 which, nonetheless, adopted a very tolerant approach towards monopoly (Harding and Kepinski 2001, 181). Only after 1989 did government regulations set up the framework within which the market mechanisms could operate. These regulations involve the government refraining from interfering with market mechanisms once these have been established. The basic tools of this framework are competition policy, anti-subsidy policy and the rules which define the operation of the domestic market (Mayhew 1998, 107).

The legislation and institutions of competition policy became crucial for economic reform at the beginning of the 1990's. Competition, privatisation and price liberalisation

[30] Journal of Laws 1933, No.31, item 270. It was replaced by the Law on cartels of July 13, 1939: Journal of Laws 1939, No.63, item 416.
[31] Journal of Laws 1987, No. 3, item 18.

were the most important features of the transition to the market economy. The most important objective of introducing competition policy in a wide sense was to reduce the power of monopolies, both the old state enterprises and the possible new monopolies springing up after privatisation. Taking away subsidies from the state sector would also tend to move market structures in the same direction. These measures would help the shift towards more competitive management systems, preparing the way for the economy to raise productivity from the extremely low levels of the pre-reform period (Mayhew 1998, 107). The Polish government programme of October 1989 stipulated that "in order to set up an environment conductive to competition in the economy, an active anti-monopoly policy will be pursued. The anti-monopoly agency will be set apart from the structure of the Ministry of Finance and will be given more extensive powers."[32] To this end, the Sejm passed the Act[33] on Counteracting Monopolistic Practices and Protection of Consumer Interests in February 1990. The law was later amended several times.[34]

Since the Polish Antimonopoly Act was passed prior to the signing of the Europe Agreement, and notably drafted with the assistance from American experts, it did not correspond to EC standards (Ojala 1999, 138). Following approval by the legislature, amendments to the Act were signed by the President on 3 February 1995. Further amendments were introduced in 1998. The Act was amended to a great extent in relations to the provisions of the Europe Agreement and in response to the Agreement's obligations to harmonise Polish legal regulations related to competition rules with the appropriate European Union standards (Maro 1999, 156). The Act[35] of December 15, 2000 on Competition and Consumer Protection replaced the 1990 law. The purpose of the Act was

[32] Cited in Mayhew (1998).
[33] Journal of Laws 1990, No.14, item 88.
[34] Journal of Laws 1995, No.41, item 208; Journal of laws 1997 No.49, item 318; No118, item 754; and No.121, item 754; Journal of Laws 1999 No.52, item 547; Journal of laws 2000 No.31, item 381; and No.60 item 704.
[35] Journal of Laws 2000, No.122, item 1319.

primarily to adapt competition legislation to the current free market economy conditions and to harmonise Polish law with EC law (Stobiecka 2002, 92). Further amendments were introduced with passing of the Act[36] of 5 July 2002 on Amendments to the Law on Competition and Consumer Protection. The amendments included, in particular, a consumer interests' aspect. The Polish antitrust law[37] was made fully compatible with EC competition law.

Despite the fact that under the 1991 Europe Agreement, the candidate countries committed themselves to approximating their legislation to that of the European Union, particularly in the areas relevant to the internal market (this includes legislation favouring competition and state-aid control rules), no regulation controlling state aid was introduced. State aid *acquis was* transposed into Polish law in 2000 through the Act[38] on the Conditions for Admissibility and the Supervising of State Aid for Entrepreneurs. Article 5 of this Act stipulates that "granting the aid shall be inadmissible, unless the aid is granted in compliance with the conditions set in this Law and ratified international agreements regulating the granting of aid, to which the Republic of Poland is a party, in particular, in the Europe Agreement. Further amendments of the Act were incorporated with the passing of a new Act[39] of 27 July 2002 on the Conditions for Admissibility and Supervising of State Aid to Entrepreneurs which came into force on October 6, 2002 and rendered the 2000 Act void.

Competition policy and enforcement are the responsibility of the Office for Competition and Consumer Protection (OCCP). Since 2001, the OCCP has been the monitoring authority supervising the state aid for entrepreneurs. The Office for

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[36] Journal of Laws, 2002, No. 129, item 1102.
[37] I have concentrated on antitrust law. However, I excluded from the analysis secondary acts such as an Act on Counteracting Unfair Competition of 16 April 1997. Moreover, this thesis does not deal with consumer issues.
[38] Journal of Laws 2000, No.60, item 704.
[39] Journal of Laws 2002, No 141, item 1177.

Competition and Consumer Protection is presided over by the OCCP Chairman, who is "a central body of government administration" (OCCP, 2001) subordinate to the Council of Ministers. The Polish competition authority, initially called the Antimonopoly Office, was first established by virtue of the 1990 Act "in order to ensure development of competition, protection of entrepreneurs exposed to monopolistic practices and protection of consumer interests." In 1996 a regulation[40] of the Prime Minister on the organisation of the Office for Competition and Consumer Protection introduced further amendments and increased the scope of the Antimonopoly Office's responsibilities to encompass consumer protection as well. Since October 1996 this government agency has been known as the Office for Competition and Consumer Protection. Moreover, on 28 October 1998 the Economic Committee of the Council of Ministers recommended that the Office for Competition and Consumer Protection be appointed as the independent state aid monitoring authority in Poland.[41] The 2000 law on the conditions and admissibility of public aid granted to entrepreneurs includes the relevant provisions empowering the Chairman of the OCCP to perform such a function.

Furthermore, the Antimonopoly Court[42] was established along with the original Antimonopoly Office in 1990 in order to deal with appeals arising from Competition Office decisions. It is an independent judicial check on the state administration. The District Court in Warsaw is the antimonopoly court which issues judgements. A significant proportion of the OCCP's decisions are now followed by resort to the Antimonopoly Court, and the Court often intervenes to change or reverse the decision. In 1999, about one-third of the OCCP's decisions were appealed. In about half of those appeals, the Court

[40] Journal of Laws 1997 No.12, item 66 amended in 1997 by No.166, item 1208.
[41] Initially, a state aid monitoring authority was a department within the Ministry of Economy which took up its functions only on 1 January 1997.
[42] The Regulation of the Minister for Justice on the establishment of the Anti-monopoly court of 13 April, 1990; Journal of Laws 1998 No.27, item 157. Regulation of the Minister for Justice on the establishment of the Anti-monopoly court in Warsaw of December 30, 1998; Journal of Laws 1998 No.166, item 1254.

disagreed in whole or in part: 43 decisions were affirmed entirely, and 7 were affirmed in part; 37 were overturned (OECD, 2002). The Polish Supreme Court has jurisdiction to hear appeals from the judgements of the Antimonopoly Court.

1.3.4. Polish transition debate

This section will present a wider discussion of the Polish political economy in the 1990's. The analysis of the interrelationship of economic, political and also social dimensions is crucial in the circumstances of systemic transformation and EU accession preparations. The twin processes of transformation and Europeanisation required fundamental legal, economic and social change on an unprecedented scale (Tokarski and Mayhew 2000, 4). Hence, it is necessary to see how power has been used to shape the political economy and the way in which it distributes costs and benefits, risks and opportunities to social groups, enterprises and organization within the system (Strange 1994; Blazyca 2001).

In the 1990's there were two important debates: transition and Europeanisation debates. Certainly, they are not separate debates as both processes of transformation and Europeanisation were concurrent and the interrelationship is self-evident. However, while the former concentrates on the systemic change from socialist central planning to a market economy [section 1.3.4.], the latter concentrates on the EU impact on Poland's political economy [section 2.4.]. Polish transition debate presented here focuses on the major premises of Balcerowicz economic reform package, how government's policy choices were determined by economic thinking and state aid and the special economic zones, while the Polish Europeanisation debate concentrated on costs and benefits of EU accession process and the timing of accession.

First of all, I will present briefly the first period of reforms in Poland,[43] in particular the initial package of economic reforms introduced by Balcerowicz in January 1990. Then, I will show how economic thinking influenced policy decisions. Finally, I will concentrate on state aid and the special economic zones. This is beyond the scope of this section to present a detailed debate of transition (see Adam 1999, Belka, 2001, Rapacki 2001). I have limited the analysis to factors relevant for the state aid debate in Poland in the 1990's.

- **The 1990 reform package**

The January 1990 stabilisation package contained liberalization measures, which in fact created the foundations of a market economy, and fairly routine stabilization policies aimed at equilibrating the economy (Belka 2001, 14). Stabilisation, liberalization, privatization and institution-building constituted the four pillars of the programme which guided the governments (Balcerowicz, et al 2004, 3). The reform programme was later labeled 'shock therapy' because stabilization and liberalization measures were carried out simultaneously.

The transformation of centrally-planned economies to market economies meant that the omnipresent state, which for decades had controlled all aspects of economic organisation had to withdraw from direct and active intervention in the affairs of the enterprise sector (Balcerowicz, et al 2004, 3). Basic progress in restructuring was expected to come on the back of privatisation of state-owned enterprises (Gołębiowski 1993). However, slow structural change and a pace of privatisation hindered industry restructuring and state aid control.

[43] According to Kolarska-Bobińska (2000) the process of reform in Poland can be divided into two periods: reforms introduced in the early 1990s, which dealt primarily with economic regulations and institutions, and those of the late 1990s – which brought fundamental changes to many areas of the public sector (Kolarska-Bobińska 2000; 7).

Privatisation, which was one of the pillars of the reform programme, was not fully implemented. Macieja (2001) claims that the reason was the obstruction of groups and political interests that benefited from blocking privatisation. This refers particularly to industries like mining, defence industry and energy. Rapacki (2001) claims that the overall economic impact of government-led or "top-down" privatisation turned out to be smaller than initially expected. "In the entire 1990-97 period 496,000 jobs were transferred from the public to the private sector while 3 million new jobs were created in the private sector as a whole" (Rapacki 2001, 129).

The assessment of the reform package is varied. Kowalik (2001) notes that transformation has had high costs in terms of mass unemployment, poverty, steadily increasing inequalities in income distribution and widespread corruption. Industrial workers, public sector employees and farmers lost out. In contrast, Belka (2001) claims that it was a success story which both statistical data such as growth rates, and political facts such as Poland's admission to the OECD in 1996, NATO membership in 1999, confirm the positive assessment: "the Polish transition success is due to five main factors: the success of shock therapy; good relations with the international organisations; Polish pragmatism; social sensitivity; and EU entry ambitions" (Belka 2001, 26).

- **Polish economic liberals versus interventionists and the impact on policy choice**

In general, Polish economic liberals support faster privatisation, stronger anti-inflation policy and a more restrictive fiscal stance, and expect that real exchange rate appreciation automatically restructures the economy; state interventionism is kept to a minimum. In contrast, the interventionists focus attention on the need for activity to promote export, lower interest rates, induce greater commitment from the financial sector, support tax relief

on export-orientated investment, and in general, promote a degree of state intervention in economic and social policies, etc. (see Blazyca 2001; Lubiński 1996).

The Solidarity government, in which Balcerowicz was the minister of finance, was reluctant for ideological reasons to promote exports and to impose restrictions on imports (Adam 1999, 34). The neo-liberal policies did not protect vulnerable social groups. However, the 1993-1997 centre-left government (PSL-SLD) introduced several provisions aimed at promoting exports and promised to reduce the social costs of transformation and ensure their more just distribution (see Lubiński, 1996; Adam, 1999).

Millard (1999) noticed that there remained a continuing tension between international pressures for economic neoliberalism and domestic pressures for continuing high levels of state intervention in the economy and social policy. In fact, these tensions reflected contradictions within parties, for example the Democratic Left Alliance supported European integration and its "economic liberalization," however, speedy economic restructuring could threaten the OPZZ trade union support.

- **State aid and the special economic zones**

The lack of a state aid control regime in the 1990's stimulated some discussion about state aid. In the mid-1990's the European Commission pressed for the introduction of legislation on state aid control in Poland. There were also Polish voices urging the introduction of new legislation, criticising the waste of public funds as a result of a lack of transparency and control of state aid (see Fornalczyk 1996; Kryńska 2000; Sowa 2003). Prof. Fornalczyk (2000) points out the benefits of state aid control: budget deficit reduction; more transparent public expenditure; and improvement of the efficiency of tax collection. Sowa (2003) regrets that the lack of such legislation allowed wastage of public funds during the transformation.

However, there was an economic argument of protectionism and a concealed political argument of protectionism and state aid to some sectors of the Polish economy. The majority of state aid in Poland was not connected with any long-term policy. In most cases aid was a device to rescue enterprises that was implemented on an ad hoc basis (in particular transport, agriculture, coal mining and steel). Dariusz Rosati, former Foreign Minister and a moderate interventionist, claims that: "structural reforms, the lack of market economy institutions and, in particular, the lack of capital markets and labour market as well as a high degree of risk may support the argument for a degree of protectionism. Protectionism allows avoiding an excessive decline of production and high unemployment. It should be used in the form of import tariff, reduced gradually in 5-7 years (Rosati 1998; 299)."

Not only the lack of framework legislation on state aid control was the issue of contention between Poland and the European Union in the 1990's but also state aid for the seventeen Special Economic Zones (SEZ) in Poland. SEZs were incompatible with EU state aid and regional policies, for example: the law did not propose maximum ceilings of aid and export aid was allowed. The existence of Special Economic Zones in Poland was one of the major causes of contention from the beginning of the accession negotiation in 1998.

In 1994 Special Economic Zones (SEZs) were introduced in Poland with the aim "to stimulate local initiatives for creating new types of economic activities, to improve environmental conditions in the region but first and foremost to create jobs." Investors were granted exemption from the corporate income tax and local charges for a period of the first ten years of their activity in the zone, and for the second ten years a 50% relief from the above mentioned taxes and charges.

Some commentators were very critical about the SEZs. Kryńska (2000) thinks that in terms of employment SEZ were not as successful as originally expected; only about 28 thousand jobs were created in comparison with over 160 thousand planned (Kryńska 2000). Similarly, Sowa (2003) claims that they did not achieve their goals and there was a lack of political will to transform SEZs as the basis for efficient regional policy. Janusz Stainhoff, Minister of the Economy in the Buzek government, was also unenthusiastic about the Special Economic Zones. In his opinion, they hindered free competition. However, he did not question their existence because they were set up in the regions with high unemployment. Nevertheless, he said that he would not favour setting up new Zones.

In conclusion, this debate draws the attention to some problems of transition. In the mid-1990's sluggish structural change and a pace of privatisation hindered industry restructuring and introduction of state aid control. "A large part of the economy was state-owned, giving state aid without any rationalization was common" (Sawicki interview, July 2003). Moreover, state aid to the special economic zones was not limited by any upper limit. Hence, in the mid-1990's there were voices critical of wasting public funds. Governments' policy choices were determined by their economic thinking. It has been pointed out that two parties in government (1993-1997) used more state intervention than previous Solidarity governments (1989-93) whose economic policy was influenced by neo-liberal thinking. Certainly, the electorate assessed the governments' policies. Change of governing parties from Solidarity to post-communist in 1993, and again to (post-)Solidarity in 1997 should not be neglected.

Conclusions

This chapter have set the context of this study on Europeanisation and Polish competition policy. I have presented the development of Poland-EU relations; association agreement,

Copenhagen accession criteria and the promise of EU membership. Moreover, in order to cast more light on the complexity of systemic changes, I have emphasised interrelationships between political, economic and social spheres. The complexity of transition was presented in the section about Polish transition debate. The struggle between Poland and the EU on state aid (in particular, the Special Economic Zones) was one of the issues. Consequently, I have presented the background of the story about state aid and antitrust policies in Poland. In Chapter 2 I will present a theoretical overview of the existing literature on rational actions and institutions because I explain the institutional outcomes from the perspective of rational choice institutionalism.

Chapter 2. Literature Review

This chapter presents a theoretical overview of the existing literature on rational actions and the European impact on domestic structures. I refer to theories of (international) political economy, Europeanisation and international relations (IR) in order to shed more light on the impact of the European Union on the candidate countries for EU membership. I have also included a review of a Polish Europeanisation debate.

The theoretical aim of this research project is twofold. Firstly, it is to identify the work done previously on the topic and to show what gaps or mistakes exist that provide a scholarly *raison d'être* for my thesis. According to Schimmelfenning (2000) and Wallace (2001) much has been written about European integration; however, most of the scholarly work is concerned with developments at the European level and also at the domestic level in member states but they do not address the issue of enlargement sufficiently. The subject has been so far neglected in theoretical studies of the EU. Secondly, I want to present in detail the assumptions of rational choice institutionalism. This is because in this thesis I explain the institutional outcomes from the perspective of rational choice institutionalism.

2.1. Rational choice institutionalism

Rational choice approaches to political institutions allow an understanding of policy outcomes as emerging from the preferences of the political actors and the institutional set up (Riker 1982; North 1990). A rationalist strand of new institutionalism "represents a distinctive approach to the study of social, economic and political phenomena" (DiMaggio and Powell 1991, 1). New institutionalism "elucidates the role that institutions play in the determination of social and political outcomes" (Hall and Taylor 1996). The approach is

new in the sense that it adds institutional factors to the analytical framework of micro-economics or public choice theory (Kato 1996, 554).

Rational choice institutional analysis is closely connected to related theories, such as those represented in the work of Douglass C. North, Olivier Williamson, and others in the "new institutional economics" tradition (Ostrom 1999, 36). Rooted in the economic theory of the firm (Coase 1937, 1960; Milgrom and Roberts 1991; Williamson 1985, 1996), economic history (North 1981, 1990), and positive political theory (Hinich and Munger 1997; Riker 1982, Shepsle and Bonchek 1997), the rationalist approach provides a systematic analysis of institutions.

In the rational choice tradition, institutions are "the rules of the game in a society" and "are the humanly devised constraints that shape human interaction" (North 1990, 182). For Shepsle (1986) institutions are frameworks of "rules, procedures, and arrangements," or prescriptions about which actions are required, prohibited, or permitted (Ostrom 1999, 37). Firstly, an institution is a set of rules that structure social interactions in particular ways. Secondly, for a set of rules to be an institution, knowledge of these rules must be shared by the members of the relevant community or society (Knight 1992, 2). Cole and John (2000) define institutions as "national political and administrative arrangements." For Banchoff (2002) they are arenas within which state and societal actors pursue their respective interests.

In general, rational choice insights privilege methodological individualism and consequentialist mechanisms with agents calculating in response to assumed benefits (material or social) or the threat of sanctions. Rational choice explains outcomes as results of choices made by rationally self-interested utility-maximising agents. Rational choice, or the neo-utilitarian approach, focuses on the incentive structure faced by those making decisions. Derived from economics, the rational choice paradigm - founded on

methodological individualism and the assumption that individuals are motivated by self-interest – forms the thread uniting politics and economics (Ordeshook 1990, 12).

Ostrom (1999) claims that the development and use of a general framework help to identify the elements and relationships among these elements that one needs to consider for an institutional analysis. They provide the most general list of variables that should be used to analyse all types of institutional arrangements. The first step in analysing a problem is to identify a conceptual unit – called an action arena – that can be utilised to analyse, predict, and explain behaviour within institutional arrangements. Action arenas include an action situation and the actors in that situation. An action situation can be characterised by means of seven clusters of variables: participants, positions, outcomes, action-outcome linkage, the control that participants exercise, information, and the costs and benefits assigned to outcomes (Ostrom 1999).

The positive theory of institutions is concerned with political decision making, especially the ways in which political structures (or institutions) shape political outcomes (Shepsle 1986). According to Rodrik (1995) a standard model of political economy considers the interaction between an opportunistic government, voters and interest group. Shepsle (1983) points out that the structure of political institutions and the outcomes associated with them reflect the interests of those in power. Institutional arrangements constrain individual behaviour by rendering some choices unviable, precluding particular courses of action, and restraining certain patterns of resource allocation.

In short, positive political economy is the study of rational decisions in the context of political and economic institutions. It deals with two characteristic questions: How do observed differences among institutions affect political and economic outcomes in various social, economic and political systems, and how are institutions themselves affected by individual and collective beliefs, preferences, and strategies? (Alt and Shepsle 1990, 2). According to Shepsle (1986) the rational choice approach to institutions focuses on two

separate levels of analysis. In the first, analysts study the effects of institutions. Institutions are exogenous. In the second, analysts study why institutions take particular forms, why they are needed, and why they survive. Institutions are treated as endogenous. In combination, these approaches provide both a method for analysing the effects of institutions and social and political interaction and a means for understanding the long-term evolution and survival of particular institutional forms.

For Weingast (2001) there are four characteristics which distinguish rational choice approaches to institutions. Firstly, rational choice approaches provide an explicit and systematic methodology for studying the effects of institutions; how institutions constrain the sequence of interaction among the actors, the choices available to particular actors, the structure of information and hence beliefs of the actors, and the payoffs to individuals and groups. Secondly, the rational choice approach to institutions is explicitly comparative. Thirdly, the study of endogenous institutions yields a distinctive theory about their stability, form, and survival. Fourthly, the approach provides the micro-foundations for macro-political phenomena (Weingast 2001, 4).

To sum up, rational institutionalists have demonstrated the strong influence that the institutional environment exerts on strategic choices (Child 1972, 1997; Oliver 1997; Peng 2000). The rationalist institutional approach incorporates institutional constraints upon individual behaviour into the rational choice original approach, which is based on an assumption of economic rationality. The novelty of rational choice new institutionalism lies in the analysis of the effects and influences of institutions, especially the analysis of whose interests or preferences prevail in public policy or social decisions. The literature explores the relationship between institutional contexts or "structures" for decision making and rational individual behaviour defined a priori (Kato 1996, 557).

- A theory of veto players

A theory of veto players is a framework for the analysis of the effects of political institutions (Tsebelis 2000, 463). This theory is a hallmark of rational choice institutionalism. A theory of veto players focuses on legislative politics and how lawmaking decisions are made in order to explain a series of policies. A significant policy change has to be approved by all veto players. Veto players are individual or collective decision-makers whose agreement is required for the change of the status quo (Tsebelis 2002, 36). Tsebelis (2000) argues that the potential for policy change decreases with "the number of veto players, the lack of congruence (dissimilarity of positions among veto players), and the cohesion (similarity of policy positions among the constituent units of each veto player) of these veto players" (Tsebelis 2000, 464). Policy stability, defined as the impossibility of significant change of the status quo, will be the result of many veto players, particularly if they have significant ideological differences among them (Tsebelis 2002, 242).

Tsebelis (2002) distinguishes between institutional and partisan veto players. Institutional veto players are individual or collective veto players specified by the Constitution [...] who need to agree for a change of the status quo." Partisan veto players are the veto players who are generated inside institutional veto players by the political game. For example, the replacement of a single-party majority by a two-party majority inside any institutional veto player transforms the situation from a single partisan veto player to two partisan veto players. Both the number and the properties of partisan veto players change over time (Tsebelis 2002, 121). The partisan veto players are the parties composing the government coalition. In a parliamentary system potential veto players are the government parties, the upper or lower house of parliament or the head of the state as well as constitutional courts. Furthermore, the veto player who sets the agenda has a considerable advantage. The veto player who controls the agenda-setting process has a significant redistributive advantage. However, this advantage declines as a function of the

policy stability of the system, that is, with the number of veto players and their distances from each other (Tsebelis 2002, 52).

The notion of veto points is closely related to the concept of veto players. For Immergut (1992) the notion of veto points refers to all stages in the decision-making process on which agreement is required for a policy change. Enacting laws depends on the cooperation of a number of actors during "windows of opportunity" that may open up only rarely. What is a window of opportunity for a legislator wishing to promote change, however, is, conversely, a blocked opportunity for interest groups hoping to prevent a move away from the status quo. It has been argued that the ability of interest groups to influence these political decisions depends precisely on the number of veto points within these political systems (Immergut, 1992, 227). Institutional veto points are instances that central governments have to face when imposing European provisions on their constituencies (Haverland 1999, 1).

The existence of multiple veto points in a given policy-making structure is likely to inhibit or considerably slow down adaptation to Europeanisation pressures (Haverland 1999, 1). Multiple institutional or factual veto points affect the capacity of domestic actors to achieve policy changes because bids for change are blocked by veto players. If there is a clear mismatch between national policies and European policy demands, political structures ridden with formal and factual veto points and the absence of cooperative decision making traditions will lead to non-implementation and in consequence to no, or only marginal, change in administrative structure (Héritier 2001, 44).

When placing veto players' theory in comparative politics, Tsebelis (2002) makes a comparison and criticises three influential approaches in comparative politics. Firstly, he claims that all the arguments on the characteristics of the party system fail to acknowledge the role of a government in promoting legislation. Governments shape legislative outcomes because of their agenda-setting power. The fact that there are many parties in

parliament is not relevant in his analysis. Secondly, he compares veto players' theory with Laver and Shapsle's (1990) model of ministerial discretion. Yet, he does not agree that agenda setting is controlled by the corresponding minister. Thirdly, Tsebelis refers to Lijphart's studies of the interaction between the legislative and executive branches on the basis of government duration in parliamentary systems. In contrast to Lijphart, Tsebelis argues that government duration and executive dominance do not have the self-evident connection that Lijphart implies.

A significant difference between Tsebelis' analysis and existing literature is the question of exclusive ministerial jurisdictions (see Laver and Shepsle 1996). Tsebelis (2002) assigns agenda-setting power to the government as a whole. Conversely, Laver and Shepsle (1996) recognise ministerial discretion: "Ministerial discretion results from the minister's ability to shape the agenda of collective cabinet decisions rather than to determine cabinet decisions once the agenda had been set" (Laver and Shepsle 1996, 33). In its turn, the government makes these proposals to the parliament and they get accepted with few modifications. "Perhaps the most distinctive feature of our approach is the assumption that most important policy decisions are taken by the executive" (Laver and Shepsle 1996, 13). Hence, arguments about veto players and ministerial discretion share a focus on agenda-setting, but disagree on the identity of the agenda setter.

- Theories of coalitions

While the theory of veto players emphasises the role of actors who block legislation unilaterally, theories of coalition pinpoint the position of essential members of some coalitions of actors that can block legislation altogether. The theories of coalitions may be cast in the language of formal logic and they may be derived through formal operation from a universal axiomatic model of human behaviour, the rational decision model (de

Swaan 1973, 2). The formal theories of coalitions deal with the interaction of rational actors as they join in coalitions with or against one another (Riker 1962; Leiserson 1966; Axelrod 1970; Laver and Shepsle 1996).

Early theories of coalition formation were "office-seeking": they took no account of the policy positions of the various actors, while later theories emphasised both presuppositions. The main implication of this approach is that minimal winning government coalitions include only parties whose legislative votes are essential for the government's majority. The "minimal winning set" defined by Von Neumann and Morgerstern (1943) contains all the coalitions that exclude an actor whose weight is not necessary for the coalition to be winning. The "minimum size principle" is a reconstruction based on the work of Riker. Riker (1962) asserts that coalitions should comprise as few parties as possible, consistent with the need to win confidence votes in the legislature. On the other hand, "pure" policy-driven approaches to coalition formation would be characterised only by ideological compactness: the coalitions would contain parties whose policies are as compatible as possible. Leiserson (1968) presented a theory that incorporated a notion of "ideological diversity" among actors: players search for those coalitions which they expect to secure for them at least some minimal satisfactory payoff and which unite actors of a minimal ideological diversity. However, it is rather unusual that politicians are concerned only with getting into office or only with having an impact on public policy. This leads to the assumption that coalitions are likely to form which are minimal in the number of participants and ideologically compact. Axelrod (1984) puts forward the "minimal connected winning" approach to coalition formation. It should be minimal – it contains no more members than are necessary for a coalition to win; connected – all members are adjacent on an affinity scale; and winning – it has the required majority in the legislature. De Swaan (1973) develops a "closed minimal range" account of coalition formation. This is the coalition which is winning and in which all

members are adjacent on a left-right policy dimension. It is the coalition with the smallest ideological range.

2.2. Europeanisation literature

There has been burgeoning literature within political science that discusses and analyses Europeanisation. According to Laffan and O'Mahony (2003) the literature on Europeanisation grapples with the impact of the European Union on the national and the national on the European Union. The literature on Europeanisation addresses the issue of the growing institutionalisation of the EU policy process at the same time as it indicates the "Europeification" or Europeanisation of national politics and policy-making (Cowles, Caporaso, and Risse 2001). Research that focuses on the question of how to account for the emerging European polity adopts a 'bottom-up' perspective, in which the dynamics and the outcome of the European institution-building process are the main dependent variables (see e.g. Wallace and Wallace 1996; Moravcsik 1998; Héritier 1999). More recently, however, an emerging literature focuses on the "top-down" perspective and the impact of European integration and Europeanisation on domestic political and social processes of the member states and beyond (Börzel and Risse 2003, 57).

Conceptual and empirical research on Europeanisation concentrates, in particular, on domestic adaptation to the pressures emanating directly or indirectly from EU membership. Hence, this review of the Europeanisation literature has a public policy analysis focus. It deals with the domestic impact of European Union policies, mechanisms of Europeanisation and outcomes. According to Laffan (2003) domestic public policy making is no longer confined to the structures and processes of national government given the significance of the additional arena created by the European Union (Laffan 2003, 1).

The research on the impact of the European Union aims to explain outcomes at domestic level – or to put it in a Europeanisation jargon - to present mechanisms of Europeanisation. In general, the level of European adaptation pressure on domestic political economy and the extent to which the domestic context facilitates or inhibits adjustments explain a differentiation in institutional adjustment across countries and policy sectors (see Knill and Lehmkuhl 1999; Börzel and Risse 2000; Radaelli 2000; Radaelli 2003; Schmidt 2001). Structural change in response to Europeanisation occurs if and when it generates significant adaptational pressures in the domestic environment; and if and when facilitating factors are present, enabling actors to induce or push through institutional change (Cowles *et. al.* 2001, 6).

The relationship between adaptational pressures and change in domestic structures and policies is curvilinear. When adaptational pressure is low, because the content of EU policy is already present in a member state, there is no need to change domestic institutions. At the other extreme when the distance between EU policies and national ones is very high, member states will find it difficult to transpose European policy into domestic policy (Radaelli 2003, 45).

The concept of an adaptation pressure is defined as the degree of institutional incompatibility between national structures and practices and EU requirements (Haveland 1999, 2). Börzel and Risse (2000) claim that the lower the compatibility between European and domestic processes, policies, and institutions, the higher the adaptational pressure. Moreover, they claim that a "misfit" is a necessary condition for domestic change. This "mismatch" (see Héritier, Knill and Mingers 1996; Cowles et al. 2001) between European and domestic policies, processes and institutions influences domestic change. There are policy and institutional misfits. The former refers to differences between European rules and regulations and domestic policies; the latter challenges domestic rules and procedures. Knill (1997) develops an argument that the extent to which administrative traditions affect

implementation effectiveness is crucially dependent on the degree of pressure for administrative adaptation perceived at the national level as a consequence of European requirements.

According to Radaelli (2003) there are two types of mechanisms, that is, vertical and horizontal Europeanisation. Vertical mechanisms seem to demarcate clearly the EU level (where the policy is defined) and the domestic level (where the policy has to be implemented). Horizontal mechanisms look at Europeanisation as a process where there is no pressure to conform to EU policy models. They involve a different form of adjustment to Europe based on patterns of socialisation (Radaelli 2003, 41). In general Radaelli's mechanisms are consistent with the logic that Börzel and Risse use. Börzel and Risse (2003) utilise the "logic of consequentialism" and the "logic of appriopriateness." While the former refers to rationalist institutionalism, the latter refers to sociological institutionalism. While the former leads to domestic change through a differential empowerment of actors resulting from a redistribution of resources at the domestic level, the latter leads to domestic change through socialisation and a collective learning process resulting in norm internalisation and the development of new identities (Börzel and Risse 2003, 63).

Conversely, Knill and Lehmkuhl (1999) distinguish three mechanisms of Europeanisation. Firstly, European requirements yield domestic institutional change by prescribing an institutional model to which domestic arrangements have to be adjusted. Secondly, European legislation may influence domestic arrangements by "altering domestic opportunity structures and hence the distribution of power and resources between domestic actors." Thirdly, European policies are designed to change the domestic political climate through a cognitive logic of framing integration. A similar taxonomy is proposed by Schmidt. Schmidt (2001) offers to consider variables such as adjustment pressures from EU decisions and the adjustment mechanism in order to understand mechanics of

adjustment in specific policy sectors. The adjustment pressures refer to how constraining those decisions are because the EU requires, recommends or suggests a model of implementation. The adjustment mechanism may be of coercion, adaptation, mimesis or regulatory competition.

Adaptational pressures are a necessary but not sufficient condition for change. They are insufficient to account for domestic change (Börzel and Risse 2003, 58). In fact, the argument of adaptational pressures as "goodness of fit" has been seriously criticised (see Goetz 2001; Radaelli 2003), which has brought the debate further in the direction of intervening variables. Consequently, Börzel and Risse (2003) suggest analysing various facilitating factors: two of them stem from a rationalist logic, i.e. multiple veto points and formal institutions, while two other factors stem from a sociological logic, i.e. norm entrepreneurs and political culture. Radaelli (2000) claims that the post-ontological focus of Europeanisation raises a number of questions, such as the extent of the role that domestic institutions play in the process of adaptation to Europe. In fact, Radaelli (2003) proposes to look at three groups of variables: institutional capacity, temporal dimension and policy structure, and advocacy coalitions. An institutional capacity encompasses political interactions, and institutional arrangements. Haverland (1999) argues that variation in national institutional opportunity structures tend to determine the pace and quality of implementation regardless of differential gaps in the "goodness of fit." The number and policy positions of veto-players are crucial (Tsebelis 1995; Scharpf 1997; Haverland 2000). Schmidt (2001) suggests analysing mediating factors such as economic vulnerabilities, institutional capacities, policy legacies, policy preferences and discourse. An economic vulnerability is vulnerability to pressures from competition in the capital and product market. Policy legacies impinge on the ability to adopt and adapt reforms, while preferences refer to the willingness to hold to traditional policy preferences and embracing

new ones. Moreover, discourse cannot be separated from preferences or from cognitive and normative structures (Schmidt 2001; 4).

Four possible outcomes of Europeanisation can be distinguished: inertia, absorption, transformation and retrenchment (Börzel 1999; Börzel and Risse 2000; Heritier 2000; Radaelli 2000; Radaelli 2003; Cowles, Caporaso and Risse 2001; Schmidt 2001). Inertia is a situation of a lack of change. This may happen when a country finds that EU choices or policy models are too dissimilar to domestic practices (Radaelli 2000, 14). For Schmidt (2001) inertia means resistance to EU decisions. Absorption – as specified by Hertier (2001) – is accommodation of European policies or ideas without substantially modifying existing domestic policies. This is when a degree of domestic change is low. Accommodation implies the accommodation of European policies or ideas without changing the essential features of domestic policies (the degree of domestic change is modest). For Schmidt (2001) absorption envisages minimal policy change. Transformation implies that existing domestic policies are replaced by new, different ones and, hence, the degree of domestic change is high. For Schmidt (2001) transformation denotes radical policy change. Europeanisation can also induce retrenchment. This is a very paradoxical effect as it implies that national policy becomes less "European" than it was before.

Theoretical research on Europeanisation is often couched within well-established meta-theoretical frameworks such as new institutionalism, liberal intergovernmentalism, multilevel governance, and policy networks (Featherstone 2003, 12). Above all, three competing theories appear informative about Europeanisation and domestic politics: rational choice institutionalism, constructivism and historical institutionalism. Rational choice institutionalism allows an understanding of policy outcomes as emerging from the preferences of the political actors and the institutional set-up (Riker 1982; North 1990). A sociological understanding of institutions stresses their constitutive, identity-forming roles and constructivists insist on the primacy of intersubjective structures that give the material

world meaning. A sociological logic refers to cognitive and normative mechanisms (Checkel 1998; March and Olsen 1998). Historical institutionalism highlights path-dependency of institutional change. It shows an interest in explaining ("endogenising") preferences and identities (Cowles, Caporaso and Risse 2001). Historical institutionalism is based on the premise that once institutions are created they may prove difficult and costly to change. Linked to this is a notion that institutions may be locked into a particular path of developments (Laffan and O'Mahony 2003, 6).

2.3. IR and IPE insights

Research on Europeanisation draws from the considerable amount of knowledge generated by IR and IPE theories due to the fact that these theories emphasise an international dimension. Both Putnam's "two-level game" and Gourevitch "second-image reversed" refer to the interplay between politics in the international and domestic arenas. For Putnam (1988) a two-level game is a metaphor for domestic-international interactions. There are two strategic levels:

> At the national level, domestic groups pursue their interests by pressuring the government to adopt favorable policies, and politicians seek power by constructing coalitions among those groups. At the international level, national governments seek to maximize their own ability to satisfy domestic pressures, while minimizing the adverse consequences of foreign developments. Neither of the two games can be ignored by central decision-makers, so long as their countries remain interdependent, yet sovereign (Putnam 1988, 433).

Consequently, some of the variance that we observe in compliance with international agreements can probably be best explained in terms of domestic politics. Moreover, "the second image reversed" argument about international sources of domestic change merits particular consideration. According to Gourevitch (1978) "we must explore the extent to which that structure itself [i.e. domestic] derives from the exigencies of the international system" (Gourevitch 1978, 882).

Regime compliance has been analysed from different perspectives. Two dominant perspectives in the contemporary debate are commonly referred to as the enforcement approach and the management approach. The two schools present contending claims about the sources of non-compliance (Tallberg 2002, 611). The enforcement approach stems from the political economy tradition of game theory and collective action theory (Downs, Rocke and Barsoom 1996). Compliance problems are therefore best remedied by increasing the likelihood and costs of detection through monitoring and the threat of sanctions. By contrast, the managerial school emphasises a good record of compliance with international treaties due to considerations of efficiency, interests, and norms (Chayes and Chayes 1993; Young 1994). Non-compliance, which occurs only sporadically, is not the result of deliberate decisions to violate treaties, but an effect of capacity limitations and rule ambiguity. It is best addressed through a problem-solving strategy of capacity building, rule interpretation, and transparency, rather than through coercive enforcement. Tallberg (2002) argues that a third approach exists which combines enforcement and management mechanisms. When examining compliance with international agreements Underdal (1998) concentrates on the calculus of compliance and explicates the calculations that a unitary rational actor would perform in deciding whether or not to honour its commitments. His model treats compliance as a function of will and capacity but focuses essentially on the structure of incentives. Moreover, Underdal (1998) also examines the domestic politics of implementation. The most important difference from the

first model is that the decision-maker is assumed to maximize domestic political support rather than national welfare. Moreover, the state is a complex organisation, where decisions and policies are formed through a series of policy games over which no single actor has full control. Furthermore, it is constrained by the society it is supposed to govern (Underdal 1998).

International Political Economy deals with interactions between domestic politics and international political economy. Gilpin (1987) claims that "a theory of political economy will require a general comprehension of the ways in which social, economic, and political aspects of society interact." Strange (1994) puts forward the fundamental question of IPE: *who-gets-what,* and analyses how power has been used to shape the political economy and the way in which it distributes costs and benefits, risks and opportunities to social groups, enterprises and organization within the system. Strange (1994) argues that both relational and structural power matter in global political economy. Relational power denotes the ability of one country to get another country to do something it would not otherwise do. Structural power is defined as "the power to shape and determine the structures of the global political economy within which other states, their political institutions, their economic enterprises and their scientists and other professional people have to operate." Consequently, it allows decisions on how things shall be done and it shapes frameworks within which states relate to each other, relate to people and relate to corporate enterprises (Strange 1994).

2.4. Polish Europeanisation debate

In the 1990's the Polish Europeanisation debate focused on the terms of the association agreement with the European Union, prospects of EU membership and timing of Poland's EU accession. The pro-European orientation was dominant among political elites in the

1990's. Similarly, Polish scholars assessed positively Poland's ties with the EU. Nevertheless there were critical voices about the EU association and accession requirements.

A positive evaluation of the association agreement and the prospect of Poland's EU membership was presented, *inter alia*, by Prof. Belka and Prof. Orłowski. Belka (2001) argues that the association agreement served as a guideline for reforms: "with its *acquis*-related provisions it may well reduce national sovereignty in economic policy but it also reduces our freedom to commit serious mistakes [...] it has mobilized a political will to reform" (Belka 2001, 28). Moreover, Poland's contacts with the EU provided a massive inflow of policy related know-how and, furthermore, resulted in a significant increase in the FDI inflow into Poland. Furthermore, EU membership will improve growth conditions. Witold Orłowski (2001), a Polish specialist on the economics of EU integration, claims that the Polish economy, in order to grow, needs wide access to West European markets, some way of reducing the perceived risks of investment and easier access to foreign financing. Poland also needs a new anchor for political and social stability (Orłowski 2001, 274).

There was a degree of scepticism concerning Poland-EU relations. Some academics argued that the areas where the EU made specific demands were of greater benefit to western Europe than to Poland (see Sołtysiński 1996). Similarly, Blazyca (2001) argued that the trade asymmetries built into association agreements while on the surface favouring Poland in reality favoured EU producers. Likewise, he was critical of the European Commission's approach towards the candidate countries: "The EU seems to be pressing on candidate countries a fairly pure version of liberalism notwithstanding those countries needs' for more sensitive treatment...Brussels appeared to be stiff and unyielding on Polish needs" (Blazyca 2001, 269).

The major costs for Poland may result from the accelerated restructuring and modernisation of the economy which may increase unemployment. Tokarski and Mayhew (2000) warn that where implementation of EU regulations would add even more to the expenditure side of the budget, great care is necessary. Moreover companies which have monopolistic power may push increased costs through to the consumer, thus adding to inflation.

Political elites may use an EU argument in order to win the support for reforms. The promise of membership in the near future may allow politicians to push through difficult reforms of the "public sector". Rapacki (2001) claims that "the need to meet EU convergence criteria in a growing number of areas will bring greater external pressure (and a handy argument for the Polish government) for much needed structural reforms" (Rapacki 2001, 138). In fact, the Buzek government introduced four reforms (healthcare, social-security, educational, and public administration systems) at a time when the prospect of EU membership became closer.

There is no doubt that no precise date of accession proposed by the European Commission aroused many speculations when Poland's accession to the European Union will happen and what the reasons are for such timing. Marie Lavigne implies that the decision to accept highly diverse East European states depended on EU political will: "Central and East European countries will be allowed to join when the EU judge it politically expedient." However, this is a contested argument. Certainly, other factors matter, for example: EU institutional arguments, financial factors, domestic public opinion and the domestic political factor. I will present these in turn and draw conclusions at the end.

The EU institutional argument was also crucial when deciding on the timing. The so-called fourth Copenhagen accession criteria stipulated that "the Union on its part must have the capacity to absorb new members, while maintaining the momentum of European

integration" (European Council 1993, 13). Before enlargement takes place, the Union must undertake institutional reforms in order to accommodate new members. Orłowski (2001) claims that "the enlargement to the East represents an unprecedented challenge for the EU. Enlargement therefore also requires a "transition" for the EU itself: one that involves reforming the least efficient and most costly common policies" (Orłowski 2001, 274).

The timing of the EU enlargement to the East may be determined by a financial factor. The prospect of the increased burden for the EU of financial transfers might slow down the process.[44] Former Prime Minister Olszewski[45] claims that Polish membership is impossible in the near future simply because of the costs to the present member states. The economic factors meant that a majority of EU leaders were against early enlargement (cited in Bobiński 2001, 298).

Polish public opinion expressed an opinion that a delay in membership was not damaging provided it is accompanied by a firm perspective of accession. The CBOS opinion poll shows[46] that a minority is in favour of joining the EU as soon as possible and a majority wants membership later (Bobiński 2001, 300). Similarly, some Polish politicians also opted for a later date of accession. The PSL Prime Minister Pawlak proposed to adopt a tougher stance in EU talks. Pawlak's main argument was that if Poland joined at the wrong moment then the country's economy, including its agriculture, would be destroyed by competition from West European countries (see Bobiński 2001, 300).

Finally, the domestic political factor points out that the final benefit of EU membership could not be ignored. Despite some criticism of the European Commission's approach, the general public mood was very positive towards European integration. Polish politicians became aware that, if they failed to work for EU membership, the electorate

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[44] For the conditions of real convergence between EU-15 and candidate countries from Central Europe, see Orłowski 2001.

[45] The right wing Movement for the Reconstruction of Poland, ROP.

[46] When asked: "Should Poland first modernize its economy and only then join the EU?" Some 58% of those surveyed in May 2000 agreed as compared with 48% in April 1997. On the other hand the proportion of the population in favour of the "speediest entry" fell from 40% in April 1997 to 29% in May 2000 (CBOS 2000).

would hold them responsible for the loss of financial and other opportunities. The only thing that can mobilize politicians is fear of not being re-elected as a result of backlash of this kind (see Bobiński 2001, 299).

Certainly, no single factor explains the reasons for the timing of Poland's accession to the EU. Over the past decade there was a degree of political will; the beginning of the accession negotiations in 1998; and the IGC decision in Nice in 2000 which provided for institutional arrangement to accommodate new members. Sub-optimal outcomes for some member states were in fact an advantage for new member states. For example, under the Nice Treaty, Poland was given 27 votes in the European Council, just two shy of the number that Germany possessed, which has a population twice as large. The financial aspect of the debate must be taken into consideration. The enlargement to the East means an increased financial burden on the EU which may have a negative effect on speedy accession of new member states. Moreover, domestic public support for the reforms and European integration may mobilise the politicians to deliver the promise of EU membership.

Conclusions

In Chapter 2 I have presented the main postulations of rational choice institutionalism, Europeanisation, international relations and international political economy. In this thesis the approach of rational choice institutionalism is a heuristic device for analysing a policy process in a decade of important systemic changes in Poland resulting from transformation and Europeanisation. Hence, it was crucial to present its assumptions and the way it interprets the reality. This chapter has also made a reference to Polish materials and it has analysed both commitment and resistance to Europeanisation. In the next chapter I will present a conceptual framework which is essential for theorising and interrelating the concepts into logical propositions.

Part II. Theory and Methodology

Part II is a conceptual, theoretical and methodological section. The relation between conceptual and theoretical analyses is well captured by Merton's words. He asserts that theorising is taken up with the clarification of concepts and followed by interrelating the concepts into logical propositions and hypotheses. This is when a theory is developed:

> Conceptual analysis, which is confined to the specification and clarification of key concepts, is an indispensable phase of theoretic work. But an array of concepts does not constitute theory, though it may enter into a theoretic system. It is only when such concepts are interrelated in the form of a scheme that a theory begins to emerge. Concepts, then, constitute the definitions of what is to be observed: they are the variables between which empirical relationships are to be sought. When propositions are logically interrelated, a theory has been instituted (Merton 1958, 143).

In what follows, I offer definitions of key concepts used throughout this thesis such as Europeanisation, EU accession conditionality and compliance. Subsequently, I propose a typology of actors participating in a policy-making process at a domestic level. In Chapter 4, the rationalist model of compliance is presented which emphasises the relationship between rational action and institutional constraints. In Chapter 5, I propose a method and procedure to analyse information in order to explain the institutional outcomes in Poland.

Chapter 3. Conceptual Framework

In this conceptual chapter I present definitions of concepts which I use throughout the thesis and which are crucial for a theoretical model. According to Stebbing (1961) a definition is "an aid to clear thinking and, therefore, to the communication of thought." For Sartori (1970) a conceptual analysis is a "fundamental step in comparative political science because concepts that are not well-defined lead to confusion and elusive language."

Consequently, I first begin by presenting different uses of the concept of Europeanisation and clarifying how it is used throughout the thesis. Then, I elaborate on the notion of EU accession conditionality. Here, the nature of the externally driven pressures and how they impinge on domestic policy-making and political economy are emphasised. Furthermore, a definition of compliance is presented. Moreover, I concentrate on factors indigenous to a political system. This is when I conceptualise an External Actor, a Veto Player, Pivotal Actors and Powerless Actors.

3.1. Key Concepts

Europeanisation

In general, Europeanisation denotes EU-isation.[47] The concept of Europeanisation explicitly refers to the notion of the European Union. Ladrecht (1994) provides one of the first definitions of Europeanisation implying that it means an incremental process re-orienting the direction and shape of politics to the degree that EC political and economic dynamics become part of the organisational logic of national politics and policy-making

[47] EU-isation is a term coined by Wallace (2000, 1).

(Ladrecht 1994, 69). However, Europeanisation is a contested concept because it is used to depict a variety of phenomena and processes of change. In general, "Europeanisation" may be treated either as a dependent variable or an independent variable. In this thesis Europeanisation denotes the impact of the European Union on domestic policies.

Europeanisation can be broadly treated as a process involving several distinct dimensions. The first one is a bottom-up process through which national political, social and economic forces create a new European supranational setting. The second one is a top-down process through which EU political, social and economic dynamics become an increasingly important part of domestic arrangements. Research has concentrated either on an explanation of the dynamics and outcomes of the European integration process, or on the impact of the European Union on domestic institutions (Börzel and Risse 2003, 57). Another perspective is that Europeanisation is a two-way process. Member states are not simply passive recipients of pressure from the EU; they also try to project national policy preferences upward to the EU level (Bomberg and Peterson 2000, 2).

On the one hand, Europeanisation means European integration and institution-building at the EU level (Stone Sweet and Sandholtz 1998; Colino 1997; Moravcsik 1999). Europeanisation is "the emergence and the development at the European level of different structures of governance, that is, of political, legal, and social institutions" (Cowles et al., 2001, 1). On the other hand, Europeanisation is a "processes of construction, diffusion and institutionalisation of formal and informal rules, procedures, policy paradigms, styles, 'ways of doing things' and shared beliefs and norms which are first defined and consolidated in the making of EU decisions and then incorporated in the logic of domestic discourse, identities, political structures and public policies" (Radaelli 2000, 3). For Schmidt (2001) Europeanisation is a set of regional economic, institutional, and ideational forces for change also affecting national policies, practices and politics.

Olsen (2001) and Featherstone (2003) present typologies of Europeanisation. Olsen (2001) differentiates five understandings of the concept. Firstly, Europeanisation means changes in external territorial boundaries. Secondly, Europeanisation is the development of institutions of governance at the European level. Thirdly, Europeanisation denotes central penetration of national and sub-national systems of governance. Fourthly, Europeanisation implies exporting forms of political organisation and governance that are typical and distinct for Europe beyond the European territory. Fifthly, Europeanisation is a political project aiming at a unified and politically stronger Europe (Olsen 2001, 2). Featherstone (2003) talks about Europeanisation as a historic phenomenon, Europeanisation as transnational cultural diffusion and Europeanisation as institutional adaptation.

Most studies of Europeanisation seem to privilege extension (Radaelli 2000, 4). A concept can be depicted with two fundamental properties: extension and intension (Sartori 1970). For Sartori (1984) denotation is "the instance when fewer properties are included in the concept, the larger will be the class of empirical instances." Moreover, it does not have high discriminatory power as a concept with high intension, i.e. connotative precision, does. The fewer properties that are included in the concept of Europeanisation, the larger will be the class of empirical instances. Thus Europeanisation is supposed to explain processes of cultural change, administrative innovation, and even modernisation (Radaelli 2000, 4).

Europeanisation is an "*essentially contested concept.*" Europeanisation has no single meaning and there is no single definition but only internal complexity and ambiguity. Gallie (1964) defines a concept to be essentially contested when "there is no one use of any of them [i.e. concepts] which can be set up as its generally accepted and therefore correct or standard use" (Gallie 1964, 157). First of all, it is widely agreed that the term is used to describe a variety of phenomena and processes of change (Börzel and

Risse 2000; Olsen 2001) and no general method has been proposed for deciding between the claims made by different scholars. Moreover, there is a possibility of considerable modification in the light of altering circumstances. For example, Agh (2002) assumes that there is anticipative Europeanisation as democratisation and adaptive one as a specific EU democratisation because of a changing situation.

Throughout the thesis I use the concept of Europeanisation to denote the impact of the European Union. Consequently, there is also the implication that there is institutionalisation at the European level of a system of governance with common institutions and the authority to make Europe-wide binding policies which have effects on domestic structures of both EU member states and candidates for EU membership. In Olsen's classification this is his third definition which means domestic impacts of European-level institutions. This understanding focuses on change in domestic institutions which results from the development of European-level institutions, identities and policies. The European-level development is treated as an explanatory factor and changes in the domestic institutional arrangements as the dependent variable. For Olsen the implication is that "the research tasks are to account for variations in European impacts and to explain varying responses and importance of domestic institutions against pressures from the European level" (Olsen 2001, 10).

EU accession conditionality

EU accession conditionality is a mechanism through which the European Union influences candidate countries for EU membership. Europeanisation exerts pressures. Pressures refer to the rules which prescribe a course of action and which exert a compelling and constraining influence. They stem from legal obligations and commitments to approximate

the state's legislation with that of the Community as well as non legally-binding documents.

Conditionality is an institutional arrangement. In general, conditionality entails the linking by a state of perceived benefits such as aid, trade concessions, cooperation agreements, political contacts, or international organisation membership to the fulfilment of conditions (Stokke 1995, 11). Conditionality has been "a basic strategy through which international institutions promote compliance by national governments" (Checkel 2000, 1). Positive conditionality entails holding out the promise of benefits if the country concerned meets certain conditions. Negative conditionality implies imposing sanctions such as reducing, suspending, or terminating benefits if the state in question does not comply with the criteria. In general, to analyse the effectiveness of the use of conditionality, two questions in particular must be answered: firstly, what the conditions or requirements are; secondly, the role of actors involved: conditionality *by whom for whom*.

Traditionally, conditionality referred to economic conditionality. Nevertheless, political conditionality has been recently analysed as well. Economic conditionality implied that an access to new loans, rescheduling debt reduction, etc., was conditional on certain criteria being met. It was a basic strategy through which international institutions such as the World Bank and the International Monetary Fund promoted compliance by national governments. However, in recent years the use of political conditionality has grown dramatically (Smith 1997; Checkel 2000; Schimmelfennig et al. 2002). There has been "an explosion in both the aggregate use of conditionality and a change in its underlying purpose, with the promotion of political and institutional reforms now on a par with the economic sort" (Checkel 2000, 1).

EU accession conditionality means that EU membership and technical pre-accession assistance are dependent on the extent to which an applicant country complies

with the requirements prescribed by the European Union. This type of conditionality is *ex ante* and is based on promises made by the EU and its member states. Grabbe (1999) defines EU accession conditionality as "an evolving set of conditions for membership. These conditions have progressively been expanded to cover a wide range of policy outputs, and imply a role for the EU in policy-making in CEE beyond its mandate in the existing member states" (Grabbe 1999, 1). For Hughes *et al* (2002) "EU membership conditionality is the instrument by which the Commission seeks to ensure the systemic compatibility of the Central and East European countries with the EU" (Hughes *et al.* 2002).

EU accession conditionality encompasses rules, incentives and sanctions. Rules are prescribed criteria to be met. They are the requirements which are binding guidelines for action. Incentives, as "supply-side measures,"[48] are positive with motivational influence which induces support or encouragement for an action. Sanctions are a means of penalising by reducing, suspending, or terminating benefits if a state in question does not comply with the criteria. However, it is expected that sanctions might be imposed only as a last resort. In the EU's application of conditionality, positive measures are preferred. Smith (1997) points out that the Community approach is geared to the principle that international cooperation must focus especially on positive measures providing incentives for the promotion of democracy and human rights: "the use of sanctions should be considered only if all other means have failed" (European Commission 1992). Positive measures help to establish the conditions under which democratic principles and the market economy can be protected. Such measures seem to challenge sovereignty less than sanctions do. According to Schimmelfennig *et al.* (2002), the European Union offers two kinds of rewards to non-member countries, namely, assistance and institutional ties. It

[48] On supply-side economics and supply-side measures see Samuelson P. and W. Nordhaus (1995).

offers technical and financial assistance including funding for infrastructure projects, environmental protection and nuclear safety. Institutional ties start with trade and cooperation agreements. These are followed by association agreements. EU membership is the strongest institutional tie (Schimmelfennig et al. 2002, 3).

Compliance

In this study compliance with international obligations refers to the legal transposition of EU legislation into national legislation, if there was no such regulation in national law. However, if domestic law is congruent with EU law, no change of the *status quo* is predicted. This definition is in line with the one of Neyer (2002) the only difference being that it refers to a candidate country for EU membership. He defines compliance as "the extent to which the member states of the European Union implement supranational regulations, i.e. the extent to which these regulations are incorporated into national law, and are applied and enforced by member state administrations" (Neyer 2002, 3).

The measure of compliance is whether a new statute is passed in parliament. I deal only with legal implementation which means the incorporation of the EU-induced legislation into national law. This legal implementation is unilateral, on the side of a candidate country for EU membership. I exclude administrative implementation which encompasses implementation of new law and its enforcement.

3.2. Players in the EU conditionality game of accession

The aim of this section is to present and operationalise players in the EU conditionality game of accession. In order to proceed towards explanation, one has to make concepts

useful in terms of an empirical analysis. Hence, I present a taxonomy of actors and players. A taxonomy is a simple device that organises research and makes complex concepts amenable to empirical reseach (Radaelli 2003, 34).

I make a distinction between external and domestic actors. While there is only one external actor, domestic actors are manifold. I distinguish three exclusive and exhaustive categories of domestic actors: Veto Players, Pivotal Actors and Powerless Actors. The classification is based on the importance of actors for a decision to comply: Veto Players can veto legislation unilaterally, Pivotal Actors can block legislation by setting up a coalition while Powerless Actors have no impact on the policy outcome.

This classification of actors into categories depends on the level of analysis. While on one level an actor may be considered to be a veto player, on another level of analysis the same actor may be regarded as an actor without the power to veto a decision. The process of EU enlargement is an example of a two-level game. For Putnam (1988) any international collaboration results from a two-level game; one – international, the second – national. At the international level, both the EU (and its Member States) and the Polish government are involved in the game and may be regarded as veto players. At the national level, the European Commission cannot be regarded as a Veto Player. It is only one of the actors who does not have much impact on domestic policy-making. The European Commission has no direct power to veto domestic legislation.

Moreover, at the domestic level, a macro or a meso-level (policy level) may be distinguished. Schimmelfennig and Sedelmeier (2002) label the macro-polity dimension and the substantive-policy dimension. Meso explanations, on the other hand, focus on specific domains or arenas of activity, and may not be relevant to others, and indeed tend to emphasise factors that are specifically relevant to the domains or arenas under examination. In contrast, macro explanations seek to explain at the broadest level of

analysis, and in aggregate and all-embracing terms while micro explanations deal with very specific or local political activities (Wallace and Wallace 2000, 70). For example, at the macro level, a referendum which introduces the preferences of the population in the policy-making process is an equivalent to the introduction of a new veto player; however, at the policy level it is not a veto player.

Furthermore, implicit in the distinction is the idea of institutional and partisan analyses. The identification of actors is based on constitutional provisions (institutional analysis) and a partisan analysis of the political system. Tsebelis (2002) claims that institutional veto players are generated by the constitution, while partisan veto players are generated by the political game. Hence, I look at the *de jure* specification and *de facto* situation. The *de jure* rules of institutional design are the foundation stones of political decision structures. However, in order to understand how these institutions work in practice, we must add the *de facto* rules that arise from electoral results and party systems (Immergut 1992, 27). Political power depends on votes which are distributed within particular political institutions. The partisan composition of parliament, a stable parliamentary majority and party discipline matter for legislative relations.

Additionally, different actors may appear on stage at different phases of the legislative process. Conventional accounts of how public policies are made divide the process into essentially three phases: policy proposals, policy decisions and policy implementation. This three-phase distinction is helpful as a starting-point, in that it identifies different kinds of activities and different kinds of actors who are involved during the three phases (Wallace and Wallace 2000, 73).

Given the limited scope of the thesis, I have chosen to model a domestic game. I take the outcome of the EU game as exogenously given. Hence, I only look at the Polish game. It is analysed in policy proposal and policy decision phases. What follows is a

classification of actors at a meso-level in a national game. It is broad enough to refer to any policy area. A more detailed analysis and classification of actors in the area of antitrust and state aid policies are presented in the next chapter.

3.2.1. The External Actor

The External Actor is, *sensu largo*, the European Union. The EU defines policies, sets strategic objectives (free trade area, membership), conditions (provisions in Europe Agreements, membership criteria) and gives political and financial assistance and incentives (PHARE, privileged cooperation and consultation) to countries willing to become members of the European Union. However, *sensu stricto*, there are three European institutions, i.e. the European Council, the European Commission and the European Parliament, which play a significant role in the process of EU enlargement. The European Council issues the accession criteria and guidelines to be followed. The European Commission has a twofold role that gives it a major influence over the whole process of enlargement (Grabbe 1999, 27). The Commission is a "guardian of the Treaties" and is in charge of proper application of EU legislation at a national level. Simultaneously, it assesses the degree of compliance with the EU requirements, which a candidate country is obliged to fulfil, and presents reports on conformity. The European Commission is responsible for all aspects of interpreting conditionality and, finally, decides whether the conditions are met, and recommend to the Council whether or not the conditions are met. Finally, EU accession requires the consent of the European Parliament under the assent procedure. However, the European Parliament is not usually seen as a major player in enlargement politics (Schimmelfennig and Sedelmeier 2002, 525).

3.2.2. Domestic Actors

A Veto Player

A Veto Player can veto legislation *unilaterally*. Without his agreement no decision can be made. Tsebelis (2002) defines veto players as "individual or collective actors whose agreement is necessary for a change of the status quo [...] A change in the status quo requires a unanimous decision of all veto players (Tsebelis 2002, 36)." In the case of the EU conditionality game of accession, domestic Veto Players are to decide whether, or when, to comply with international commitments. Moreover, a major Veto Player is an agenda-setter who initiates and drafts government policy.

Who are Veto Players in a political system? A major Veto Player is a minister who is in charge of a government department with jurisdiction over a policy area. Chairmen of government agencies in charge of a policy area may have equivalent power. Other potential Veto Players are parties in coalition government. In minimum winning coalitions every party in government is a veto player and the outcome of votes in parliament is identical to government proposals (Tsebelis 2002, 142). In minority and oversized governments, the parties in government are politically but not arithmetically veto players. Minority governments require support from other parties and oversized governments can ignore the positions of parties not necessary for a parliamentary majority (Tsebelis 2002, 142).

Furthermore, if the reference is made to approximating bills, i.e. harmonising domestic legislation with EU law, any institution dealing with conformity assessment may be regarded as a Veto Player. For example, in the Polish case they include the Secretary of the Office of European Integration and the European Integration team in the Chancellery of

the Sejm. Finally, the President may be a Veto Player if he has the power to veto legislation.

Pivotal Actors

Pivotal Actors might block legislation by setting up a *coalition.* They are essential members of some coalitions of actors that can block legislation altogether but cannot change it unilaterally. They approve or disapprove the selection of possible outcomes made by a major Veto Player. However, a coalition does not only refer to an explanation of parliamentary coalition formation exclusively within the context of the parliamentary system itself. It refers to any coalition of actors; hence, social organisations such as trade unions and large corporations may be included in the analysis.

The potential Pivotal Actors are opposition parties which in coalition with another party may block legislative outcomes. Interest groups belong to the category of Pivotal Actors as well. Among the most important interest groups are labour unions and business clubs. In order to understand interest group influence, one must examine each link in the chain of political decision making, seeing which politicians occupy strategically important positions and analysing why they might react favourably to interest group lobby efforts (Immergut 1992, 28). Labour unions have achieved very different degrees of political influence that do not vary merely according to the number of members they enroll or the number of voters they represent. If a given group insists that specific legislative propositions be added or dropped, it must be able to threaten the passage of the law (Immergut 1992, 28).

Moreover, parliamentary committees might be important in the legislative process because they examine and often amend bills and deliver opinions on bills which have been

referred to them. Hence, they may introduce significant constraints to the choices of an agenda-setter.

Powerless Actors

Powerless Actors play a minor role in the process and their decisions do not have any impact on a policy outcome. They are members of any coalition of actors that can block legislation. They are not decisive players in any way, yet they participate in the process.

Residual parties in parliament take part in the legislative process and vote on proposed legislation but are not pivotal to any legislative majority and, hence, they are essentially irrelevant. Moreover, independent deputies, usually few in number, belong to this group. The Polish Senate and the Marshal of the Sejm have no real power, hence they belong to Powerless Actors.

Conclusions

In this conceptual chapter I presented the main concepts I used in the thesis. Before proceeding towards explanation, there was a need to make the concepts useful in terms of theoretical and empirical analyses. Moreover, I presented a typology of actors. I made a distinction between external and domestic actors. While there is only one external actor (the European Union), domestic actors are manifold. I have distinguished three exclusive and exhaustive categories of domestic actors: Veto Players; Pivotal Actors; and Powerless Actors. The classification is based on the importance of actors for a decision to comply. In the next chapter I will present hypotheses based on rational choice institutionalism which focuses on the relationship between rational action and institutional constraints.

Chapter 4. A Theory of Veto Players and Pivotal Actors

In this thesis I explain the institutional outcomes from the perspective of rational choice institutionalism Hence, this chapter presents a rationalist model of compliance based on the theory of Veto Players and Pivotal Actors. The explanations provided employ the reasoning of rational choice institutionalism. Hence, I concentrate on the relationship between rational action and institutional constraints.

4.1. Assumptions

The dependent variable is the decision of a state to comply with international commitments. In this study compliance refers to the transposition of EU regulations into national law. It is measured by whether a new statute is passed in parliament, if previously there was no such regulation in national law. However, if domestic law is congruent with EU law, no change of the legislative status quo is predicted. Compliance is a function of the structure of domestic Veto Players and Pivotal Actors combined with their preferences.

The chances for compliance are high when a degree of compatibility of policy preferences exists between an External Actor and domestic actors: Veto Players and Pivotal Actors. Moreover, the chances for compliance are higher when the deadline for compliance is approaching.

The assumptions of the model can be delineated. Firstly, a Veto Player exercises his 'veto' by blocking legislation unilaterally. A major Veto Player has agenda-setting power; thus, he controls the drafting of government bills and their submission to

parliament. Secondly, Pivotal Actors, if in coalition, may block or postpone legislation. For example, they exert their influence through a majority rule in the legislature.[49]

4.2. Hypotheses

Hypothesis 1: The more compatible the policy preferences of the External Actor and a major Veto Player, the faster the compliance. If the preferences of the External Actor and a domestic agenda-setter differ significantly, it may result in non-compliance.

This hypothesis draws from the Tsebelis' theory of veto players and the argument that the larger the distance between the veto players, the more likely the status quo will persist (Tsebelis 1995; Tsebelis 2002).

Hypothesis 2: The more compatible the policy preferences of domestic Veto Players, the greater the chances of a major Veto Player winning support for EU-induced legislation, and the faster the compliance. Furthermore, this hypothesis asserts that the smaller the number of Veto Players, the faster compliance would be. Conversely, the greater the number of Veto Players with inconsistent policy preferences, the greater the probability that a piece of legislation harmonising domestic law with EU law would be blocked.

Hypotheses 2 draws from Tsebelis' theory of veto players and the argument that the larger the distance between the veto players, the more likely the status quo will persist (Tsebelis 1995; Tsebelis 2002). Moreover, the potential for policy change decreases with the number of veto players (Tsebelis 2002, 242). In general, spatial models of preferences pinpoint how actors' preferences determine policy outcomes. The examples are: a spatial

[49] Article 120 of the 1997 Constitution stipulates that the Sejm shall pass bills by a simple majority vote, in the presence of at least half of the statutory number of Deputies, unless the Constitution provides for another majority.

model of majority rule (Shepsle and Bonchek 1997), a portfolio allocation model (Shepsle and Laver 1990) and also a veto players' theory (Tsebelis 1995; Tsebelis 2002).

Hypothesis 3: The more compatible the policy preferences of Pivotal Actors with the preferences of the major Veto Player, the greater the chances of the major Veto Player winning support for EU-induced legislation, and the faster the compliance.

This hypothesis refers to Laver and Shepsle's theory of coalition. But the meaning of a coalition is wider and includes not only parliamentary coalitions but any coalition of actors, for example, social organisations such as trade unions and large corporations or committees. Interest groups are often consulted directly during the formulation of policy proposals at the executive stage. But their relative importance depends on whether they are politically essential to the executive, or whether they can count on concentrations of politicians to overturn executive decisions at a later stage in the legislative process. Interest group influence thus depends on the institutional context of political decision making (Immergut 1992, 28).

Hypothesis 4: The closer the externally imposed deadline,[50] the greater the chances for compliance at the domestic level. Benefits of compliance (i.e. EU membership) outweigh short-term costs.

The rational timing and sequencing of legal transposition may occur. The speed of approximation and implementation of Community law is related to the costs incurred. Where it is advantageous to candidate states to introduce certain regulation at an early stage, this should be done; the implementation of the most onerous or difficult regulation should be left until a deadline. Then, no Veto Player has any incentive to defect because the benefits of EU membership are much higher than short-term costs. The closer the

[50] The 'deadline' refers to the date of accession: by which time all accession requirements should be fulfilled.

deadline the stronger the pressures because non-compliance would mean not being accepted as an EU member state.

4.3. Value-added of the model

I put forward hypotheses which stem from the theory of veto players and theories of coalitions. However, I have improved these theories in some respects.

What is lacking in the theory of veto players is an emphasis on the potential importance of different actors who can not only veto policy change unilaterally but also set up a blocking coalition. Moreover, in contrast to the theory of veto players, which determines the possibility of policy change but cannot identify the direction of it, I assume that the approximate direction of policy change is known. This is because of the obligation to adopt external policy prescriptions. Furthermore, I consider an individual minister to be an agenda-setter and not the government as such. This is in accordance with the claim of exclusive ministerial jurisdictions (Laver and Shepsle 1996) and against the claim that agenda setting belongs to the government as a whole (Tsebelis 2002). In addition, I emphasise the international context of domestic policy-making. Political contracts are often contingent upon international developments. Tsebelis (2002) concentrates only on domestic politics. I present a heuristic device that allows us to think more systematically about the interplay between exogenous and endogenous factors and I include an External Actor in the analysis.

With reference to coalition theories, what I propose is that a coalition refers not only refer to a parliamentary coalition. It refers to any coalition of actors including social organisations such as trade unions or parliamentary opposition. Formal coalition theories are not equipped to take such factors into consideration (De Swaan 1973, 146).

In contrast to all previous applications of the theory of veto players which were quantitative, instead my research is qualitative. In general, no complex approach was proposed to explain variation in compliance with the EU requirements in candidate countries for EU membership. Despite its importance, strategic adaptation and institutional modification remain understudied and only partially understood. Empirical research has corroborated predictions with respect to the veto players' theory in the European Union, EU member states and the USA, yet it has not been tested in any of the Central European countries. Kathleen Bawn (1999) tested quantitatively the theory with respect to government spending in Germany. Kreppel (1997) found legislative output in Italy negatively correlated with the number of parties in government. Chang and Tsebelis (2001) found out that the structure of budgets in OECD countries changed at a slower pace when the government was composed of many veto players. Immergut (1992) investigated a series of reforms in France, Switzerland and Sweden that established, or failed to establish, their national health insurance programmes and argued that enacting laws depended on the cooperation of a number of actors during "windows of opportunity."

Nevertheless, none of the studies was applied to the area of competition policy and a Central European country. Hence, in what follows I present two case studies in which I will test the hypotheses of the rationalist model of compliance. The results will be presented in Chapter 9.

4.4. Justification

This chapter presents a rationalist model of compliance based on the theory of Veto Players and Pivotal Actors. The explanations provided employ the reasoning of rational choice institutionalism. Hence, the relationship between rational action and institutional constraints is analysed.

Rational choice institutionalism has been chosen because it allows an examination of the following questions:

- How do observed differences among institutions affect political and economic outcomes in various social, economic and political systems and,
- how are institutions themselves affected by individual and collective beliefs, preferences, and strategies? (Alt and Shepsle 1990, 2).

Hence, the scholarly reason for using rational choice institutionalism is that it provides an explicit and systematic methodology for studying the effects of institutions; how institutions constrain the sequence of interaction among actors, the choices available to particular actors, the payoffs to individuals and groups, and how the institutions may be affected by preferences (see Weingast 2001).

In this thesis I explain the institutional outcomes from the perspective of rational choice institutionalism. Consequently, I look at different institutional arrangements (number of Veto Players, agenda setter, etc) and how they affect a political outcome – Poland's compliance with EU requirements. Simultaneously, I analyse how new institutions are set up (for example, the Act on State Aid Control) and how the preferences of political actors shaped new institutions. Actors' expected costs and benefits determine preferences and, in turn, policy preferences of different actors are crucial for a policy choice.

The rationalist model of compliance, which I have presented in this thesis, predicts that the chances for compliance are high when a degree of compatibility of policy preferences exists between an External Actor and domestic actors: Veto Players and Pivotal Actors. Moreover, the chances for compliance are higher when the deadline for compliance is approaching. In contrast, non-compliance results from many Veto Players with inconsistent preferences and a distant deadline for compliance.

Apart from rational choice institutionalism, there are certainly different ways of explaining policy outcome, for example sociological or historical institutionalism. While the sociological understanding of institutions stresses their constitutive, identity-forming roles and refers to cognitive and normative mechanisms (Checkel 1998; March and Olsen 1998), it cannot account for the fact that institutions may be influenced by preferences based on rational calculation. On the other hand, while historical institutionalism highlights path-dependency of institutional change and explains how institutions are created (Cowles, Caporaso and Risse 2001), it does not look at how differences among institutions affect political and economic outcomes in different systems.

However, only rational choice institutionalism allows us to explain policy outcomes as emerging from the preferences of political actors and the institutional set-up (see North 1990). The emphasis on the preferences of political actors and the institutional set-up is of particular significance in the period of important developments in Poland. This approach allows us to see how political actors are constrained by institutions and how power has been used to shape the political economy and the way in which it distributes costs and benefits to different social groups. In fact, this thesis is a study of political power in Poland and who gets to determine policy outputs.

A rationalist model of compliance, which I have presented in this thesis, is a heuristic device for analysing a policy process in a decade of important systemic changes resulting from transformation and Europeanisation. It allows us to explain why compliance with EU requirements was achieved and who had the power to influence the policy outcome. Although this model is an abstract representation of a phenomenon, it permits an understanding of the lack of compliance with EU requirements in state aid policy.

To sum up, the choice of rational choice institutionalism has been justified by the fact that neither sociological nor historical institutionalism take into account rational action

and institutional constraints. In this thesis the rational choice institutionalist approach is a heuristic device for analysing a policy process in a decade of important political, economic and social changes in Poland. This approach has been used to structure the story which I am telling about how the EU-induced institutions were chosen in Poland.

Conclusions

In Chapter 4 I have justified why I want to use rational choice institutionalism. The reason being that it allows us to explain policy outcomes as emerging from the preferences (based on rational calculation) of the political actors and the institutional set-up. It has been argued that rational choice institutionalism offers insights that other approaches neglect. Moreover, it provides logically rigorous explanations. This approach is a heuristic device for analysing a policy process in a decade of important systemic changes resulting from transformation and Europeanisation. After having presented the conceptual and theoretical analyses, in the next chapter I will present the methodology.

Chapter 5. Methodology

A comparative method is employed as a research technique. This epistemological strategy is case-oriented. The rationale is that only through comparison with several cases are hypotheses secure. A hallmark of qualitative approaches is their attention to complexity – the heterogeneity and particularity of individual cases. For Yin (1994) a comparative case method is a distinctive form of multiple-case studies. Likewise, Ragin (1994) argues that classic comparative social science tends to be case-oriented. Collier (1991) claims that the comparative method is often used to refer to the partially distinctive methodological issues that arise in the systematic analysis of a small number of cases. Case-oriented methods are holistic which contradict the radically analytic approach of most quantitative work (Ragin, 1994). Ragin (1994) argues that the comparative method is superior to the statistical method. Applications of the case-oriented comparative method produce explanations that account for every instance of a certain phenomenon. As King et al. suggest:

> The comparative approach - in which we combine evidence from many observations even if some of them are not very close analogies to the present situation – is always at least as good and usually better than analogy. The reason is simple; the analogy uses a single observation to predict another, whereas the comparative approach uses a weighted combination of a large number of other observations (King 1994, 212).

Furthermore, the comparative method forces the investigator to become familiar with the cases under investigation. Hence, given the many advantages it offers over other types of methods, it is not surprising that social scientists often employ the comparative case method. Finally, the comparative method stresses the importance of both institutions and sectors. In the former, laws and conventions are uppermost; in the latter public goods,

class structure and international pressures are salient. The first gives a priority to a national particularity and constitutional traditions; the second suggests that policy sectors rather than nation-states are the main source of variation (Cole and John 2000, 249).

In order to avoid selection bias in public policy research Freeman (1985) proposes: "we would be well advised to substitute a 'several policies, several countries' framework for a 'country, several policies' mode in order to lay the groundwork for an explanation of the structured variation in the public policies of nations." In this thesis I propose to concentrate on "Poland, two policies" and on six episodes altogether in antitrust and state aid policies. By examining a specific subset of decisions in two general areas, I have a dataset of observations in which to observe the linkage between the extent of compliance and the structure of Veto Players and Pivotal Actors.

In this study compliance refers to the transposition of EU regulations into national law. Hence, the analysis is restricted to legal incorporation. Compliance is measured by whether a new statute is passed in parliament, if previously there was no such regulation in national law. However, if domestic law is congruent with EU law, no change of the legislative status quo is predicted.

This study does not examine policy implementation, that is, law application and enforcement. In this thesis I explained why compliance was achieved quicker in antitrust policy than in state aid policy in the period 1994-2000. The year 2000 was chosen as the end date because inertia in state aid policy harmonisation came to an end when legislation on state aid control was introduced. Poland complied with formal EU requirements in state aid policy. Consequently, the analysis is restricted to legal transposition as some time must be allowed for policy implementation. However, in the section on thesis conclusions I pointed out that further research should be undertaken in the area of competition law enforcement.

Units of analysis in this thesis are decision-makers, individual legislators voting for the EU-induced bills and parties functioning as a corporate actor. I was able to observe implications of the theory at the party level – when legislators are viewed as a bloc with similar interests that accrued to them as a party unit – as well as the individual level – when an individual MP might be an actor on his own right. This is revealed through the analysis of roll call votes, interviews and debates in the parliament. Moreover, chairmen of the regulatory agency are included in the analysis.

The data came from interviews and document analyses. Secondary sources included already published documents, official and legal reports, etc. Primary data included semi-structured elite interviews with politicians and civil servants. Hence, a method of triangulation of data was used. It helped reduce reliance on any one source of information and avoid bias. It increased confidence in the overall validity of inferences.

When analysing documents, I examined roll-call votes on the antitrust and state aid bills, justifications for the bills, the Sejm committee transcripts, party statements, reports on state aid granted in Poland published by the Ministry of Economy and the Office for Competition and Consumer Protection. Moreover, EU documents were examined in order to scrutinize EU accession requirements and assessment of compliance with the requirements by a candidate state. In particular, I analysed annual European Commission reports in which the Commission assessed progress made by Poland in preparation for membership, Accession Partnerships, European Council Presidency conclusions and the Commission reports on competition policy.

Interviews were important because they revealed the reasons for supporting or opposing a bill harmonising domestic legislation with EU law. I conducted fourteen interviews in Poland between September 2002 and September 2003. I interviewed those players in the EU conditionality game who participated in a competition policy debate.

Among others, I interviewed former Prime Ministers: Jerzy Buzek (1997-2001) and Waldemar Pawlak (1993-1995); former Chairperson of the Office for Competition and Consumer Protection, Prof. Anna Fornalczyk; an official from the Ministry of the Economy, Bronisława Kowalak; an official from the Ministry of Finance, Jarek Neneman; and deputies of the Solidarity Electoral Action, the Freedom Union (both parties in coalition government 1997-2000), the Polish Peasant Party, the Democratic Left Alliance (both parties in coalition government 1993-1997, and main opposition in 1997-2001).

Finally, the time-frame of the analysis is 1994-2000. Poland submitted its application for EU membership in April 1994. Moreover, the Europe Agreement, which established an association between the European Communities and their member states, on the one part, and the Republic of Poland, on the other, came into force in February 1994. Poland committed itself to fulfilling obligations as provided in the agreement. The year 2000 was chosen as the end date because inertia in state aid policy harmonisation came to an end when legislation on state aid control was introduced. Poland complied with formal EU requirements in state aid policy.

Conclusions

Having presented the conceptual and theoretical framework, I have suggested the method of conducting this research and data collection. Now, I can proceed to an empirical analysis in which I will present two case studies and six episodes. Guided by the questions posed by rational choice institutionalism, I will try to explain the phenomenon under investigation, i.e. why there was fast compliance in antitrust policy while there was non-compliance in state aid policy. I will look at the institutional differences in two policy areas; number of Veto Players, and how their preferences determined the policy outcome.

Part III. The Comparative Case Study of State Aid and Antitrust Policies in Poland

Part III is a comparative case study of state aid and antitrust policies in Poland in the 1990's. The aim of this section is to explain the outcome of several discretely identified episodes when a compliance decision was required. To explain why one outcome occurred rather than another, the theorist must ground his or her explanation in empirical materials, seeking the forces that shaped the selection of particular equilibrium (Bates 1996). The rational choice institutionalism allows us to interpret the events in the six episodes looking at the institutional set-up and preferences of the actors participating in the process.

The comparison of the two policy areas shows inertia in state aid policy harmonisation (non-compliance) and harmonisation of antitrust policy with EU *acquis* (compliance). By examining a specific subset of decisions in two policy areas, I have developed a dataset of observations in which the linkage between the extent of compliance and a structure of domestic Veto Players and Pivotal Actors and their preferences is examined. I show that non-compliance was the result of many Veto Players and Pivotal Actors and the incompatibility of their preferences with the preferences of the External Actor. Conversely, in antitrust policy the small number of Veto Players and the consistency of their preferences made compliance with EU requirements feasible.

Before I proceed with the presentation of case studies (state aid policy in Chapter 7 and antitrust policy in Chapter 8), I want to concentrate on the institutional arrangements of policy-making in Poland. In Chapter 6 I examine formal procedures governing formulation of the policy measure and passing of the act in parliament in Poland and actors participating in the process. Moreover, I present major political parties in Poland.

Chapter 6. Policy-Making Process and Party Politics in Poland

This Chapter maps domestic actors and players within the policy-making process in Poland. The aim is twofold. Firstly, it is to present a detailed analysis of policy-making in Poland. Secondly, it is to connect the typology of actors, such as Veto Players, Pivotal Actors and Powerless Actors which I put forward in Chapter 4, with the framework of domestic policy-making.

6.1. The legislative process in Poland

Formal institutions constitute a framework within which actors play their role and policy-making takes place. They establish background conditions for the actions of politicians, bureaucrats, interest groups and voters who wish to enact or to block policies. Formal institutions, such as the Constitution or the Rules of Procedures of Parliament, specify the stages in the legislative process and allow identification of actors participating in the process.

In Poland, the legislative procedures are regulated by the Constitution of the Republic of Poland of 2 April 1997[51] and the Rules of Procedures of the Sejm of 30 July 1992. The 1997 Constitution replaced the so-called Little Constitution introduced in October 1992. As regards the executive-legislative nexus the major difference between the two constitutions was that the 1992 Constitution gave more power to the President in appointing and dismissing ministers and government. The Rules of Procedures have been changed several times since 1992. The most important changes included amendments on 28 October 1997 as regards the increased competences of the Marshal of the Sejm and amendments of 13 July 2000 which provided for a separate legislative procedure which

[51] The Constitution of the Republic of Poland, Journal of Laws 1997, No 78, item 483.

concerned approximation of Polish law with EU law and setting up a Sejm Committee on European law (Sejm 2002).

Article 95 of the Constitution stipulates that legislative power is exercised by the Sejm which is the lower Chamber of Parliament, and the Senate which is the upper Chamber of Parliament. The *Sejm* has 460 members, elected for a four year term by proportional representation in multi-seat constituencies with a 5% threshold for individual parties and 8% for coalitions. The *Senat* has 100 members elected for a four year term. The legislative initiative is vested in groups of deputies (at least 15), the Senate, the President, the Council of Ministers, and a group of at least 100,000 citizens having the right to vote in elections to the Sejm (Article 118 of the Constitution, Article 32 of the Rules of Procedures of the Sejm). Potentially, a major Veto Player is any of the legislative initiators. At the stage of preparing a bill interest groups may be consulted. If interest groups have a degree of political influence, they are Pivotal Actors.

The formal rules specify that the bill should be accompanied by a declaration about its compliance with the law of the European Union, along with an explanatory statement which has to indicate, amongst other things, an estimate of its social, economic and financial effects, sources of finance and whether the bill imposes a burden on the state budget. This is the time when two actors appear on stage; the first one assesses conformity of domestic legislation with EU law; the second is the Marshal of the Sejm. If a bill is introduced by the Council of Ministers, it is the Secretary of the Office of the Committee for European Integration who assesses legal conformity. If a bill is introduced by the deputies, the Sejm Committee, the Senate, or a group of at least 100,000 citizens, its conformity is evaluated by a European Integration team in the Chancellery of the Sejm. Prior to referring the bill for the first reading, the Marshal requests that experts from the Chancellery prepare an opinion as regards conformity with EU law. If those experts find

non-conformity with EU law, then an opinion about the bill is presented by the European Committee of the Sejm. This opinion is submitted by the Marshal of the Sejm to the author of the bill.

While there was a scrutiny procedure, as regards approximating Polish legislation to that of the European Union, in the Council of Ministers, there was no parliamentary scrutiny procedure as regards conformity with EU law until early 1999. Only on 19 March 1999[52] were the Sejm Rules of Procedures amended and a more complex scrutiny procedure introduced. Lazowski (2000) points out that the first attempts to devise a scrutiny procedure were in 1997 when the Rules of Procedures were slightly amended (a new provision was added to article 31). The authors of legal acts (bills and other non-binding internal documents such as draft Sejm resolutions) were required to submit an opinion on conformity with EU law as an annex to the legal act under consideration. Due to the lack of a relevant procedure this provision proved unenforceable (Lazowski 2000, 57).

According to Article 31 of the Rules of Procedures, bills and draft resolutions must be first submitted to the Marshal of the Sejm and shall have an explanatory note attached. Since July 2000 the approximating bills have been referred to the Committee on European Law. According to Article 56 of the Rules of Procedures, "a governmental bill declared as an approximation bill during the committee part of the legislative procedure shall be subject to the proceedings of the European Law Committee." Moreover, the Rules of Procedures of the Sejm require that the sponsor of the approximating bill deliver a Polish translation of the European legislation to which Polish legislation is to be approximated. Before undertaking a consideration of an approximating bill, the Committee establishes a timetable of work on that bill. According to the Rules of Procedures, an amendment to the

[52] Polish Monitor, No. 11/ 1999, item 150.

approximating bill may be introduced, in written form, at the sitting of the Committee by a group of at least 3 deputies being members of the Committee (it also applies to the submission of the minority motion concerning the Committee's report). During the second reading an amendment to the approximating bill may be introduced by a group of at least 5 deputies. The European Law Committee cooperates with other Sejm committees and avails itself of the experts' opinions.

The legislative process starts in the Sejm the moment the bill is submitted to the Marshal. The Sejm considers bills in the course of three readings as stipulated by Article 119 of the Constitution and Article 36 of the Rules of Procedures. While, in practice, the first reading takes place at Committee sittings, the third reading involves voting on the bill. The first reading takes place during the sitting of the Sejm or at a sitting of a committee, and consists of the presentation of the justification by the mover, a subsequent exchange of questions and answers between the mover and the deputies and a debate on the general assumptions of the bill. The first reading may end with the rejection of the whole bill or its delegation to a special committee. Further work on the bill is usually performed in sub-committees, with the participation of experts and representatives of the government. This stage of the legislative procedure ends either with the committee's acceptance of the bill which may contain a recommendation to adopt it with or without further amendments, or with a motion to reject the bill (Art. 43 of the Rules of Procedures). The second reading in the Sejm consists of the presentation of a report on the bill, a subsequent discussion and the introduction of possible amendments (Art. 44 of the Rules of Procedures). The deputies, the movers and the Council of Ministers are entitled to propose amendments. Subsequently, the bill is usually referred back to the committee so that the latter may take a stand towards the suggested amendments and motions.

In Poland the composition of committees reflects the political party structure of the Chamber (Sejm 2003). Hence, I do not recognise the Sejm committees as separate collective actors. They are a manifestation of the Sejm party composition. Institutionally, the committees play a vital role in the activities of the Sejm. According to the provisions of Articles 17 and 40-43 of the Rules of Procedures of the Sejm, the main function of the committees is to examine and prepare issues which are currently the object of parliamentary debates and to deliver opinions on matters which have been referred to them by the Sejm, the Marshal or the Presidium. The committee sittings are attended on an obligatory basis by ministers and heads of supreme bodies of State administration (or their representatives), whose range of activity is enclosed within the issues considered at the given meeting. The composition of the committee is determined by the Sejm by means of a resolution, on the motion of the Presidium of the Sejm, after having obtained the opinion of the Council of Elders.

In the course of the legislative procedure involving the examination of bills by committees, it is obligatory to seek the opinion of the Office of the Committee for European Integration (OCEI). This opinion is attached to a committee report in the second reading. At this stage the Secretary of the OCEI may be a Veto Player as well because he can veto a piece of legislation unilaterally if it does not conform to EU law. The role the Secretary performed at this stage of the legislative process is similar to his role performed when the bill has been proposed by the Council of Ministers. Before it is sent to the Marshal of the Sejm, the Secretary of the Office of the Committee for European Integration delivers a conformity assessment.

At this stage of the legislative process in the Sejm, parliamentary parties (and deputies) are crucial, hence an analysis of the party composition of the Sejm is important. At the stage of the third reading deputies and parties play a crucial role. (I classify deputies

in the conceptual analysis as Veto Players, Pivotal Actors or Powerless Actors.) The third reading comprises of a vote preceded by the presentation of an additional report of the committee or (if the bill had not been referred back to the committee) the presentation by the deputy-rapporteur of the amendments and motions put forward during the second reading. Actually, a number of ballots usually precede the final passage of the bill by a majority rule (Art.49 of the Rules of Procedures). The provisions of the Rules of Procedures dealing with the voting procedure expressly provide that, in accordance with the Constitution, the decisions of the Sejm are made by a simple majority vote in the presence of at least half of the statutory number of deputies, "unless the provisions of statute and the Rules of Procedures of the Sejm provide otherwise."

The Marshal submits the statute[53] passed by the Sejm to the Senate. The Senate is a second institutional player in the legislature. In the typology of actors, the Senate is a Powerless Actor. Institutionally, I do not consider it to be a Veto Player because its power to veto legislation is limited. The formal institutional arrangements stipulate that within 30 days of its submission, the Senate may adopt the statute without any amendments, adopt amendments or resolve upon its total rejection (Art. 121 of the Constitution). If, within the prescribed time period the Senate fails to adopt an appropriate resolution, the statute is considered adopted according to the wording submitted by the Sejm. The resolution of the Senate proposing the introduction of amendments to the statute adopted by the Sejm (or rejecting it in general) is transferred by the Marshal of the Sejm back to the committee which had formerly examined the given statute. A senator-rapporteur representing the Senate committee which had dealt with the statute in question may participate in the

[53] After the bill has been passed in the Sejm, it becomes a statute, although without binding force. In Polish legal and juridical language a bill becomes a statute the moment it is passed by the Sejm, although a statute thus passed is not yet in force. The statute gains the force of a universally binding law only after the legislative process in the Senate is completed, it is signed by the President and published in the Journal of Laws. In general, the bill becomes a statute the moment the Sejm passes it, on condition the Senate does not propose any amendments; or the Sejm accepts all or some amendments proposed by the Senate; or the Sejm passes the bill after it has been reviewed after presidential veto.

sittings of the Sejm committee. The latter prepares a report which submits motions to the Sejm concerning the adoption, partial or total, of the changes proposed by the Senate, or their rejection (Art. 54 of the Rules of Procedures). A resolution of the Senate rejecting the statute or an amendment proposed in an earlier resolution of the Senate is considered accepted unless the Sejm rejects it by an absolute majority vote in the presence of at least half of the statutory number of Deputies (Sejm 2003).

Having reviewed the proposal of the Senate the Marshal of the Sejm submits the adopted statute to the President for signature. While in institutional terms, the President is a Veto Player, it depends on his party affiliation whether, in practice, he is be a Veto Player. In Poland, the president has the power to veto legislation. The formal provisions lay down that the President is expected to sign the statute within 21 days and order its promulgation in the Journal of Laws (Art. 122 of the Constitution). However, before signing the statute, the President may refer it to the Constitutional Tribunal for adjudication upon its conformity to the Constitution. In cases when in the opinion of the Tribunal the statute conforms to the Constitution, the President cannot refuse to sign it. Accordingly, the President may refuse to sign a statute if the Tribunal has judged its non-conformity. Nevertheless, whenever such non-conformity relates only to a certain number of provisions which are not, in the Tribunal's opinion, inseparably connected with the statute in question the President may decide to sign the statute with the omission of the provisions which were questioned by the Tribunal. He may also decide to return the statute to the Sejm for the purpose of removing the non-conformity. If the President has not made reference to the Constitutional Tribunal to adjudicate on the constitutionality of a given statute, he may refer it to the Sejm for the latter to reconsider his veto. Such reference has to be accompanied by an explanatory note. The Marshal submits the presidential motion to the committee which was in charge of the statute before it was adopted by the Sejm.

Subsequently, the committee prepares a report containing either a motion to re-pass the statute in its original wording or a motion to the contrary. The Sejm may override the presidential veto by a three-fifths majority vote in the presence of at least half of the statutory number of deputies. The statute which was re-passed is signed by the President within 7 days and promulgated immediately afterwards. In such a situation the President no longer has the right to refer it to the Constitutional Tribunal (Sejm, 2003).

A legislative initiative of the Council of Ministers

In this section, I will concentrate on the process and procedures governing the passage of a governmental bill in the Council of Ministers before it is submitted in parliament. I give special importance to the Council of Ministers for two reasons. Firstly, the Council of Ministers (government) initiated 78 percent of all the approximating statutes, i.e. statutes which harmonised Polish legislation with EU law. The Council of Ministers was the most active legislative initiator during the third term of the Sejm in the years 1997-2001. The Council of Ministers proposed 221 bills out of a total number of 271 approximating bills, deputies presented 39 bills, Sejm committees –20 bills, the Senate – 3 bills, the President – 1 and citizens – none (Chancellery of the Sejm 2002, 4). Secondly, while in general a submission of a bill is regulated by the Rules of Procedures of the Sejm of 30 July 1992, the Council of Ministers has special internal procedures governing submission of a bill as stipulated by Regulation No. 13 of the Council of Ministers of 25 February 1997.

A detailed analysis of internal procedures in the Council of Ministers is presented in Table 3. The Council of Ministers may initiate a legislative bill as stipulated in Article 118 of the Constitution and Article 32 of the Rules of Procedures of the Sejm. However, I consider an individual minister to be a Veto Player and not the Council of Minister as such. This is in accordance with the claim of exclusive ministerial jurisdictions (Laver and

Shepsle 1996) and against the claim that agenda setting belongs to the government as a whole (Tsebelis 2002). The members of the government and other entities of the central administration such as government plenipotentiaries and chairmen of the public agencies[54] initiate, prepare and submit drafts of governmental texts. In institutional terms a major Veto Player has the power to set the agenda.

Table 3. Stages of presenting a bill by the Council of Ministers

Submitting a bill	1. Any member of the Council of Ministers 2. Other entities of central administration entitled to initiate legislation
Assessment of a bill	1. Inter-ministerial acceptance 2. The appropriate Standing Committee of the Council of Ministers 3. The Legal Commission in the Chancellery of the Prime Minister 4. The Committee for European Integration 5. (optional) Other State agencies, civic organisations and other potentially interested groups
Decision	A bill is sent to the Marshal of the Sejm, or a bill is amended by the Council of Ministers and only then sent to the Marshal of the Sejm, or a bill is rejected

Sources: The Constitution of the Republic of Poland, 2 April 1997, Journal of Laws, 1997, No 78, item 483; Regulation No. 13 of the Council of Ministers of 25 February 1997 (Polish Monitor No. 15, item 144); The Law of 8 August 1996 on the Organisation and Rules of Procedures in the Council of Ministers and on the competences of Ministers (Journal of Laws 1996, no. 106, item 492).

[54] The Article 6 of the Rules of Procedure in the Council of Ministers and Regulation no.13 of the Council of Ministers of 25 February 1997 enumerate those who may prepare governmental texts.

It is mandatory for draft governmental texts to go through a procedure to gain inter-ministerial acceptance. While any minister may veto the proposal, in fact, only those who deal with the policy may be Veto Players. For example, in the area of state aid, they include the Minister of the Economy, the Minister of Finance and the Minister of the Treasury. After the bill has gained inter-ministerial acceptance, it is examined by the appropriate Standing Committee of the Council of Ministers, the Legislative Commission and the Secretary of the Committee for European Integration before being introduced to the Council of Ministers.

The Council of Ministers takes its decision on the basis of auxiliary committees' advice. In my institutional classification they are not considered to be actors because they are only advisory bodies of the Council of Ministers. The standing committees are the following: the Economic, Social and Defence Committees of the Council of Ministers as well as the Regional Policy and Sustained Development Committee. The Economic Committee of the Council of Ministers assesses drafts of normative documents, drafts of programmes, analyses, reports and other government documents pertaining to Poland's economic policy. The Social Committee of the Council of Ministers evaluates drafts on social policy, unemployment, etc. The Committee for Defence Affairs of the Council of Ministers assesses drafts of normative documents, drafts of programmes, analyses, reports and other government documents pertaining to Poland's internal and external security. The Committee for Regional Policy and Sustained Development of the Council of Ministers analyses the impact of the proposed legislation on the regional development. Moreover, before introducing a draft normative document for consideration by the government, the initiating body also submits the draft to the Legal Commission in the Chancellery of the Prime Minister, which verifies its conformity with the Constitution and with prevailing legislation (Article 18 of the Rules of Procedures in the Council of Ministers).

In addition, the Committee for European Integration is responsible for assessing conformity of bills and executive regulations with the legislation and standards of the European Union, and for overall harmonisation of the law. Therefore, in my institutional classification, I consider the Secretary of the Office of the Committee for European Integration to be a Veto Player. This is the Secretary of the Office who delivers the opinion of the Committee (Article 15 of the Rules of Procedures in the Council of Ministers, Regulation no. 13 of the Council of Ministers of 25 February 1997). The Office continues the works previously conducted by the Bureau for European Integration and the Bureau for Foreign Assistance. The latter were part of the Council of Ministers' Office and were set up on the strength of a Council of Ministers' Resolution No.11/91 dated 26 January 1991 establishing the Office of a Government Plenipotentiary for European Integration and Foreign Assistance. Their task was to support the work of the Government Plenipotentiary. In fact, a scrutiny procedure in the Council of Ministers for the conformity of regulations and bills with the *acquis* goes back to as early as September 1990 when the Economic Committee of the Council of Ministers officially recommended that "new legislation be harmonised to meet the Community's requirements."[55] This was formally followed by the decision of the Council of Ministers No.16/94 of 29 March 1994[56] on additional requirements for the procedure of adoption of the Council of Ministers legislative acts arising from the obligation to approximate the legal system to European Union law. Currently, these issues are regulated by the Council of Ministers Rules of Procedures and also the Act on Committee for European Integration.

Moreover, at this stage of the legislative process, interest groups can play a pivotal role. Article 10 of the Rules of Procedures in the Council of Ministers stipulates that "given the contents of the draft governmental bill and taking into account other

[55] Cited in Lazowski (2001, 49).
[56] Polish Monitor, No 23 / 1994, item 188.

circumstances such as social and economic effects of the proposed bill, its complexity and urgency," a draft statute may be assessed by other State agencies, civic organisations and other potentially interested groups.

Furthermore, the role of the Prime Minister must be emphasised. Decisions of the Council of Ministers are taken by consensus in the presence of a majority of government members. But in the event of a tie, the Prime Minister casts the deciding vote. A draft statute may be accepted without any amendments, accepted with amendments or rejected or postponed (Article 29 of the Rules of Procedures in the Council of Ministers, Regulation no. 13 of the Council of Ministers of 25 February 1997).

6.2. Major political parties in Poland in the 1990's

The focus of this section is upon political parties in Poland in the 1990's. However, particular attention is paid to political parties and caucuses represented in the lower House of Parliament, the *Sejm,* in the period 1993-2001. Hence, I refer to the second and third term of the Sejm in the years 1993-1997 and 1997-2001 respectively. Over this period of time several parties were set up and several disappeared from the political arena. In order to facilitate an understanding of the Polish party system, I will first focus on the basis of post-communist party competition in Poland.

Poland's pluralistic party system, whose characteristic feature was a proliferation of parties, evolved in several stages. According to Herbut (2000) and Bugajski (2002) the first phase commenced with the destruction of the hegemonic communist party system and came to an end in January 1990. The second phase was the break-up of the dominant Solidarity movement, leading to a fragmented party system for the October 1991 parliamentary elections. Nevertheless, the process of institutionalisation of political parties

had begun. Prior to the September 1993 elections considerable party realignment began that inaugurated the third phase of party consolidation across the political spectrum. Since 1993 Poland has had a two-bloc system, comprising parties aligned into two rival alliances of the post-communist left and the post-Solidarity centre-right (Herbut 2000, 100).

The outcomes of parliamentary elections were central to the evolution of the party system in Poland. After the 1991 election there were twenty-odd parties in the Sejm, while the number of parties was reduced to six after the 1993 elections. This was mainly the result of a new electoral system: a 5% threshold for individual political parties was introduced, an 8% threshold for coalitions and the d'Hondt method replaced the Hare-Niemeyer system[57]. After the 1997 elections there were five parties in the Sejm. However, during the Sejm's terms, there were some defections and some new parliamentary caucuses were set up.

In the September 1993 parliamentary elections the former communists in the Democratic Left Alliance (SLD) won 20.4% of the vote and 171 seats, while their former agrarian allies in PSL, with 15.4% of the vote and 132 seats, scored second (see Appendix 3, Table 1). The only post-Solidarity party to win significant parliamentary representation in 1993 was the Democratic Union (UD), finishing third with 10.6% of the vote and 74 seats. The Labour Union (UP), a social democratic party of both former communists and Solidarity activists, also performed well and came fourth with 7.3% of the vote and 41 parliamentary seats. Moreover, the Wałęsa-inspired Non-Party Reform Bloc (BBWR) managed to cross the 5 per cent threshold. Finally, the populist Confederation for an Independent Poland (KPN) which had remained aloof from Solidarity before and after 1989, inched across the threshold and was allocated 22 seats.

[57] The Hare-Niemeyer method is a highly proportional method of seat allocation. The number of seats to be filled is multiplied by the number of votes won by a party. The result of this calculations is divided by the total number of valid votes. This gives a number of seats to be allocated to the party. D'Hondt method is less proportional. With d'Hondt method, each party's total number of votes is divided by the following series of numbers: 1,2,3, etc (see Benoit and Hayden 2004).

In the September 1997 parliamentary elections, the Solidarity Electoral Action (AWS) won 33.8 per cent of the vote while the Democratic Left Alliance (SLD) got 27.1 per cent (see Appendix 3, Table 2). AWS agreed with the Freedom Union (UW), a party with a focus on economic and political liberalism, to form a coalition government. On 17 October 1997 President Kwaśniewski designated the AWS candidate Jerzy Buzek as prime minister and Buzek's new centre-right government won the Sejm's confidence on 11 November 1997. There was tension between the coalition parties, particularly over the economic policy pursued by UW Finance Minister Balcerowicz (Millard 1999a, 213). The AWS-UW coalition finally collapsed in June 2000, leaving Buzek at the head of an AWS minority government.

When classifying Polish parties, two different ways of categorisation are applied. The first is "genetic" while the second places the parties in conventional party families. Herbut (2000) uses the former category: the Democratic Left Alliance (SLD) and the Polish Peasant Party (PSL) belong to the post-communist parties, while the Freedom Union (UW) and the Solidarity Electoral Action (AWS) are post-Solidarity parties. On the other hand, Bugajski (2002) classifies the parties as socialist (SLD, Labour Union); liberal (UW); Christian Democrat (AWS, Non-Party Bloc for the support of the Reforms); agrarian (PSL) and nationalist (Confederation for Independent Poland and Movement for the Polish Republic).

Due to the fact that in this thesis I only deal with the third stage in the development of the Polish party system, in what follows I will present four major parties which dominated the political space in Poland in the years 1993-2001. I have decided to concentrate mainly on these parties because they were parties in government: SLD and PSL in the years 1993-1997 and AWS and UW in 1997-2001. However, some other parliamentary parties of minor importance will be analysed. The Labour Union, the Non-

party Bloc in Support of Reforms, the Polish Agreement, the Confederation for an Independent Poland, the Movement for the Reconstruction of Poland, etc. participated in the legislative process as they had representation in parliament, but they were of minor importance. When presenting Polish political parties I refer to characteristics of both typologies, namely, genetic and conventional.

Democratic Left Alliance

The Democratic Left Alliance, *Sojusz Lewicy Demokratycznej* (SLD), was "one of the parties headed primarily by former Communist party members" (Jackson et al. 2003, 90). SLD was set up first as a coalition in 1991 and then as a party in 1999. SLD, which was established in the run-up to the 1991 parliamentary elections, was initially composed of 17 organisations but expanded to 27 in 1993 and 33 in 1997. SLD as a political party was set up in April 1999 and Leszek Miller became its leader. Out of 33 former coalition members only 5 did not join. SLD was an electoral coalition of parties and groupings clustered around the Social Democracy of the Polish Republic (SdRP), the direct organisational successor to the communist PZPR that had successfully refashioned itself as a Western social democratic party. It was a coalition "integrating parties, trade unions, social organisations, and unorganised people connected with the social-democratic ideas of justice and social equality."[58] The Democratic Left Alliance included the OPZZ trade union federation (Szczerbiak 2001, 93). The impact of the OPZZ labour union on SLD was significant. The OPZZ trade-union federation along with SdRP was the driving force in terms of providing SLD with political direction and organisational support. Out of a total of 208 SLD Sejm deputies and senators elected in 1993, 73 were SdRP members and 61

[58] Cited in Szczerbiak (2000, 178).

were from OPZZ (Szczerbiak 2001a, 179) while in the 1997 Sejm elected OPZZ had 42 deputies.

Before 1997, thirty-three different parties, social movements and trade unions renewed the SLD coalition agreement. In the September 1997 elections the Democratic Left Alliance got 27.1% of votes and 164 seats in the Sejm. They became the second largest group, just after the Solidarity Electoral Action. In the period from October 1997 to September 2001 "SLD emerged as a highly disciplined opposition led by the effective and pragmatic former communist official Leszek Miller and appeared well placed to return to power after the next parliamentary elections in September 2001" (Millard 1999b, 98).

SLD attitudes to European integration were contradictory. On the one hand, the Social Democratic leaders were undoubtedly committed to Europe and, indeed, to economic liberalisation which was seen as essential in a global capitalist context. On the other hand, the demands of accession for rapid economic restructuring constituted a threat to important elements of the main constituents of the Democratic Left Alliance including the OPZZ trade union, anxious to protect the jobs of its members, and many other groups determined to maintain the fundamentals of the welfare state (Millard 1999a, 206). SLD did not oppose the economic reforms outright, but claimed that the pace of privatisation should be slower, that government social spending should be increased even if that meant a larger deficit and advocated abolition of the *popiwek*, the tax that restricted wages in state-owned and management firms (Jackson et al. 2003, 90).

Polish Peasant Party

The Polish Peasant Party, *Polskie Stronnictwo Ludowe* (PSL), along with SLD was another post-communist party, but with a very rural base. In general, the Polish Peasant Party is an important party in the Polish political system. It is perceived as "easily adjusting" which

enables it to benefit politically (Paszkiewicz 2000, 69). In 1993 it became a coalition government partner of the Democratic Left Alliance.

In the 1990's the Polish Peasant Party promoted a social market economy with an emphasis on protecting the domestic market (Paszkiewicz 2000, 68). PSL took a more antagonistic approach to the economic reforms than did the leaders of the Democratic Left Alliance. It strongly opposed the economic reforms and campaigned in favour of continued subsidies for farmers and state-owned firms (Jackson et al. 2003, 48). PSL advocated larger government subsidies and protection for agriculture and state-owned enterprises. They were less concerned about increasing the government deficit and opposed much of the privatisation plan (Jackson et al. 2003a, 90). PSL for its part also remained formally committed to EU accession. Nevertheless, it was the PSL's treasury minister who was the only member of the government to make public his criticism of the National Integration Strategy (Millard 1999a, 206). Following the September 1997 elections, PSL divided the party leadership and parliamentary fraction leadership between Jarosław Kalinowski and Janusz Dobrosz. Until 1997, it was Waldemar Pawlak who occupied both positions.

Freedom Union

The Freedom Union, *Unia Wolności* (UW), was formed in April 1994 when the Democratic Union (UD), *Unia Demokratyczna,* merged with the Congress of Liberal Democrats (KLD) *Kongres Liberalno-Demokratyczny*; two post-Solidarity parties. UW was intellectually and emotionally committed to rapid accession (Millard 1999a, 215). In the area of economic policies, UW promoted a market economy, unrestricted competition and the curbing of state interventionism and welfare state benefits (Paszkiewicz 2000, 144). As one element of its electoral strategy to construct an alliance of supporters for

market reforms, the Freedom Union attempted to forge links with its potential allies in the business community organised in bodies such as the Polish Business Council, the Confederation of Polish Employers and the Business Centre Club (Szczerbiak 2001a, 180). In April 1995, Leszek Balcerowicz, former Minister of Finance, replaced Tadeusz Mazowiecki as party leader.

In 1997 the Freedom Union became a coalition government partner of the Solidarity Electoral Action. However, UW promoted economic and political liberalism which aroused the animosity of a substantial number of the different groupings that made up AWS (Millard 1999a, 213). On 6 June 2000, the coalition government of the Solidarity Electoral Action and the Freedom Union finally collapsed leaving Buzek at the head of an AWS minority government. UW defected from the coalition because of tension between the coalition parties, particularly over economic policy.

Solidarity Electoral Action

The Solidarity Electoral Action, *Akcja Wyborcza Solidarność* (AWS), was established in June 1996 in order to unite post-Solidarity centre-right parties for parliamentary elections in September 1997. Prior to the 1997 elections the trade union leader, Marian Krzaklewski, organised the AWS coalition that united the trade union and Catholic parties (Jackson et al. 2003, 48). AWS was a broad coalition of parties and groupings, social movements and trade unions including various Christian democratic, liberal conservative, nationalist and agrarian parties. In July 1997 thirty-six organisations belonged to AWS. As one of the observers noticed: "The AWS programme satisfied its disparate conservative, liberal, interventionist, nationalist and Catholic elements by a very general programme combining

elements of populism and Christian democracy."[59] There were four main strands within AWS: trade union - NSZZ 'S' and *Ruch Społeczny AWS* Social Movement AWS; liberal-conservative; Christian-national and Christian democratic (Paszkiewicz 2000, 166).

In general, AWS was avowedly committed to EU membership. However, many of its arguments and prescriptions appeared to be incompatible with the requirements of European integration (Millard 1999a, 211). As a right-oriented organisation the Solidarity Electoral Action supported pro-market policies and privatisation but accepted limited state intervention as a method of regulating market forces in order to achieve social goals (Herbut 2000, 92). Krzaklewski was a leader of both the party and a parliamentary fraction.

Other parliamentary parties

- Labour Union

The Labour Union, *Unia Pracy* (UP), was established in 1992. It is a Social-Democratic Party. It supports the "Third Way," which incorporates elements of market economy and state interventionism, as the best option for Poland. UP opposes rapid privatisation. In the 1993 parliamentary elections, it got 7.3 per cent of the vote and was allocated 41 seats in the Sejm and one in the Senate. UP followed the direction of its party manifesto. Sometimes it supported the SLD/PSL government, sometimes it sided with the opposition (Paszkiewicz 2000, 140). In the 1997 parliamentary elections, UP received 4.74 per cent of the vote which did not allow for any seats in the Sejm as the threshold was 5 per cent.

- Non-party Bloc in Support of Reforms

[59] Cited in Millard (1999b, 96).

The Non-party Bloc in Support of Reforms, *Bezpartyjny Blok Wspierania Reform* (BBWR), was set up on the initiative of president Lech Wałęsa who wanted to have his own political group in order to influence Sejm decisions. It was registered as a political association in November 1993. BBWR strongly supported Poland's integration with the EU and NATO. The party emphasised its differences with other parties in three respects: support for a strong presidential system of government, a maximum decentralisation of power and the promotion of property rights for all citizens (Bugajski 2002, 185). In the economic domain, it supported privatisation and facilitating the development of small and medium-sized enterprises (Paszkiewicz 2000, 13). After the October 1993 elections BBWR was assigned 90 seats out of 460 in the Sejm and two in the Senate. This result was considered to be a failure. BBWR supported Lech Wałęsa in the 1995 presidential elections. However, the failure of Wałęsa resulted in divisions within the party. In December 1996 the name was changed into the Bloc for Poland (BBWR- BdP) – *BBWR Blok dla Polski.* BBWR- BdP was centre-right, national and Christian. Before the 1997 parliamentary elections BBWR- BdP together with some other Christian and national political groupings set up an electoral coalition. It got 1.39 per cent of the vote, which did not allow for any representation in the Sejm.

- Polish Socialist Party

The Polish Socialist Party, *Polska Partia Socjalistyczna* (PPS), was registered in September 1990. PPS supported a variety of ownership models in the market economy. Moreover, it opted for state interventionism in agricultural restructuring (Paszkiewicz 2000, 59). In 1993 it got 3 seats in the Sejm. Before the 1997 parliamentary elections it joined an SLD electoral coalition. It got 7 seats in the Sejm and 3 in the Senate. In 1999, PPS left SLD. The Polish Socialist Party – the Movement of Workers, *Polska Partia*

Socjalistyczna (PPS) – Ruch Ludzi Pracy (RLP) (PPS-RLP), was set up on 4 November 1999. When the SLD coalition became a political party in 1999, PPS decided not to join and together with RLP set up a parliamentary circle. PPS-RLP was dissolved on 23 September 2000. Three deputies of PPS-RLP then became independent.

- Confederation for an Independent Poland

The Confederation for an Independent Poland, *Konfederacja Polski Niepodległej* (KPN), was established in 1979 and was the oldest party not connected in any way with the communist parties. It was officially registered in 1990. However, the Confederation underwent various splits.

The Confederation for an Independent Poland – Motherland (KPN-Ojcz.) *Konfederacja Polski Niepodległej – Ojczyzna,* was formerly known as the Confederation for an Independent Poland – Patriotic Camp (KPN – OP), *Konfederacja Polski Niepodległej – Obóz Patriotyczny.* KPN-OP was set up in February 1996 by a group of party members defecting from KPN who did not support the KPN leadership. It recognised the legacy of KPN as their own. KPN-OP was led by Adam Słomka and was part of an AWS coalition before the 1997 elections. On 29 July 1998 AWS took a decision to remove KPN-OP from its coalition (Paszkiewicz 2000, 29). On 23 December 1999 it became KPN – Ojcz. It was dissolved on 12 July 2000.

- Polish Agreement

The Polish Agreement, *Porozumienie Polskie* (PP), formerly known as the "Our Circle" (NK), *Nasze Koło* which was set up in September 1998, was registered as a political party in November 1999. Formed as a breakaway from the Solidarity Electoral Action, the Polish Agreement was closely associated with the Catholic-nationalist right.

The Polish Agreement was the first attempt to establish a political formation that was explicitly opposed to EU membership (Szczerbiak 2001b, 6). The Polish Agreement claimed to unite in the name of: resistance towards accession of Poland to the EU and is convinced that it must "support Polish agriculture and Polish production in the face of the threat posed by accession to the EU, and protect Polish property against foreign hands" (*Gazeta Wyborcza* 26 May 1999).

- Parliamentary Circle "the Republicans"

The Parliamentary Circle 'the Republicans,' *Parlamentarne Koło Republikanie* (PKR), was established on 31 January 1995 when 5 deputies defected from the Non-party Bloc in Support of Reforms, and was dissolved on 22 January 1996. Two of these deputies later set up the Deputies' Circle New Poland, *Poselskie Koło Nowa Polska.*

- Deputies' Circle "New Democracy"

The Deputies' Circle "New Democracy," *Poselskie Koło 'Nowa Demokracja'* (PKND), was set up on 19 January 1995 when three deputies defected from the Labour Union.

- Movement for the Reconstruction of Poland

The Movement for the Reconstruction of Poland – Centre Accord *Ruch Odbudowy Polski – Porozumienie Centrum* (ROP-PC), was set up on 28 February 2000. Formerly, it was known as the Movement for the Reconstruction of Poland.

The origins of the party go back to November 1995, when its leader Jan Olszewski was running for the presidency. His electoral committees transformed into a political party. In the beginning it was known as the Movement for the Republic of Poland (RdR), *Ruch*

dla Rzeczpospolitej; later it was called the Movement for the Reconstruction of Poland (ROP) *Ruch Odbudowy Polski*.

ROP was a centre- right party. The party strategy was to build on its traditional patriotic electorate by adding small and medium sized business people threatened by unfair competition from foreign capital and the ex-communist *nomenklatura*. In November 1996, Olszewski proposed to the Solidarity a common front against the "looting" of the Polish economy and the privatisation of strategic sectors such as banking, energy, and insurance (Millard 1999a, 212).

- Polish Vested Interest

The Polish Vested Interest, *Polska Racja Stanu* (PRS), was established on 23 December 1999 by two deputies who defected from the Movement for the Reconstruction of Poland and one who defected the Solidarity Electoral Action. It dissolved on 12 July 2000.

- Coalition for Poland

The Coalition for Poland *Koalicja dla Polski* (KdP), was set up on 12 July 2000 by eight deputies: three of them had belonged to the former Polish Vested Interest Party and five defected from AWS. KdP was dissolved on 2 April 2001.

- Polish Right

The Polish Right, *Prawica Polska* (PP), was set up on 16 December 1994 by four deputies who defected from the Confederation for an Independent Poland. PP ceased to exist on 16 February 1995.

6.3. Actors in antitrust and state aid policies in Poland

The analysis of formal institutions and partisan representation in government and parliament allows identification of major actors participating in policy-making. In principle, the Polish legislative process contains a number of institutional veto players, no matter what policy area it is, such as an agenda-setter, President and Secretary of the Office of the Committee for European Integration. However, "analysing the political game inside institutional veto players may produce more accurate insights" (Tsebelis 2002, 37). A partisan analysis, which examines major political parties, is crucial.

This section discusses how formal institutions that have structured antitrust and state aid policies map into the veto players' model and how a partisan analysis modifies an institutional analysis. I narrow down the analysis to the national game. When examining the domestic level, I look systematically only at a meso-level which is a policy level. The macro-level is neglected. Furthermore, I look at two stages in the policy-making process, i.e. policy initiation and policy decision. I do not analyse the implementation stage.

Section 6.3 presents a typology of actors in state aid and antitrust policies in Poland. The analysis of formal institutions allows identification of major actors participating in policy-making. In principle, the Polish legislative process contains a number of institutional veto players, no matter what policy area it is, such as an agenda-setter, President and Secretary of the Office of the Committee for European Integration.

In order to identify the actors the following documents are scrutinised:

- The Constitution of the Republic of Poland of 2 April 1997,
- Rules of Procedures of the Sejm of 30 July 1992,
- The Regulation no.13 of the Council of Ministers of 25 February 1997,

- The Law of 8 August 1996 on the Organisation and Rules of Procedures in the Council of Ministers and on the competences of Ministers,
- The Act of 24 February 1990 on Counteracting Monopolistic Practices and Protection of Consumer Interests,
- The Law of 8 August 1996 on the Committee for European Integration,
- The Act of 8 August 1996 on the law reforming operation of the economy and administration,

I analyse the period until 2001 because in 2001 the Act on the Conditions for Admissibility and Supervising of State Aid to Entrepreneurs came into force and, then, the institutional settings in state aid policy changed. Since 2001, the Office for Competition and Consumer Protection has been responsible for both antitrust and state aid policies in Poland.

Table 4. Actors in antitrust and state aid policies before the year 2001

Actors	Antitrust	State aid
External Actor	**The European Union** The 1991 Association (Europe) Agreement was a treaty between the European Communities and the Republic of Poland.	**The European Union** The 1991Association Agreement provided the legal foundation for bilateral relations between the EU/EU and Poland.
Veto Players	- **Chairman of the Office for Competit and Consumer Protection** (an agen setter) Act of 24 February 1990 on Counteracting Monopolistic Practices and Protection of Consumer Interests - **Secretary of the Office of the Committee for European Integration** TheLaw of 8 August 1996 on the Committee for European Integration - **President** Art. 144.3.6 of the Constitution - **Parties in coalition government** Electoral law; post-elections coalition agreements	- **Chairman of the Office for Competition and Consumer Protection** (an agenda-setter) Article 6 of the Rules of Procedure in the Council of Ministers; the decision of the Economic Committee of the Council of Ministers on 28 October 1998, - **Minister of Economy** (an agenda-setter) The Act of 8 August 1996 on the law reforming operation of the economy and administration - **Minister of Finance** The Act of 8 August 1996 on the law reforming operation of the economy and administration - **Minister of Treasury** The Act of 8 August 1996 on the law reforming operation of the economy and administration - **Secretary of the Office of the Committee for European Integration** The Law of 8 August 1996 on the Committee for European Integration - **President** Art. 144.3.6 of the Constitution - **Parties in coalition government**
Pivotal Actors	- **Opposition parties** Electoral law - **Interest groups** Article 10 of the Rules of Procedures in the Council of Ministers	- **Opposition parties** Electoral law - **Interest groups** Article 10 of the Rules of Procedures in the Council of Ministers
Powerless Actors	**- Residual parties in parliament** Electoral law **- Independent deputies** Electoral law **- Marshal of the Sejm** Article 110.2 of the Constitution; the role of the Marshal is limited to presiding over the Sejm debates **- Senate** Art. 121 of the Constitution; A decision of the Constitutional Tribunal, K 25/97 confirm the limits of the Senate power	**- Residual parties in parliament** Electoral law **- Independent deputies** Electoral law **- Marshal of the Sejm** Article 110.2 of the Constitution; the role of the Marshal is limited to presiding over the Sejm debates **- Senate** Art. 121 of the Constitution; A decision of the Constitutional Tribunal, K 25/97 confirm the limits of the Senate power

Veto Players

Agenda-setting power was conferred on different actors in the two policy areas. In the field of antitrust, this was the Chairman of the Office for Competition and Consumer Protection. The Office for Competition and Consumer Protection (OCCP) prepared draft legislation, new laws concerning monopolistic practices or their revisions. Hence, the OCCP Chairman was the major Veto Player. Moreover, the Chairman had the power to monitor whether companies abide by the law on preventing monopolistic practices, issued decisions related to the prevention of monopolistic practices, prevented monopolistic practices, and promoted competition and the protection of consumers' interests. The Chairman enjoyed a degree of independence from the executive. However, he was constrained by Article 17.2 of the Law on Counteracting Monopolistic Practices which stipulated that the Chairman of the Office is nominated and dismissed by the Prime Minister.[60] The Chairman was not a member of the Council of Ministers, yet he was obliged to attend the Council of Ministers' economic committee.

In contrast, both the Minister of Economy and the Chairman of the Office for Competition and Consumer Protection were the major Veto Players in the area of state aid. Initially, the agenda-setter was the Chairperson of the Antimonopoly Office (the Office for Competition and Consumer Protection). However, on 1 January 1997 the Minister of the Economy took over the agenda-setting power in the field of state aid. It is worth mentioning that on 1 January 1997 the reform of central administration was introduced and a Ministry of the Economy was set up. It took over the responsibilities of the Minister of Industry and Trade, the Minister of Foreign Economic Cooperation and the Minister of

[60] The 2000 Act on the Conditions for Admissibility and Supervising of State Aid to Entrepreneurs increased the independence of the Chairman of the Office for Competition and Consumer Protection. Article 24.2 stipulates that the Prime Minister appoints, for the period of 5 years, the President of the Office, selected by way of a contest.

Privatisation and Ownership Transformation. Within the Ministry of Economy two departments dealt with state aid: the Legal Department designed bills and the Department of Economic Strategy was in charge of state aid for undertakings as well as research on trends in international competitiveness, trade and investment. Moreover, it was in charge of producing reports on state aid granted to entrepreneurs in Poland. The state aid team was set up within the department.

Furthermore, several cabinet ministers had the right to veto a bill on the control of state aid. Along with the Minister of the Economy, the Minister of Finance and the Minister of the Treasury were central to decisions on granting aid. The Minister of Finance was responsible for annual planning of the state budget and distributing financial resources. The main activities of the Ministry of the Treasury included privatisation, corporate supervision, treasury assets, compensation, restitution, National Investment Funds Programme and state aid. The Minister of the Treasury, within the scope of privatisation and the management of Treasury assets, granted state aid such as loans which were granted under more favourable conditions than the market offers, a grant for a designated purpose, deferment of capital payments, conversion of liabilities into shares or stakes, deferment or consent to installment payment of receivables, etc.

Moreover, the Secretary of the Office of the Committee for European Integration was certainly a Veto Player. A Secretary of the Office of European Integration checked the conformity of a proposed bill with EU law. The Secretary of the Committee for European Integration drafted opinions on the conformity of legal drafts with EU law [Article 9]. Article 1 of the Law of 8 August 1996[61] on the Committee for European Integration stipulates that "the Committee for European Integration, hereinafter called the Committee, is a supreme governmental administration body competent for the programming and co-

[61] Official Journal, 1996 no. 106, al. 494 – Resolution on the Office for European Integration; Regulation UKIE from 22.11.1996 on statute of the Committee for European Integration.

ordination of policy relating to Poland's integration with the European Union, programming and co-ordination of Poland's actions adjusting Poland to European, standards as well as for the co-ordination of state administration actions in the field of foreign assistance obtained." The Committee for European Integration is composed of the Chairman of the Committee, Secretary of the Committee and Committee members. Article 4.3 of the Law on the Committee for European Integration stipulates that the Secretary of the Committee is appointed and recalled by the Prime Minister (who usually performs the function of the Chairman). Similarly, the function of conformity assessment might be performed by a European Integration team in the Chancellery of the Sejm if the bill was proposed by deputies.

In institutional terms, the President might be considered to be a Veto Player. Article 144.3.6 of the Constitution stipulates that the President may refuse to sign the bill and, hence, he may exercise a veto. The presidential veto may be overridden in the Sejm by a three-fifths majority vote in the presence of at least half of the statutory number of deputies. However, only the analysis of the President's policy preferences with respect EU integration may indicate whether he would veto legislation approximating Polish law to EU law. In December 1990 Lech Wałęsa, the Solidarity leader, received 74 per cent of the vote in the second round of presidential elections and became President. In the November 1995 presidential elections Aleksander Kwaśniewski, who was nominated by the Democratic Left Alliance, received 51.7 per cent of the vote while the incumbent president Lech Wałęsa received 48.3 per cent of the vote in the second ballot (while in the first round they got 35 and 33 per cent respectively). Presidential elections held on 9 October 2000 returned former president Kwaśniewski. He received 53.9 percent of the votes cast and was elected on the first ballot.

In order to identify Veto Players in government in the periods 1993-1997 and 1997-2001, the party composition of government and parliament needs to be analysed (see Table 5). After the 1993 elections, SLD formed a coalition government with PSL. After the 1997 elections, the AWS rightwing electoral alliance formed a coalition government with the liberal Freedom Union UW. Both the SLD/PSL and AWS/UW governments were minimal winning coalitions,[62] or more precisely: "minimal connected winning coalitions"[63] Both the SLD/PSL and AWS/UW governments coincided with the majority in parliament. After elections in 1993 the SLD and PSL government was supported by 303 votes in the Sejm. After elections in 1997 the AWS and UW government could count on 261 votes.

In the period from October 1993 until October 1997, two parties in government were Veto Players: Democratic Left Alliance (SLD) and the Polish Peasant Party (PSL). Conversely, in the period from October 1997 until June 2000, two parties in government were Veto Players: the Solidarity Electoral Action (AWS) and the Freedom Union (UW). In the period from July 2000 until September 2001 only AWS was a Veto Player. When a minority government is in office, only parties in government are Veto Players. Although "minority governments require support from other parties" (Tsebelis 2002, 168), "minority governments most of the time have a single veto player" (Tsebelis 2002, 148). Hence, if there is one-party minority government, this party is the only Veto Player in government. The party which left the government may set up a blocking coalition. In the period from June 2000 until October 2001 the Freedom Union was a Pivotal Actor.

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[62] Riker (1962) defines minimal winning government coalitions as the ones which include only parties whose legislative votes are essential for the government's majority. Coalitions should comprise as few parties as possible, consistent with the need to win confidence votes in the legislature.

[63] Axelrod (1984) puts forward the minimal connected winning approach to coalition formation. It should be minimal – it contains no more members that are necessary for a coalition to win, connected – all members are adjacent on an affinity scale and winning – it has the required majority in the legislature.

Table 5. Party composition of the lower house of the Parliament, the *Sejm*, in the years 1993-2001.

Partisan Actors	The second term of the Sejm in the years 1993 – 1997	The third term of the Sejm in the years 1997 – 2001
Veto Players	**SLD** - Democratic Left Alliance **PSL** - Polish Peasant Party (303 seats out of 460 in October 1993)	**AWS** - Solidarity Electoral Action **UW** - Freedom Union [64] (261 seats out of 460 in October 1997)
Pivotal Actors	none	**SLD** - Democratic Left Alliance, **PSL** - Polish Peasant Party (191 seats out of 460 in October 1997)
Powerless Actors	**UD(UW)** - Freedom Union, **BBWR** - Non-party Bloc in Support of Reforms **UP** - Labour Union **KPN** - Confederation for an Independent Poland **MN** - German Minority, **PPS** - Polish Socialist Party, **PP** - Polish Right, **PKND** - Deputies' Circle 'New Democracy' **PKR** - Parliamentary Circle 'the Republicans'	**PP** - Polish Agreement (formerly known as Our Circle, NK), **KPN-Ojcz.** - Confederation for an Independent Poland - Motherland (known also as KPN-OP), **ROP-PC** - Movement for the Reconstruction of Poland-Centre Accord, **PPS-RLP** - Polish Socialist Party – the Movement of Workers, **PRS** - Polish Vested Interest, **KdP** – Coalition for Poland

Pivotal Actors

Opposition parties in the legislature might be considered to be Pivotal Actors because they can set up a coalition to block a piece of legislation. In the years 1997-2001 the opposition

[64] The AWS/UW coalition formally came to an end in June 2000, while an AWS minority administration stayed in office until October 2001.

consisted of SLD and PSL (see Table 5). In the years 1993-1997, there was no strong opposition, thus, I included all opposition parties in a group of Powerless Actors.

Moreover, interest groups are Pivotal Actors. They may be consulted and their voice may be important because they represent the interests of constituencies. Among the most important interest groups were NSZZ "S", OPZZ, Business Centre Club and the Confederation of Polish Employers. In particular, two trade unions were important: the Independent Self-Governing Trade Union "Solidarity," (*NSZZ "S") Niezależny Samorządny Związek Zawodowy 'Solidarność,'* and the All Polish Trade Union Alliance, (*OPZZ) Ogólnopolskie Porozumienie Związków Zawodowych.* One of the Polish commentators argued the significance of trade unions: "Trade unions have a different role to play, different functions in Poland than trade unions in countries with stabilised capitalists systems. The Anglo-Saxon model, in which trade unions are only partners of business and not the state, although logical, may be unrealistic in Poland."[65]

While OPZZ was of a communist origin, NSZZ "S" derived from an anti-communist movement of workers. OPZZ was the only legal trade-union organisation before 1989. It had some three million members organised in 14,500 workplace commissions in the 1980's. Its impact on SLD was significant. The OPZZ trade-union federation and SdRP were the driving force in terms of providing SLD with political direction and organisational support. In contrast, NSZZ 'S' derived from anti-communist movement of workers. The Independent Self-Governing Trade Union 'Solidarity' was founded as a result of workers' protests and it was established on the basis of the Gdansk Accords signed on 31st August 1980 by the Inter-enterprise Strike Committee and the Government Commission. NSZZ Solidarność claimed to represent 1,185,000 workers in 2000, what was 7.6% of the total workforce of Poland.

[65] Cited in Szczerbiak (2000, 182).

From 1997 until 2001, chairmen of NSZZ Solidarność and OPZZ labour unions were members of the legislature. Marian Krzaklewski, who was the chairman of NSZZ "S," was a leader of one of the AWS parliamentary fractions during the third term of the Sejm. In AWS the trade union element was significant. About fifty deputies came from the Solidarity trade union, including 19 regional chiefs and important branch leaders such as coal mining and defence. This suggested a strong trade union voice in areas of the Polish economy where the European Commission had expressed particular concern, including the Solidarity strongholds of mining and shipbuilding (Millard 1999). Similarly, Józef Wiaderny, who was the chairman of OPZZ, was an SLD deputy during the third term of the Sejm. Moreover, Maciej Manicki, who was a vice-chairman, was an SLD deputy as well. OPZZ had 42 deputies in the third term of the Sejm, elected in 1997.

Business Centre Club is Poland's biggest organisation of private business owners. It focuses on lobbying activities, the aim of which is to limit the risk of doing business and to ensure an even playing field for all competitors. The Club's experts take part in the work of parliamentary committees and express opinions on bills. BCC Convention takes part in BCC lobbying activities and reviews draft legislation that might affect Poland's economy and it voices opinions on the government's policy on small and medium enterprises.

The Confederation of Polish Employers (KPP) *Konfederacja Pracodawców Polskich*, takes part in a dialogue with the government and may influence its decisions. It may be consulted on draft legislation. KPP is a member of the Union of Industrial and Employers' Confederations of Europe (UNICE).

Powerless Actors

I consider residual parties such as KPN, BBWR, etc. as Powerless Actors because they could not influence the legislative outcome in any way. Yet, they were actors in the legislative process. (Chapter 6.2 presents overviews of minor parties in parliament).

Furthermore, independent deputies belong to the same group, as does the Marshal of the Sejm. Formal institutional provisions stipulate that the Marshal has the right to preside over the debates of the Sejm and acts as its representative (Article 110.2 of the Constitution). The Marshal of the Sejm is an intermediary in the process but he cannot block legislation. His importance is undermined by a formal legislative procedure. I consider him to be a Powerless Actor.

Finally, despite the bicameral character of the legislature, the Sejm remains the chief legislative partner of the executive with an evident marginalisation of the function and competencies of the Senate. In this situation, the relationship – legislative/executive – should be analysed, taking into account that the Sejm is the dominant arena for conflict between political parties and coalitions in the parliamentary forum (Grzybowski 1999, 145). The role of the Senate in making law is not equal to that of the Sejm. The Senate cannot amend significantly the act so that the contents remain in the form proposed by the Sejm (Oniszczuk 2000, 623). This state of affairs has been confirmed by decisions of the Constitutional Tribunal. "Despite the fact that two chambers of Parliament are law-making bodies, the Sejm is leading and dominant (K 25/97). Senate amendments may only refer to the very contents of the bill accepted by the Sejm" (K 5/93) (Oniszczuk 2000, 623).

In conclusion, this brief presentation of actors participating in the EU conditionality game of accession in the field of competition policy in the period between 1994-2000 has revealed several interesting regularities. Firstly, there was a different number of Veto

Players in the two policy areas. In the area of state aid there were more Veto Players than in the area of antitrust legislation. Secondly, agenda-setting power was assigned to different actors. In state aid policy, it was the Minister of the Economy along with a Chairman of the Office for Competition and Consumer Protection; in antitrust policy agenda-setting was the sole responsibility of the Chairman of the Office for Competition and Consumer Protection. Hence, I would expect that in the field of state aid, the political configuration mattered more than in antitrust policy. A minister was a representative and a nominee of a party government, while the OCCP Chairman was insulated from political interference and benefited from a degree of independence. The above observations may have a significant implication on any explanation of compliance. It will be tested whether the speed and extent of compliance with EU requirements may be the result of many Veto Players and the inconsistency of their policy preferences.

6.4. Expectations

Expectations about the consistency of policy preferences between the European Union and domestic actors in two policy areas are presented in Table 6.

- State Aid Policy

The Democratic Left Alliance supported a degree of state intervention, though at the same time it supported European integration. However, the demands of accession for rapid economic restructuring constituted a threat to important elements of the main constituents of SLD including the OPZZ trade union, anxious to protect the jobs of its members, and many other groups determined to maintain the fundamentals of the welfare state. In 1991 the SLD campaigned strongly against economic reforms and in favour of state intervention

to protect Poland's heavy industry (Jackson et al. 2003, 48). Consequently, I expect that there are higher chances for SLD policy preferences to be inconsistent with the preferences of the European Union, although I cannot exclude the possibility of preference consistency because of a pro-European stance. Hence, I use the category "mixed."

Table 6. Expectations of preference consistency between domestic actors and the European Union in state aid and antitrust policies

Actors	State aid	Antitrust
SLD Democratic Left Alliance	mixed	mixed
PSL Polish Peasant Party	mixed	mixed
AWS Solidarity Electoral Action	mixed	mixed
UW Freedom Union	Yes	No
Chairman of the Office for Competition and Consumer Protection (OCCP)	Yes	Yes
Secretary of the Office of the Committee for European Integration (OCEI)	Yes	Yes
Minister of Economy (SLD/PSL)	mixed	X
Minister of Economy (AWS/UW)	mixed	X
Minister of Finance (SLD/PSL)	mixed	X
Minister of Finance (AWS/UW)	Yes	X
Minister of Treasury (SLD/PSL)	mixed	X
Minister of Treasury (AWS/UW)	mixed	X
President	Yes	Yes
Interest groups: mining, heavy industry, agriculture	No	No
Business clubs	Yes	Yes

Similarly, the Polish Peasant Party's approach may be interpreted likewise. PSL did not allow for the rapid opening of the Polish economy and the loss of a Polish national interest

and it supported a significant degree of state interventionism in the economy. Hence, its preferences were not consistent with the preferences of the European Union. On the other hand, the Polish Peasant Party did not oppose European integration openly. Hence, there was a degree of support for the measures which had to be introduced, though the degree of scepticism was expected to be stronger.

Conversely, the Solidarity Electoral Action was avowedly committed to EU membership and subsequently AWS was expected to support state aid control. However, AWS was a coalition incorporating different ideas, interests and programmes and a trade union element was very strong. Some fractions within the party could oppose the law (thus the category is "mixed"). The government coalition partner of AWS, the Freedom Union was the most ardent supporter of the act on state aid control.

The Office for Competition and Consumer Protection was placed in charge of preparing regulation on the admissibility of state aid. Hence, I expect the Chairperson to be in favour of any piece of legislation controlling state aid. Policy preferences of the Ministers of the Economy, Finance and Treasury depended on their party affiliation. Because the Secretary of the Office of the Committee for European Integration was in charge of the process of domestic law harmonisation with EU law, I expect that his policy preferences were in accordance with the EU preferences.

President Wałęsa supported EU integration. Similarly, President Kwaśniewski's commitment and enthusiasm for the EU was unquestioned. Hence, I expect that he will support the bill. Interest groups opposed the act because controlling state aid could threaten their interests. Monitoring state aid, certainly, would involve decreasing public spending and lowering the benefits conferred to particular actors. I expect that business clubs supported state aid control.

- Antitrust Policy

The Democratic Left Alliance is a party of post-communist origin which supported protectionist economic policies. On the other hand, the party was not openly against the European integration. Consequently, I expect SLD policy preferences to be inconsistent with the preferences of the European Union, although I cannot exclude the possibility of preference consistency because of its pro-European stance (thus the answer "mixed"). There is similar expectation with regard to the Polish Peasant Party.

The Solidarity Electoral Action generally supported the fostering of competition. The Freedom Union supported counteracting monopolistic practices. Hence, party preferences are consistent with the preferences of the European Union. UW promoted economic and political liberalism. Furthermore, I expect that the Chairman of the Office for Competition and Consumer Protection was an ardent supporter of the bill which was to improve antimonopoly law. Similarly, the Secretary of the Office of the Committee for European Integration who took over responsibilities from the Government Plenipotentiary and who assessed conformity with EU law was expected to support the law which complied with EU regulations. As regards policy preferences of the president, President Lech Wałęsa declared his support for the multidimensional integration of Poland with the structures of the West. Similarly, President Kwaśniewski's commitment and enthusiasm for the EU was unquestioned. I expect that business clubs and employers' associations supported counteracting monopolistic practices, for example, the Business Centre Club focused on lobbying activities, the aim of which was to limit the risk of doing business and to ensure a level playing field for all competitors.

Conclusions

This chapter set out to present a detailed analysis of policy-making in Poland and actors participating in the process. The typology of actors in antitrust and state aid policies was proposed. I have also presented my expectations concerning the consistency of policy preferences between the European Union and domestic actors in two policy areas. In the next part of the thesis, which is an empirical part, I present a comparative case study of state aid and antitrust policies in Poland. I explain the institutional outcomes from the perspective of rational choice institutionalism.

Chapter 7. State Aid Policy

Altogether, it took almost ten years to pass the earliest act controlling state aid. Inertia in state aid policy harmonisation persisted until 2000. While principles governing the granting of state aid in Poland were regulated in many different legal acts, there was no single legal document controlling and monitoring the granting of state aid.[66] This long delay was surprising, given that Poland signed the Europe Agreement with the European Communities in 1991 which created the legal framework for regulating state aid (Jankowski 2001, 16).

In what follows, I present three episodes which illustrate and explain policy inertia and non-compliance with EU requirements in the mid-1990's, and compliance in 2000. The first episode presents a failed attempt to introduce a bill on monitoring state aid and, thus, non-compliance in 1996. The second episode examines the end of policy inertia in 2000 when new legislation on state aid control was introduced and compliance with EU requirements was the outcome. The third episode shows that once state aid law was harmonised, and policy preferences of the EU and major domestic actors were consistent, the direction of change could not be reversed.

[66] The main legislation which referred to granting state aid were: the Act on State Budget of 5 January 1991, the Act on Public Finances of 26 November 1998, as well as other regulations.

7.1. Episode 1: A failed attempt to change the *status quo* in 1996

The first episode presents a failed attempt to introduce a bill on monitoring state aid and, thus, non-compliance in 1996. Firstly, I will look at the EU accession conditionality in the area of state aid. Secondly, I will look at the institutional set-up and preferences of Polish actors in order to explain a lack of state aid control.

EU accession conditionality in the field of state aid

The European Union, which is the External Actor, put forward the EU accession conditionality in the 1991 Europe Agreement and at the Copenhagen European Council in 1993. Moreover, other EU documents pinpointed the importance of national law approximation to EU law: the White Paper (1995), Agenda 2000 (1997), the Accession Partnership (1998) and Commission's annual reports.

The Europe Agreement required that the associated states align their competition laws to those of the European Union within three years. Poland committed itself to making its legislation compatible with that of the Community in the field of competition and state aid as stipulated by Articles 68 and 69 of the Europe Agreement. Moreover, Article 63 recognised as "incompatible with the proper functioning of the Agreement," "any public aid which distorts or threatens to distort competition by favouring certain undertakings or the production of certain goods." Any practices contrary to provision (iii) of Article 63 were to be assessed on the basis of criteria arising from the application of the rules of Article 92 of the Treaty establishing the European Community. EU state aid is regulated in Articles 87 to 89 of the EC Treaty. Article 87 prohibits any aid granted by a member state or through State resources in any form which distorts or threatens to distort competition by

favouring certain firms or the production of certain goods. Article 87(2) and (3) provide for a number of exemptions. Moreover, the Copenhagen criteria explicitly emphasised the importance of the approximation of domestic law to EU law as regards the whole body of the *acquis communautaire* including provisions on competition.

In the mid-1990's the assessment of Poland's compliance was not positive. The European Union was distinctly unhappy with the slow pace of change in certain sectors of the economy, notably energy, steel, banking and finance (Millard 1999). In 1996, the EU Commissioner, Hans Van der Broek, accused the government of postponing restructuring of the Polish economy for political and social reasons; he noted that many enterprises were as yet "untouched" by reforms and portrayed their continuing protection as very short-sighted.[67]

The domestic response

I expect non-compliance and policy inertia because, first and foremost, the preferences of Veto Players and Pivotal Actors differed from the preferences of the External Actor. Domestic Veto Players were interested in preserving the status quo, i.e. no control over state aid. Secondly, the number of potential Veto Players was significant in the proposal stage. Numerous institutions granted aid without any rationalization and the amount of state air was significant (Appendix 4). In 1996 there were at least eight departments and offices which granted aid: the Ministry of Industry and Trade, the Ministry of Privatisation and Ownership Transformation, the Ministry of Finance, the Ministry of Transport, the Ministry of Communications and the Committee of Scientific Research (Ministry of Economy 1998). Thirdly, there was no institutional agenda-setter at the beginning of the

[67] Quoted in Rzeczpospolita (245) 19-20 October 1996.

1990's. The Antimonopoly Office assumed the responsibilities in the area of state aid at the end of 1994 (Chancellery of the Council of Ministers 1995, 56). Then, the Minister of Economy took over the responsibilities in state aid area in 1997. However, in 1998 the Chairman of the Office for Competition and Consumer Protection was again granted the responsibility. Moreover, a deadline for harmonisation of domestic legislation was distant. Hence, I expect that new legislation on state aid control would be opposed.

As regards Veto Players in government, the Social Democratic-Peasant government coalition of the Democratic Left Alliance (SLD) and the Polish Peasant Party (PSL) was in power from October 1993 until September 1997. Although the coalition parties did not oppose the European integration, they were not amenable to some reforms which were required by the EU accession process. The Chairperson of the Antimonopoly Office in the years 1990-1995, pointed out: "There was no official position paper of the SLD/PSL coalition as regards state aid control. On the contrary, there was expectation for a bill allowing for an increase in granting state aid" (Fornalczyk interview, June 2003). A PSL deputy expressed the opinion on the subject matter during an interview: "We [PSL] supported European integration, Pawlak submitted application for EU membership. Even when in opposition, we supported harmonisation of law. However, there were some constraints. We could not allow for the rapid opening of the Polish economy and the loss of our national interest" (Sawicki interview, July 2003). Moreover, "when Pawlak was a Prime Minister, a large part of the economy was state-owned, giving state aid without any rationalization was common. Hence, the Act on state aid control was not possible at that time" (Sawicki interview, July 2003). Under the Premiership of the Peasant Party leader Waldemar Pawlak (October 1993-March 1995), the process of economic restructuring and privatisation had slowed measurably while agriculture gained substantial new concessions (Millard 1999). The PSL's treasury minister was the only member of the government to

make public his criticism of the National Integration Strategy (Millard 1999). The demands of accession for rapid economic restructuring also constituted a threat to important elements of the main constituents of the Democratic Left Alliance including the OPZZ trade union, anxious to protect the jobs of its members, and many other groups determined to maintain the fundamentals of the welfare state (Millard 1999a, 206). Of the 208 SLD Sejm deputies and senators elected in 1993, 61 were from OPZZ (Szczerbiak 2001, 179).

Pivotal Actors such as interest groups did not support the act on state aid control because controlling state aid could threaten their interests. Monitoring state aid, certainly, would involve decreasing public spending and lowering benefits conferred on particular actors. The report on state aid granted to entrepreneurs in 1996 emphasised that "28.5 per cent of all aid granted was spent on mining, while 28.7 per cent was spent on transport" (Ministry of Economy 1998, 6). In the mid-1990's the Polish economy was still in transition with a lot of enterprises undergoing de-monopolisation and privatisation. State aid was given to steelworks, the fabrics industry, telecommunications and the building sector, etc.

Initial preparations of a bill on state aid control began as early as 1993. "Harmonisation of state aid control was considered for the first time in 1993 [...]. A short memo was prepared for Suchocka [Prime Minister in the years July 1992 – May 1993]" (Fornalczyk interview, June 2003). The Antimonopoly Office[68] was placed in charge of preparing regulation on the admissibility of state aid as stipulated in the 1995 government document entitled: "The international competitiveness of Polish industry: The Programme of Industrial policy in the years 1995-1997" (Kowalak interview, August 2003). However, the bill which aimed at creating a cohesive system of monitoring state aid in Poland was

[68] Since October 1996 the Antimonopoly Office has been known as the Office for Competition and Consumer Protection.

completed only in 1996. It was prepared by a team led by Fornalczyk, a former Chairperson of the Antimonopoly Office, who at the time was working in a private agency. Preparations of the bill were undertaken within a Phare project commissioned by the European Commission and designed for the Antimonopoly Office. "In mid-January 1995, I organised a team and we started working on a draft law. I knew what to do" (Fornalczyk interview, June 2003).

The draft Act on State Aid Control was completed in 1996 (see Appendix 5). It established "the rules for state aid control granted to entrepreneurs, means for state aid monitoring and the assessment of the effects of granting aid on an implemented economic strategy and fostering competition in the market" (Article 1). State aid is admissible in the sense that it "is a significant element of economic policy of the state" (Article 4). However, its transparency should be ensured (Article 4.2). Moreover, state aid could be granted within State Aid Schemes which are proposed by a Government Centre for Strategic Studies and approved by the Council of Ministers. There are priority areas such as: research and development works, environmental protection, restructuring of enterprises, restructuring of sectors of the economy and regions, maintaining employment or creating new jobs, development of small and medium-sized enterprises and development of infrastructure (Article 6). The Government Centre for Strategic Studies is a Supervisory Authority assessing the effects of state aid granted to entrepreneurs on an implemented economic strategy (Article 10). However, the Antimonopoly Office is to assess "the effect of state aid granted to entrepreneurs on fostering competition in the market."

Three main reasons were presented in a justification attached to the draft of an Act on State Aid Control. Firstly, the Act is to provide information and familiarise both donors and beneficiaries with the state aid control regime. "Due to the fact that the subject matter

of state aid is not sufficiently known in Poland... its [the Act] role is to inform both donors of national public funds as well as beneficiaries."[69] Secondly, it is to rationalise public spending because "one of the main weaknesses of public finance is that there is no regulation concerning public spending which would allow for transparency and its complete register. The relief often granted according to non-transparent rules and resulting in few economic benefits necessitate naming the authority which will be responsible for registering public spending and the assessment of effects of granting state aid for the implemented economic strategy and fostering competition in the market."[70] Thirdly, the Act is to harmonise Polish law with EU law. "The main emphasis is put on setting up a framework... which will allow for further harmonisation of Polish law with EU law. The act is to regulate state aid to entrepreneurs in accordance with Article 63 of the Europe Agreement and Article 92 [87 of the EC Treaty] of the Treaty establishing European Community."[71] "Monitoring [of state aid] will allow the creation of a database, which may be used for providing information and, hence, compliance with one of the requirements of the Europe Agreement."[72]

However, the Act on State Aid Control was not accepted by any domestic decision-makers. Interviews with officials confirmed that "Nobody wanted it [i.e. state aid control]. Interest groups and the government coalition were against it because its implementation would entail high costs but no benefits. Entrepreneurs were keen not to show their inefficiency, and they were keen to preserve the status quo" (Żołnowski interview, June 2003). Moreover, it was confirmed in interview that there was opposition from some ministers, for example the Minister of Industry and Trade who eagerly defended the secrecy of state aid given to the mining industry (Żołnowski interview, June 2003). The

[69] Justification of 'the Act on State Aid control' p.10.
[70] Justification of 'the Act on State Aid control' p.8.
[71] Justification of 'the Act on State Aid control' p.8.
[72] Justification of 'the Act on State Aid control' p.7.

absolute veto was expressed by the incumbent Chairman of the Antimonopoly Office, Andrzej Sopoćko, "who did not show any interest in the bill on state aid control because of the complexity of the subject matter" (Fornalczyk interview, June 2003). Accordingly, he rejected the bill.

To sum up, this episode was an obvious example of exercising the power of veto. The preferences of the Chairman of the Antimonopoly Office were different from the preferences of the European Union who commissioned the Phare project. I presume that the Chairman vetoed the bill in 1996 because of the institutional, political and economic situations.

In institutional terms, the independence of the Chairman of the Antimonopoly Office was questioned. He was appointed by the Prime Minister. Incoming Prime Ministers on occasion selected a new Chairman (OECD 2000, 22).

In political terms, politicians prefer to give state aid because it produces more immediate and visible effects, whereas alternative forms of public intervention give results only in the medium or long term. State aid may be a useful tool for gaining political support. Hence any attempt of state aid rationalisation through a system of control and greater transparency may be impeded. In the mid-1990's the Democratic Left Alliance (SLD) and the Polish Peasant Party (PSL) were slow at introducing economic reforms. In particular, PSL took a more antagonistic approach to economic reforms, but a friendly approach to state subsidies. For SLD, rapid economic restructuring could threaten an important element of its constituents, namely, the OPZZ trade union (Millard 1999a, 214). Sowa (2003) claims that there was no political will for deep restructuring, state interventions consisted in rescue operations which only shifted problems in time. Interest groups were not ready to yield benefits granted by the state. In particular, coal mining,

agriculture, metallurgy and transport were the sectors of the Polish economy which benefited enormously from state aid.

In economic terms, in the 1990's granting of state aid was one of the elements of industrial policy carried out by the state (Sowa 2003, 3). As deputy Sawicki noticed "a large part of the economy was state-owned, giving state aid without any rationalization was common." Secondly, internal rent shifting'[73] was obvious as aid to an inefficient firm restricted entry or expansion to a low cost competitor. Thirdly, it was used to redistribute welfare to politically more powerful groups in order to maximize political support. Policy-makers may redistribute welfare by sticking to inefficient regulations in order to drive a wedge between actual prices and equilibrium prices (prices without intervention such as the world price). Table 3 in Appendix 4 presents sectors of the Polish economy and the volume of state aid granted.

7.2. Episode 2: The end of policy inertia in 2000.

The second episode examines the end of policy inertia in 2000. I will again look at the institutional set-up and preferences of Polish actors in order to explain why new legislation on state aid control was introduced. However, I will first look at the EU requirements.

EU accession conditionality and compliance assessment

In 1997 the European Commission pinpointed in its *avis* on Poland's application for EU membership that "legislation necessary to control the granting of state aid in Poland still needs to be established" (European Commission 1997, 50). Moreover, "credible

[73] See Fingleton 2001.

enforcement of competition law requires the establishment of effective antitrust and state aid monitoring authorities" that would "examine the compatibility of any aid measure with the Europe Agreement" (European Commission 1997, 50).

When accession negotiations started in 1998, conditionality became much more important (Mayhew 2003). In 1998 the Commission pointed out in its regular report that state aid law and the setting up of an independent state aid monitoring authority were still awaited. In 1999 the Commission again pinpointed that "closer attention should be paid to the distortion of competition arising from state aid, and particularly indirect aid in the form of e.g. social security write-offs, tax-relief, debt write-off, and tax arrears write-offs and aid given by sub-national authorities" (European Commission 1999, 33). To sum up, the EU started emitting clear signals that the slow pace of transposition was becoming Poland's chief liability. In April 1999 a similar negative assessment was repeated by the Commission during the seventh meeting of the Association Committee in Warsaw (UKIE 1999).

Likewise, the assessment of short and medium term priorities as set in the Accession Partnership in 1999 emphasised the importance of the adoption of law on state aid control. The first Accession Partnership for Poland was decided in March 1998. The 1998 Accession Partnership stipulated: "In the area of state aid, the necessary legislative framework and an independent state aid monitoring authority have not yet been put into place. Therefore, progress in meeting the short term priorities aimed at the adoption of internal market legislation has been limited." In the medium term "further reinforcement of state aid authorities" was necessary. Despite the fact that state aid legislation was pending adoption, the Commission stressed that, in general, Poland had made little progress in addressing the short term priorities of the Accession Partnership with a notable lack of progress regarding some long-standing issues such as state aid. Poland should

"adopt state aid law and provide adequate resources for state aid monitoring authority; complete preparation of state aid inventory; continue annual state aid reports; adopt and implement programme for alignment of special economic zones" (European Commission 1999c, 5).

The domestic response

I claim that policy inertia came to an end and Poland complied with EU requirements in state aid area because of three important events: two of them were domestic while one was international. Firstly, the 1997 administrative reform streamlined the ministries and provided for different institutional arrangements at the central level. The Minister of the Economy and the Chairman of the Office for Competition and Consumer Protection became particularly important in the field of state aid policy. Secondly, parliamentary elections in September 1997 brought to power a new majority coalition government: an AWS centre-right electoral alliance formed a coalition government with the liberal Freedom Union. Thirdly, there was a promise to start accession negotiations which made complying with the accession criteria a priority for Polish decision makers. Following the presentation of the Commission's opinion on membership applications in July 1997, the Luxembourg European Council decided in December 1997 to convene bilateral intergovernmental conferences in the spring of 1998 in order to begin negotiations with six countries, including Poland.

The preferences of Veto Players in government were more compatible with those of the External Actor and more amenable towards introducing state aid control legislation. As the Secretary of the Office of the Committee for European Integration was in charge of the process of domestic law harmonisation with EU law I expect that his preferences were

in accordance with the EU preferences. Moreover, policy preferences of President Kwaśniewski who was in office from 1995 until autumn 2000 were consistent with EU preferences. Hence, compliance with the EU accession criteria was more feasible. However, because the number of actors involved was significant I could expect that introducing change was not swift.

Major Veto Players were the Minister of the Economy (Janusz Steinhoff, an AWS deputy) and the Chairman of the Office for Competition and Consumer Protection (Tadeusz Aziewicz). In January 1997 the administrative reform was introduced and the Minister of the Economy took over some of the responsibilities of the Minister of Industry and Trade, the Minister of Foreign Economic Cooperation and the Central Planning Office. Moreover, the Council of Ministers assigned the Minister of Economy to be in charge of state aid policy. However, soon after the competences in state aid policy were transferred back to the Office for Competition and Consumer Protection. However, "given that this Ministry grants state aid itself (Ministry of Finance dominates in granting aid because the most common way of giving aid is through granting of tax relief), the Council of Ministers took a decision to hand over the competence in the state aid control to the Office for Competition and Consumer Protection" (Fornalczyk interview, June 2003). In 1999 the Office for Competition and Consumer Protection set up a unit dealing with state aid to help draft the statute. Since then the OCCP has administered the law on state aid control. The bill on conditions for admissibility and supervising of state aid to entrepreneurs was prepared in the Department of Economic Strategy in the Ministry of Economy in cooperation with the Office for Competition and Consumer Protection, it was the project supported also by the Office of the Committee for European Integration (Kowalak interview, August 2003).

Furthermore, the Minister of Finance and Minister of the Treasury were Veto Players. In the Ministry of Finance a group of experts dealing with public finances developed a system of monitoring state aid (European Commission 1998) and an official from the Ministry of Finance took an active part in preparing the bill (UOKiK 2003). The Ministry of Finance was a natural ally of the Office for Competition and Consumer Protection (Fornalczyk interview, June 2003). Moreover, this active role of the Ministry of Finance in preparing the bill was not surprising given that Balcerowicz was the Minister of Finance. He was a Freedom Union (UW) leader and was considered to be the most liberal economist in Poland. For Balcerowicz a bill on state aid control meant regulating and restricting public spending, and this he utterly supported (Fornalczyk interview, June 2003). In addition, the Minister of the Treasury, Emil Wąsacz (AWS) was a potential Veto Player because the Minister of the Treasury granted state aid. The Ministry was set up, when the administrative reform came into effect, taking over the competences of the Ministry of Ownership Transformation. However, it was confirmed in an interview that out of three ministries (i.e. Ministry of Economy, Ministry of Finance and Ministry of Treasury), the role of the Ministry of the Treasury was the least significant in shaping the bill on conditions for admissibility and the supervising of state aid to entrepreneurs.

The Solidarity Electoral Action (AWS) and the Freedom Union (UW) were Veto Players in government. This was the government coalition under Prime Minister Jerzy Buzek (AWS) who was in office from 31 October 1997 until 19 October 2001. In general, AWS was avowedly committed to EU membership. However, many of its arguments and prescriptions appeared to be incompatible with the requirements of European integration (Millard 1999, 211). This was because AWS was a coalition incorporating different ideas, interests and programmes. As regards economic issues, UW promoted the market economy, unrestricted competition and curbing state interventionism and welfare state

benefits (Paszkiewicz 2000, 144). An UW deputy confirmed in an interview that the Freedom Union was the most ardent supporter of the act on state aid control. UW supported fair competition and transparent procedures (Szejnfeld interview, June 2003).

Policy preferences of the OCEI Secretary, Jacek Saryusz-Wolski, were consistent with the preferences of the European Union. He expressed his positive opinion on the bill monitoring state aid, though with the exception of some minor provisions. However, before this positive opinion was issued, speedy compliance was hampered. In autumn 1997 AWS Prime Minister Buzek appointed Ryszard Czarnecki, a full cabinet minister of the Committee for European Integration and head of its permanent secretariat (UKIE). This was a departure from the previous practice of prime ministerial leadership in EU affairs. Czarnecki, standing as Minister for European Affairs, happened to be hampered by his open Euro-scepticism, which brought him into frequent conflict with the more euro-enthusiastic Foreign Affairs Minister. For a few months there was not much done in the area of approximation of EU law. Finally, in July 1998 Czarnecki was dismissed and Saryusz-Wolski was appointed to the post.

The legislative process started on 18 May 1999 when a government bill[74] was submitted to the Marshal of the Sejm by the Council of Ministers. During the first reading on 18 June 1999 a motion was put forward to reject the bill. It was the anti-EU parliamentary caucus "Our Circle" which opted to reject the bill in the first reading. However, the motion of a Powerless Actor to reject the bill was turned down[75] in a vote on 23 June 1999. Another Powerless Actor - the Confederation for an Independent Poland-Motherland (KPN-Ojcz.) who, at the time of the episode had five deputies suggested sending the bill back to the government for reconsideration. Conversely, two Pivotal Actors, the Polish Peasant Party and the Democratic Left Alliance, opted to delegate the

[74] Document no.1118, Third Term of the Sejm, 18 May 1999.
[75] Voting no. 1, 52nd Session of the Sejm: 11 voted for, 351 against, 9 abstained.

bill to the Sejm committees. In fact, the bill was delegated to Sejm committees for a detailed examination and potential improvements of what had been proposed. Three Sejm committees dealing with the bill - the Committee on Competition and Consumer Protection; the Committee on Economy and the Committee on Public Finances - produced the report after 10 months. (In the analysis I do not treat the Sejm committees as distinct actors because their composition was a reflexion of the composition of the Sejm).

Party positions were voiced during Sejm debates and Sejm committee meetings. Both the Solidarity Electoral Action and the Freedom Union deputies expressed their positive opinions on the bill. An AWS deputy expressed his satisfaction with the new draft: "Based on the EU law, the bill is an important step in harmonizing Polish law with EU law" (Sejm 1999, 34). In the interview, the AWS Prime Minister Buzek highlighted the fact that, despite the complexity of the problem, it was recognised that state aid control should be introduced. "The act was very rigorous as regards granting aid. There had been a tendency to save jobs [by granting aid to enterprises in a dire financial situation]. However, this type of state aid as well as special economic zones hinders competition. The opinion prevailed that we should use the same rules which were implemented successfully elsewhere [i.e. state aid control]" (Buzek interview, February 2003).

During a parliamentary debate an SLD deputy underlined that "there was no industrial policy and no priorities for economic policy in Poland" and questioned whether "every EU standard should be adopted in Polish legal and economic settings." Having said this, he emphasised that "SLD does not consider the act to be controversial. This is an important act" (Sejm 1999, 37). In 1999, the Polish Peasant Party seemed to be more supportive of introducing state aid control legislation. A PSL deputy said in an interview: "After 1997 the time came for introducing the act on state aid control. Over the course of time the participation of the private sector increased, hence, it was more viable to

introduce legislation controlling state aid" (Sawicki interview, July 2003). As early as February 1997, the PSL leader, Jarosław Kalinowski, expressed his pro-EU view in an interview and he said "I support the Europeanisation of Polish agriculture" (Czakowska 1997, 3).

The evidence shows that both Veto Players and Pivotal Actors in the legislature supported the bill and the roll call vote was the final verification with only few deputies voting against the bill. During the third reading on 27 April 2000, a vote on the bill was held: 390 deputies voted for, 11 were against and 11 abstained (Table 7). Among those who voted against were: one AWS deputy, two SLD deputies, and two PSL deputies (one of those deputies was former Prime Minister Pawlak) and, unsurprisingly, all deputies of the euro-sceptic Polish Agreement (formerly known as "Our Circle") voted against the bill harmonising Polish law with EU law.

Despite general support for the bill, one of the UW deputies noticed that trade unions had a strong impact on some deputies. "As regards economic legislation, both AWS and SLD *związkowcy* [deputies who, at the same time, belonged to trade unions] were problematic. They favoured only the particular interests of trade unions and not their parties as such" (Szejnfeld interview, June 2003). It probably resulted in a prolonged legislation process on state aid control bill and further disagreements over policy implementation. Despite the fact that trade unions raised reservations as regards economic policies (Szejnfeld interview, June 2003) deputies who were trade union members voted for the bill. OPZZ had 42 SLD deputies in the Sejm while about fifty AWS deputies came from the Solidarity trade union. This suggested a strong trade union voice in areas of the economy where the European Commission had expressed particular concern, including the Solidarity strongholds of mining and shipbuilding (Millard 1999a, 214).

Table 7. Political groups in the Sejm and voting on the bill on Conditions for Admissibility and Supervising of State Aid for Entrepreneurs.

Party caucus	Seats held on 27 April 2000	Roll call vote, 27 April 2000		
		For	Against	Abstained
AWS	186	164	1	1
SLD	161	154	2	0
UW	59	47	0	1
PSL	26	15	2	0
PP	7	0	6	1
KPN-Ojcz.	5	0	0	5
ROP-PC	4	2	0	2
PPS-RLP	3	3	0	0
PRS	3	1	0	1
Independent	6	4	0	0
Total	460	390	11	11

Source: Minutes from the 76th session of the Sejm on 27 April 2000. Voting no. 41. Sejm of the Republic of Poland. Third Term. Warsaw 2000.

After the voting in the Sejm, the bill was sent to the Senate and the President. Because the role of the Senate is limited in the legislative process I consider it to be a Powerless Actor. The Senate proposed some minor amendments. Then, the statute was sent to the President for his signature. Although in 1995 Kwaśniewski was an SLD parliamentary club chairman, he resigned the position when he was elected as president in 1995 and was "able to rise above mundane political conflicts and divisions" (Kość 2000). President Kwaśniewski's commitment and enthusiasm for the EU was unquestioned (Millard 1999a, 215) and, unsurprisingly, he signed the bill harmonising Polish law with EU law.

After a protracted 13-month-long legislative procedure,[76] the Act of 30 June 2000 on the Conditions for Admissibility and Supervising of State Aid to Entrepreneurs[77] was passed in the Parliament and entered into force in January 2001. The Act contained basic principles of the EU state aid *acquis*. It provided for a general prohibition of granting aid, with simultaneous admissibility of exemptions in conformity with regulations of the Treaty of Rome and secondary legislation in this field. The monitoring authority on state aid was to be the Office for Competition and Consumer Protection. Provisions in the 2000 Act were also designed to secure independence of the Chairman more formally. The OCCP Chairman was still appointed by and responsible to the Prime Minister. However, the selection for appointment was to be made by competition. The Chairman's term of office was fixed at 5 years. Moreover, a unit dealing with state aid in the OCCP was expanded and upgraded to a separate department when the statute became effective in 2001.

The assessment of compliance was positive. In 2001, the European Commission emphasised that "with regard to state aid, the state aid law and the secondary legislation appears to provide a satisfactory basis for initiating effective control of state aid in Poland" (European Commission 2001, 50).

To sum up, this episode showed compliance at domestic level which resulted from compatibility of policy preferences between the External Actor and the major Veto Player. The European Union advocated state aid control and a new Chairman of the Office of Competition and Consumer Protection along with the AWS Minister of Economy favoured state aid control and proposed a piece of legislation monitoring state aid. Moreover, the OCEI Secretary supported the bill on state aid control as well as the Freedom Union Minister of Finance. In particular, the Freedom Union was in favour of state aid control.

[76] The average time for an approximating bill to be passed was 144 days (Odrowąż-Sypniewski 2002, 16).
[77] Journal of Laws 2000 No. 60, item 704.

The act on the conditions for admissibility and supervising of state aid to entrepreneurs was passed in parliament in 2000. The Solidarity Electoral Action and the Freedom Union coalition government took it more seriously to harmonise national law with the EU *acquis* because the deadline for compliance was approaching. The major domestic actors agreed on controlling state aid; hence, compliance was possible.

7.3. Episode 3: Postscript to "the end of inertia"

The third episode shows that once Polish state aid law was harmonised with the EU *acquis* and policy preferences of the EU and major domestic actors were consistent, the direction of change could not be reversed. I will again look at the institutional set-up and preferences of Polish actors in order to explain why deputies' proposal to postpone implementation of the new legislation on state aid control was rejected in 2000.

EU accession conditionality and compliance assessment

EU requirements in the field of state aid seemed to be fulfilled in 2000 with the passage of the Act of 30 June 2000 on the Conditions for Admissibility and Supervising of State Aid for Entrepreneurs. The European Commission in its 2000 report emphasised that Poland had made progress by adopting the state aid law: "Poland therefore achieved a relatively high level of legislative approximation in the field of state aid control" (European Commission 2000, 42).

The domestic response

At the moment when the European Commission expressed its positive opinion on the act on state aid control I expect no significant change of the legislative status quo. The legislative status quo was the favoured policy of the External Actor (EU) and the major Veto Player (OCCP Chairman). At this very moment the status quo meant that the Act on the Conditions for Admissibility and Supervising of State Aid for Entrepreneurs was passed in parliament and was to come into force in January 2001. According to my hypothesis, the compatibility of preferences is important when explaining compliance. In this case preferences of domestic Veto Players favoured passage of the bill as was shown in Episode 2. Moreover, Pivotal Actors expressed their support for the bill. Hence, I cannot expect any change in the status quo as the same actors were on stage. Moreover, a deadline for complying with the EU criteria was approaching and the competition chapter was being negotiated since May 1999 (see Appendix 2). The negotiations chapter could only have been closed if the law on state aid control was introduced.

The episode began on 9 November 2000 when a group of Powerless Actors submitted a bill[78] on amendments to the Act of 30 June 2000 on the Conditions for Admissibility and Supervising of State Aid for Entrepreneurs. The group consisted of twenty-two deputies: fourteen AWS deputies; one from the Polish Agreement (PP); and seven independent deputies. The bill envisaged postponing the commencement of the law from 1 January 2001 to 1 January 2002.

The deputies who submitted the bill argued that there were no legal and economic reasons to introduce such legislation before actually joining the European Union. The justification of the bill reads: "Negative aspects of too short *vacatio legis* should be

[78] Document no. 2358, 9 November 2000, Third term of the Sejm of the Republic of Poland.

emphasised. Coming into legal effect on January 1, 2001 long before Poland becomes a full member of the European Union, may give grounds for concerns both of a legal and economic character. In the light of no exact date of Poland's accession to the EU, it is irrational to approximate Polish legislation to EU legislation."[79]

Table 8. Political groups in the Sejm and deputies who submitted a bill on Amendments to the law on Conditions for Admissibility and Supervising of State Aid for Entrepreneurs.

Party caucus	Seats held on 8 November 2000	Number of deputies who submitted a bill
AWS	182	14
SLD	161	0
UW	58	0
PSL	26	0
KdP	8	0
PP	7	1
ROP-PC	4	0
Independent	14	7

Source: Sejm of the Republic of Poland. Third Term. Warsaw 2000.

At the time of the episode a Solidarity Electoral Action minority government headed by Prime Minister Jerzy Buzek was in office. The AWS/UW coalition that had governed since the 1997 election ended in June, 2000 when the Freedom Union (UW) left the

[79] The Justification of the bill on Amendments to the Law on the Conditions for Admissibility and Supervising of State Aid for Entrepreneurs, Document no. 2358, 8 November 2000, Sejm of the Republic of Poland.

government. Given the substantial differences in approach to economic policies between Balcerowicz, the UW leader, and the trade union leaders in the AWS this is not a surprise (Jackson et al. 2003, 63). Consequently, only AWS is treated as a Veto Player, while UW is recognised as a Pivotal Actor. Only as a partner to a coalition of actors could the Freedom Union block legislation. The policy preferences of both actors were expressed at an earlier stage when the Polish government (AWS-UW coalition) committed itself to introducing state aid control legislation by 2000 and presented its plans in a negotiating position on Competition policy in 1998 as well as in a National Programme for the Adoption of the *Acquis*. Moreover, following the publication of an unfavourable 1999 Commission report and an intense debate in Parliament in February 2000, a pro-EU integration consensus emerged among the major political parties. Underpinned by a formal inter-party agreement it continued to hold even after the Freedom Union left government in June 2000.

The Minister of the Economy and the Chairman of the Office for Competition and Consumer Protection were major Veto Players. They had already expressed their support for the Act on the Conditions for Admissibility and Supervising of State Aid for Entrepreneurs. Similarly, the Minister of the Treasury supported the act. The new bill proposed by deputies included provisions which were in contrast to a previously agreed act. Hence, three Veto Players disagreed with the proposal.

Moreover, an institution assessing conformity with EU law was a Veto Player. When a bill is submitted by deputies, prior to referring the bill for the first reading, the Marshal requests that experts from the Chancellery prepare an opinion as regards conformity with European Union law. A European Integration team in the Chancellery of the Sejm prepared such an opinion in which it was emphasised that postponement of the legislation on state aid control was in opposition to the government's plans. It stated: the

Polish government committed itself to implementing the law on conditions for admissibility and supervising of state aid for entrepreneurs by the end of 2000 because it would allow to make up for all the delays in law harmonisation in this area. Both a Polish negotiating position on "Competition policy" and a National Programme for the Adoption of the *Acquis* (NPAA 2000) provided for such timing (Chancellery of the Sejm 2000). Consequently, opinion was not supporting the bill.

Given the fact that the composition of the Sejm committees reflected the composition of parliament, the opinion of the committees should have reflected the opinion of the four major parties. On 14 November 2000 the bill was sent to the Committee on Public Finances, the Committee on Economy and the Committee on Competition and Consumer Protection for a detailed examination. The three committees issued their report[80] on 21 December 2000. The Committees advised the Sejm not to accept amendments proposed by the deputies.

In the meantime, the party in government (AWS) issued its opinion[81] on the bill. The government headed by Prime Minister Jerzy Buzek expressed its negative opinion. The opinion reads: "The bill proposing amendments to the law on Conditions for Admissibility and Supervising of State Aid for Entrepreneurs will not be approved. The Act of June 30, 2000 harmonises Polish legislation with EU law in the field of state aid. Its introduction was a priority within the National Programme for the Adoption of the *Acquis* 2000. Hence, the Act should come into effect as fast as possible. Moreover, the acceptance of the deputies' bill would be very disadvantageous in the light of accession negotiations. Consequently, the bill was rejected."[82]

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[80] The Report, Document no. 2499, 21 December 2000.
[81] Document no. 2358-x, 14 December 2000.
[82] The Opinion of the government on the bill submitted by the deputies concerning Amendments to the Law on the Conditions for Admissibility and Supervising of State Aid for Entrepreneurs, Document no. 2358, 14 December 2000, Third term of the Sejm of the Republic of Poland.

To sum up, this episode confirmed the hypotheses that consistency of policy preferences is important for compliance. It also provided some other interesting insights. Firstly, Powerless Actors cannot influence the outcome. Their policy preferences were different from the preferences of Veto Players such as the party in government and Pivotal Actors such as main opposition parties in the Sejm. Consequently, no change of the legislative status quo was possible in the direction preferred by a group of twenty-two deputies. Hence, I classified the group as Powerless Actors because the number of deputies was trivial. Moreover, there was no direct threat to bring down the government. Secondly, the role of Veto Players in the policy-making process is undeniable. The party in government, the Solidarity Electoral Action, vetoed the bill and the Prime Minister appeared to have a strong opinion against the bill which did not conform to EU requirements. Moreover, the Secretary of the OCEI dealing with the conformity assessment vetoed the bill.

Conclusions

This chapter has showed the case study of state aid policy. It has set out to discover whether the preferences of actors matter for policy outcome, whether the institutional differences (number of Veto Players) and the timing of EU accession impinged on the outcome. It is clear from the preceding analysis that incompatibility of policy preferences between the External Actor and the major Veto Player resulted in non-compliance at the domestic level (Episode 1). In 1996 the Chairman of the Office for Competition and Consumer Protection, who was the agenda-setter, did not show any interest in state aid control and vetoed a bill on state aid control. This was the most unanticipated finding. I expected that the agenda-setter would support the bill. On the other hand, both Episode 2 and Episode 3 were examples of compatibility of policy preferences between the External

Actor and the major Veto Player in state aid policy which resulted in compliance at domestic level.

Interviews with former Prime Minister Buzek revealed that the preferences were shaped by the analysis of costs and benefits of introducing new law. Similarly, PSL deputy expressed their conviction that the economic situation in the mid-1990's was not favourable, hence, it was not advisable to introduce law controlling state aid. However, at the end of the 1990's.

Moreover, Episode 2 showed that the Pivotal Actors in parliament did not set up a coalition of actors to oppose a piece of legislation. The roll call votes proved that the Democratic Left Alliance (SLD) and the Polish Peasant Party (PSL) supported the bill. Hence, their policy preferences were consistent with the preferences of the major Veto Players in state aid policy. Furthermore, it was confirmed in the interview that domestic actors were aware of the time constraint and the deadline for harmonisation of domestic law with the EU *acquis*. In Episode 2, Veto Players in government, namely the Solidarity Electoral Action (AWS) and the Freedom Union (UW) took the harmonisation of national law with the EU acquis more seriously than the previous governments because the date for accession was approaching.

When faced with a choice between compliance and non-compliance, actors acted rationally by calculating the costs and benefits involved and deciding accordingly. Politicians and political parties are assumed to maximize domestic political support in order to be re-elected. When taking decisions they evaluate options in terms of costs and benefits and choose the option that maximizes net benefits.

In the context of the EU accession preparations, one role of a policy-maker is therefore to negotiate the least costly (or benefit maximisation) accession to the European Union. EU membership is regarded as the most desired and final benefit in the EU

conditionality game of accession (see the section on "EU accession conditionality, p.105). However, since benefits are likely to be long-term or not immediately perceptible, the focus would be on costs; closing factories, farms, or shipyards, losing social benefits, generally provoking layoffs, angering core constituents who receive state aid.

Consequently, when analysing the data I look for the evidence which would hint that the actors evaluated options. In the interview with the author, Prime Minister Buzek, when asked about the delays in legal transposition of EU state aid *acquis*, emphasised that Poland's EU accession was crucial but too early introduction of new law on state aid control might have resulted in huge compensations being paid to the companies which were set up in Special Economic Zones.

> We had a deadline; the deadline was Poland's accession to the European Union. A year or two before that date we had to finish transposing EU law into Polish law. So we were not in a hurry. Everything was under control and according to our objectives. In fact, the law on state aid control had to take into consideration the fact that in the special economic zones, state aid was of different character, which was not in accordance with EU law. However, we wanted to deal adequately with the firms and companies which set up their business in the special economic zones in the 1990's, and now we had to change the conditions. This was another important factor (Buzek interview, February 2003).

Moreover, Prime Minister Buzek pointed out that there was a propensity to protect domestic labour market:

> In fact, the law on state aid control was very restrictive in a mode of rescuing companies in dire financial situations. So there was a natural tendency to protect companies and jobs (Buzek interview, February 2003).

Prime Minister Buzek realised that state aid may be a useful policy instrument that could increase welfare. Yet, there is also the distinct possibility that state aid may cause policy-distortion or internal rent shifting. As a result this requires some control on state aid and Buzek opted for the introduction of the new legislation:

> However, this type of aid and the special economic zones hinder competition. Hence, we have decided to apply the rules which have been successful in other countries. Moreover, we cannot afford giving significant amounts of state aid. We cannot pay for inefficiency. If the companies are weak, they must close down (Buzek interview, February 2003).

Another interesting account of the events was given by the Peasant Party deputy, Marek Sawicki, who pointed out that in mid-1990's the control of state aid was not required because of the structure of the Polish economy.

> We [PSL] could not allow for the rapid opening of the Polish economy and the loss of our national interest [...] When Pawlak was a Prime Minister, a large part of the economy was state-owned, giving state aid without any rationalization was common. Hence, the Act on state aid control was not possible at that time" (Sawicki interview, July 2003).

However, Deputy Sawicki noticed that after 1997 the conditions changed. In Sawicki's opinion there was an argument on rationalisation of state aid to private enterprises through a system of control and greater transparency.

> After 1997 the time came for introducing the act on state aid control. Over the course of time the participation of the private sector increased, hence, it was more viable to introduce legislation controlling state aid (Sawicki interview, July 2003).

Conversely, the official from the Office of Competition and Consumer Protection emphasised in an interview with the author that state aid control was not advantageous in the 1990's because the implementation of the new law was perceived to be very costly and, moreover, the enterprises protected their interests. 'Internal rent shifting'[83] was obvious as aid to an inefficient firm restricted entry or expansion to a low cost competitor.

> Nobody wanted it [i.e. state aid control]. Interest groups and the government coalition were against it because its implementation would entail high costs but no benefits. Entrepreneurs were keen not to show their inefficiency, and they were keen to preserve the status quo (Żołnowski interview, June 2003).

The above evidence shows that Prime Minister Buzek when analysing the event looked at its costs and benefits and acted accordingly. Deputy Sawicki clearly indicated that the Polish Peasant Party thought about the possible impact of the introduction of state aid control. The official from the Office for Competition and Consumer Protection added that the introduction of state aid control was not feasible because its implementation was costly.

In the next chapter I will present the case study of antitrust policy. The validity of analytical considerations will be analysed in three episodes which took place in 1995, 1998 and 2000. They were the years when the antitrust law was gradually harmonised with EU law. I will look at institutional set-up and preferences of the actors.

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[83] See Fingleton 2001.

Chapter 8. Antitrust Policy

The years 1995, 1998 and 2000 were key years for antitrust policy harmonisation. In contrast to inertia in approximation of state aid law and non-compliance with EU requirements, antitrust legislation was gradually harmonised with the EU *acquis*. Hence, there was compliance with EU requirements in antitrust policy at the domestic level.

In what follows, I present a rationalist explanation of three episodes illustrating gradual harmonisation of Polish antitrust law with EU antitrust law. The changes were necessitated by EU accession requirements and Poland's obligation to comply with them.

8.1. Episode 4: Amendments to antitrust law in 1995

This episode will illustrate how the amendments to the 1990 antitrust law were introduced in 1995. I will look at the institutional set-up and preferences of Polish actors in order to explain the outcome.

EU accession conditionality in the field of antitrust

Having signed the Europe Agreement and after having applied for EU membership in 1994, the Polish government bound itself to adopt fully the *acquis communautaire* in the internal market area. Poland committed itself to making its legislation compatible with that of the Community on the basis of Article 68 of the Europe Agreement, with particular emphasis on 'rules on competition' (Article 69), and on the basis of Copenhagen accession criteria.

Antitrust provisions derived from Articles 81 and 82 of the EC Treaty, Council Regulations and the whole body of case law. Article 81 [ex 85] prohibits agreements and concerted practices between firms while Article 82 [ex 86] prohibits undertakings in a dominant position on a given market from abusing their dominant position to the prejudice of third parties. Moreover, Council Regulation (EEC) No.4064/89 provides for merger control. Moreover, Article 63 of the Europe Agreement recognised anticompetitive practices as "incompatible with the proper functioning of the Agreement." According to the European Commission (1994) the competition requirements of the Europe Agreements were expected to be significant in liberalising trade within the Central and Eastern European countries and in liberalizing East-West trade (European Commission 1994b). The competition rules were aimed at fully introducing free market principles to the economies of these states.

Furthermore, other EU documents pinpointed the importance of national law approximation to EU law: the Copenhagen *acquis* criterion (1993) and the White Paper (1995). The Copenhagen *acquis* criterion required that a candidate country would have the ability to fulfil all obligations resulting from EU primary legislation, secondary legislation and jurisprudence of the European Court of Justice, as well as a variety of non-binding acts. It implied approximation of Polish law to Community law. The requirement to harmonise legal regulations in the candidate countries especially with regard to competition issues was stressed in the European Commission's White Paper in 1995. It emphasised that "introducing a competition policy and effectively enforcing it must, therefore, be considered to be a precondition for the opening of the wider internal market or ultimately of accession to the Union"(European Commission 1995b, 49).

The domestic response

I expect that the Chairperson of the Antimonopoly Office was an ardent supporter of the bill which was to improve antimonopoly law. As regards Veto Players in government, until March 1995 the Social Democrat-Peasant coalition of the Democratic Left Alliance (SLD) and the Polish Peasant Party (PSL) was headed by Waldemar Pawlak (PSL). Coalition government parties' attitude to harmonisation of domestic legislation with EU law was ambiguous. On the one hand, the PSL Prime Minister was the one to submit application for EU membership in 1994. On the other hand, he supported interventionist economic policies. The Polish Peasant Party advocated larger government subsidies and protection for Polish agriculture and state-owned enterprises – the policies which were not compatible with what the European Union advocated.

In response to the obligations arising from the Europe Agreement and the Copenhagen *acquis* criterion, initial steps were taken to harmonise domestic legislation with the EU *acquis*. Since the Polish Antimonopoly Act was passed prior to the signing of the Europe Agreement, and notably, drafted with the assistance of American experts, it did not correspond to EC standards (Ojala 1999, 138). Immediately after Poland had signed the Europe Agreement on 16 December 1991, the Antimonopoly Office began antitrust law harmonisation with EU standards. The aims of Polish antitrust policy were consistent with EU law (Fornalczyk interview, June 2003).

In antitrust policy, agenda-setting power was given to the Chairperson of the Antimonopoly Office who proposed amendments to the act on monopolistic practices. As provided by the Act of 24 February 1990 on Counteracting Monopolistic Practices and Protection of Consumer Interests, the Antimonopoly Office dealt with the restructuring of industries and privatisation of state enterprises (Fornalczyk 2003). The Chairperson had

the power of initiating and implementing antitrust law. Chairperson Fornalczyk had agenda-setting power. She was considered to be "independent politically" (though she was of a liberal viewpoint) who eagerly promoted undistorted competition, supported privatisation and restricting the power of monopolies. In the years 1993-1996 Chairperson Fornalczyk presented annually a "Programme of strengthening competition" to the Council of Ministers. The programme provided for the key areas of activities of the Antimonopoly Office and ministries in the field of development and the promotion of free and undistorted competition. In spite of the ambiguous stance of the Polish Peasant Party and the Democratic Left Alliance as regards economic policies and European integration, Fornalczyk skillfully managed to present a bill on amendments to antitrust law as a government bill.

Furthermore, a Government Plenipotentiary for European Integration and Foreign Assistance in the Ministry of European Affairs was in charge of all issues concerning European integration and potentially he was a Veto Player. At that time Jacek Saryusz-Wolski was in charge of coordination of the adjustment process. The Office of the Government Plenipotentiary for European Integration and Foreign Assistance was set up in 1991 by the Resolution of the Council of Ministers No. 11/91 and was equipped with statutory powers to co-ordinate the adjustment process, initiate and organise work and activities aimed at Poland's integration with the EU, particularly in the economic, legal and institutional-organisational area.

Interest groups and trade unions were not consulted at the stage of preparing the bill. However, during the legislative process in the Sejm representatives of business clubs took part but did not raise any doubts concerning the bill (Fornalczyk 2003). Despite the fact that a number of deputies belonged to trade unions, the so-called *związkowcy,* they did not oppose the bill directly. In 1993 there were sixty-one *związkowcy'* out of a total of 171

SLD deputies. They belonged to the All-Poland Trade Union Alliance (OPZZ) which was the driving force in terms of providing SLD with political direction and organisational support. However, there was not much evidence on the impact of the trade union on a decision to vote for the antitrust bill. Nevertheless, implementation of antitrust law was hindered by industrial lobbies (Fornalczyk interview, September 2003).

The legislative process started on 29 April 1994 when a governmental bill[84] was submitted to the Marshal of the Sejm by the Council of Ministers. During the first reading on 26 August 1994 the bill was delegated to Sejm committees for detailed examination and potential improvement of what had been proposed. Three committees dealt with the bill: a Committee on the Economic System and Industry, a Committee on Ownership Transformation and a Legislative Committee. The Committees' report[85] was produced on 10 January 1995. At the stage of the second reading which took place on 1 February 1995, the decision was taken to proceed immediately to the third reading.

Roll call votes were the evidence of support of domestic actors for the piece of antitrust legislation. On 3 February 1995, a vote on the bill was held: 393 deputies voted for and one abstained (see Table 9). The Democratic Left Alliance (SLD) and the Polish Peasant Party (PSL) voted for the bill. Two main opposition parties supported the bill as well. The Freedom Union (UW) and the Nonparty Bloc in Support of Reforms (BBWR) had 74 and 11 seats in the Sejm respectively. They were, in fact, Powerless Actors because they could not set up any blocking coalition. Other Powerless Actors such as the Labour Union (UP), Confederation for an Independent Poland (KPN), German Minority, Polish Socialist Party (PPS), Polish Right (PP), Deputies' Circle "New Democracy" (PKND) and the Parliamentary Circle "the Republicans" (PKR) also voted for the bill.

[84] Document no.381, Second Term of the Sejm, 28 April 1994.
[85] The Report, Document no. 805, 10 January 1995.

The Senate did not propose any amendments and the President signed the bill. President Wałęsa declared his support for the multidimensional integration of Poland with the structures of the West, and with institutions which have proved their effectiveness in resolving common problems (*Rzeczpospolita* 4 October 1995).

Table 9. Political groups in the Sejm and voting on Amendments to the Law on Counteracting Monopolistic Practices.

Party caucus	Seats held on 3 February 1995	Roll call vote, 3 February 1995		
		For	Against	Abstained
SLD	167	157	0	0
PSL	131	105	0	0
UW	74	58	0	1
UP	37	32	0	0
KPN	16	12	0	0
BBWR	11	9	0	0
MN	4	4	0	0
PPS	3	2	0	0
PP	4	3	0	0
PKND	3	3	0	0
PKR	5	5	0	0
Independent	5	3	0	0
Total	460	393	0	1

Source: Minutes from the 42nd session of the *Sejm* on 3 February 1995. *Sejm* of the Republic of Poland. Second Term. Warsaw 1995.

The Amendments to the Act of 24 February 1990 on Counteracting Monopolistic Practices

and the protection of consumers' interests were passed on 3 February 1995,[86] and amendments to the law became effective in May 1995. In general, the Act "determines the conditions for the promotion of competition, lays down the principles and procedures for controlling monopolistic practices and violations of consumer interests by undertakings and their associations if they have an effect or may have an effect on the territory of the Republic of Poland, and determines the authorities competent in these matters."[87] The amended Act provided for a general prohibition of monopolistic practices and indicated examples of prohibited agreements such as fixing prices, dividing markets, limiting the volume of production, restricting access to the market, etc. Moreover, it set out a list of abuses of a dominant position. Moreover, the amendment to the Antimonopoly Act added the merger control provision. This was a new chapter, substantially amended in 1995, under the elaborate title "influencing the process of formation of the structure of undertaking." Article 11 of that Act required notification to the OCCP of any intention to bring about a concentration when the joint market share of the participating undertakings exceeded 10 per cent. Previously, the control of mergers or concentrations was virtually non-existent (Harding and Kepinski 2001, 185).

There is no doubt that the amendments aimed to harmonise Polish antitrust legislation with EU law. The 1994 Antimonopoly Office report stipulated that the amendments to the act of 24 February 1990 aimed to "bring the Polish Antimonopoly Act closer to the competition law of the European Community" (Antimonopoly Office 1994, 6). In 1995, the Antimonopoly Office report emphasised that "the competition policy in the context of the transformation process is driven by two factors: the internal needs of the Polish national economy and external pressures, meaning the international institutions which Poland intends to join "(Antimonopoly Office 1995, 8).

[86] Journal of Laws 1995 No. 41, item 208.
[87] Cited in Harding and Kepinski (2001, 188).

To sum up, Episode 4 confirmed that from the beginning the competences of the Chairperson of the Antimonopoly Office were significant in the antitrust field. Fornalczyk supported counteracting monopolistic practices, so her policy preferences were consistent with the antitrust policy advocated by the European Union and compliance was facilitated. Coalition parties, the Democratic Left Alliance and the Polish Peasant Party supported the bill in the Sejm. However, it is difficult to assess a particular role of interest groups. They did not set up a coalition of actors to oppose a piece of legislation directly.

8.2. Episode 5: Further amendments to antitrust law in 1998

This episode will examine further amendments to antitrust law introduced in 1998. I will look at the institutional set-up and preferences of Polish actors in order to explain this event. However, I will first look at the EU requirements in the area of antitrust. Poland was obliged to comply with the EU accession criteria before EU membership could be possible.

EU accession conditionality and compliance assessment

EU conditionality in the field of antitrust was put forward in the 1991 Europe Agreement and was followed by the Copenhagen accession conditions (presented in detail in the Episode 4). Furthermore, the European Commission emphasised the importance of transposition of competition provisions in "The 1995 White Paper on Preparation of the Associate Countries of Central and Eastern Europe for Integration into the Internal Market of the Union." The European Commission in its reports as well as Accession Partnerships presented the assessment of compliance with the accession criteria annually.

Consequently, the requirement for the Polish government was to introduce legislation compatible with EU *acquis*.

Despite complying with the initial accession conditions, further requirements and a more systematic assessment of compliance was presented. As early as 1995 the Polish government could commend itself for a partial transposition of EU antitrust provisions into domestic legislation. In practice, amendments to the Act of 24 February 1990 on Counteracting Monopolistic Practices on 3 February 1995 came about as a result of the implementation of the legal obligation of the Europe Agreement (Chancellery of the Council of Ministers 1995, 55). In 1997, the European Commission in its opinion on Poland's application for EU membership stipulated that approximation in the area of antitrust was progressing, although further efforts to adapt the existing legislation were indispensable. The Commission pointed out that important adjustments were needed in the field of merger control, the powers to conduct inspections on the premises of companies suspected of having infringed the law and as regards the adoption of block exemptions. Moreover, further adjustments were necessary as regards abuse of dominant position and in respect of procedures (European Commission 1997, 50).

The domestic response

I expect that a major Veto Player, who was the Chairman of the Office for Competition and Consumer Protection, supported harmonisation of domestic antitrust law with EU law. The OCCP Chairman had the sole competence in the field of antitrust policy. Similarly, I expect that a new coalition government of AWS centre-right electoral alliance and the liberal Freedom Union supported the legislation. Their policy preferences were expected to be generally consistent with the preferences of the European Union and a major Veto

Player. As regards Pivotal Actors, such as business clubs and employers associations, I expect that they supported counteracting monopolistic practices. Similarly, I do not expect opposition parties to set up a coalition to oppose a piece of antitrust legislation. This is because two main opposition parties, the Democratic Left Alliance and the Polish Peasant Party, which were in government in the years 1993-1997, were implementing antitrust policy, though not promptly.

In general, the policy preferences of Veto Players in government - the Solidarity Electoral Action and the Freedom Union under AWS Prime Minister Jerzy Buzek - were consistent with the European Union, though there was a threat that a trade union element in AWS could express its disagreement. There was no doubt that the Freedom Union was overtly committed to undistorted competition. As regards the Solidarity Electoral Action it generally supported counteracting monopolistic practices. However, the Independent Self-Governing Trade Union "Solidarity" had an impact on the Solidarity Electoral Action. The chairman of this trade union was a leader of the AWS parliamentary fraction. In total, about fifty AWS deputies (out of 201) came from the Solidarity trade union, including 19 regional chiefs and important branch leaders, such as those from coal mining and defence. They were *związkowcy* who favoured particular interests of trade unions and not their parties as such. Nevertheless, there was no overt expression of trade union dissatisfaction during policy initiation and policy decision phases.

The Chairman of the Office for Competition and Consumer Protection, Andrzej Sopoćko, was a major Veto Player. A bill[88] on amendments to the Act on counteracting monopolistic practices was prepared by the OCCP and its Chairman presented it to the Council of Ministers. The Council of Ministers accepted the bill in July 1998. Prior to referring the bill to a parliamentary discussion the bill had to be agreed upon by another

[88] Document no.536, Third term of the Sejm, 22 July 1998.

Veto Player. It was the OCEI Secretary who assessed conformity with EU law. The opinion was positive and it pointed out that "the new provisions and new thresholds for merger control in Poland were in conformity with the EU merger provisions, i.e. Council Regulation No. 4064/89 and No. 1310/97."

The legislative process began on 22 July 1998 when the governmental bill[89] was submitted to the Marshal of the Sejm by the Council of Ministers. During the first reading on 27 August 1998 the bill was delegated to a Sejm committee for a detailed examination. It was a Committee on Competition and Consumer Protection which dealt with the bill. The Committee report[90] was produced on 30 September 1998. During the second reading, the decision was taken to start immediately the third reading and a vote on the bill was held on 21 October 1998.

Table 10. Political groups in the *Sejm* and voting on Amendments to the Law on Counteracting Monopolistic Practices.

Party caucus	Seats held on 22 October 1998	Roll call vote, 22 October 1998		
		For	Against	Abstained
AWS	187	160	0	1
SLD	162	137	0	0
UW	60	47	0	0
PSL	25	20	0	0
NK	7	6	0	0
KPN-OP	6	4	0	0
ROP	4	4	0	0
Independent	8	7	0	0
Total	459[91]	385	0	1

Source: Minutes from the 32nd session of the *Sejm* on 22 October 1998. *Sejm* of the Republic of Poland. Third Term. Warsaw 1998.

[89] Document no.536, Third term of the Sejm, 22 July 1889.
[90] The Report, Document no. 633, 30 September 1998.
[91] The total number does not equal 460 due to the fact that some mandates were not filled at a date of a vote.

Roll call voting was evidence of support of the act counteracting monopolistic practices by major domestic actors: 385 deputies voted for and only one deputy abstained (Table 10). The Pivotal Actors who were the two main opposition parties in the legislature were the Democratic Left Alliance (SLD) and the Polish Peasant Party (PSL). They supported the bill. It was confirmed in an interview that PSL was in favour: "We supported counteracting monopolistic practices but without any enthusiasm" (Kuźmiuk interview, July 2003).

Moreover, residual parties ROP, NK, KPN-Ojcz. and independent deputies, which were the Powerless Actors, voted in favour of the bill. After the Senate had scrutinized the bill, it was sent to the President, an ultimate Veto Player in the legislative process. President Kwaśniewski signed the bill in November 1998. In January 1999, the amendments to the Act of 24 February 1990 on Counteracting Monopolistic Practices and Protection of Consumer Interests[92] entered into effect. The adopted changes were intended to liberalise the administrative control of mergers to align the law with the EU legislation in that area (OECD 1999, 2). In its 1999 regular report, the European Commission pinpointed that: "The adopted changes aimed at additional improvements in mergers and antitrust. It limited the administrative control of mergers of entrepreneurs only to the cases with significant importance for the market, in accordance with the spirit of the Community law in this field."

To sum up, the OCCP Chairman was an ardent supporter of antitrust legislation. His policy preferences were consistent with the competition policy advocated by the European Union. Moreover, the episode showed that there were few potential Veto Players who could oppose legislation unilaterally. The Chairman of the Office for Competition and Consumer Protection, the Secretary of the Office of the Committee for European

[92] Journal of Laws 1998, No.145, item 938.

Integration and also the President supported the legislation which contained fundamental principles of Community antitrust rules, concerning restrictive agreements, abuse of dominant position and merger control. Moreover, deputies of the Solidarity Electoral Action and the Freedom Union supported the bill. Furthermore, Pivotal Actors in parliament - the Democratic Left Alliance and the Polish Peasant Party - supported the bill when voting in the Sejm.

8.3. Episode 6: The new law introduced in 2000

This episode will examine the introduction of a new piece of antitrust law. I will look at the institutional set-up and preferences of Polish actors in order to explain this event. However, I will first look at the EU requirements in the area of antitrust. Poland was obliged to comply with the EU accession criteria before EU membership could be possible.

EU accession conditionality and compliance assessment

Despite further amendments to Polish antitrust law, the European Commission pointed out that "further alignment in particular regarding block exemptions remains to be completed" (European Commission 1999, 33). The 1998 Accession Partnership stressed that "there has been progress in the area of antitrust law, and further legislative alignment is under consideration by the government in order to fully harmonise Polish competition law with the *acquis*." As regards medium-term priorities "further improvements in the field of competition" were necessary (European Commission 1998c).

The domestic response

The expectations are similar to the ones presented in the previous episode. However, there is one important difference. In 2000, the number of Veto Players in government changed. The coalition government of the Solidarity Electoral Action (AWS) and the Freedom Union (UW) formally came to an end in June 2000, while an AWS minority administration stayed in office. However, I do not expect that preferences changed and they were generally compatible with the ones of the European Union. Hence, I expect that

a new bill approximating domestic legislation with EU law should be supported. Similarly, I expect that Pivotal Actors in parliament, i.e. PSL and SLD, supported the bill as they had done in 1998.

The agenda-setter, the Chairman of the Office for Competition and Consumer Protection, Tadeusz Aziewicz, was committed to introducing a new law which would be fully compatible with EU law. During the first reading of the bill, a Vice-chairperson of the Office for Competition and Consumer Protection, Elżbieta Modzelewska-Wąchal, said: "As you all know eight years have passed since the Polish government signed the Europe Agreement. Article 63 of that agreement obliged Poland to harmonise Polish competition law with EU law. This was one of the main reasons why the new bill was submitted to Parliament" (Sejm 2000, 335). Furthermore, a Veto Player in the Office of the Committee for European Integration delivered a positive opinion on conformity of the bill with EU law.

Pivotal Actors in parliament did not set up a blocking coalition. Instead, there was a coalition in support of the bill on competition and consumer protection. An SLD deputy, former Minister of the Economy in Cimoszewicz government in 1997, emphasised: "Monopolies are harmful for the economy, hence where it is possible we encourage free competition" (Kaczmarek 2002). Similarly, a PSL deputy stressed: "In general, any monopoly is harmful" (Sawicki interview, July 2003). Although the Freedom Union was potentially an opposition party, it supported the bill. UW promoted economic and political liberalism and had links with its potential allies in the business community organised in bodies such as the Polish Business Council, the Confederation of Polish Employers and the Business Centre Club. It is worth emphasising that following the publication of an unfavourable 1999 Commission report and an intense debate in Parliament in February 2000, a pro-EU integration consensus emerged among the major political parties.

Underpinned by a formal inter-party agreement it continued to hold even after the Freedom Union left government in June 2000.

It was confirmed in the interview that a draft act on competition and consumer protection was consulted with interest groups such as the Business Centre Club, the Confederation of Polish Employers and the Polish Chamber of Commerce. However, trade unions were not consulted (Żołnowski interview, June 2003). The Business Centre Club focused on lobbying activities, the aim of which was to limit the risk of doing business and to ensure a level playing field for all competitors. The Polish Chamber of Commerce represented the interests of Polish entrepreneurs. The preferences of Pivotal Actors who were consulted were in accordance with the preferences of the European Union and the major Veto Player.

The governmental bill[93] was submitted by the Prime Minister to the Marshal of the Sejm on 7 June 2000. During the first reading, which took place on 9 September 2000, the bill was delegated to the Sejm Special Committee on European Law because this was the bill which harmonised Polish law with EU law.

During the parliamentary debate, deputies of the Solidarity Electoral Action (AWS), the Freedom Union (UW), the Democratic Left Alliance (SLD) and the Polish Peasant Party (PSL) underlined the necessity of introducing new legislation which would fully harmonise Polish law with EU law. An AWS deputy said: "A new Act is needed because the date of EU accession is approaching."

Deputies expressed their policy preferences in a vote on 17 November 2000; 394 deputies voted for the bill, eight voted against (3 AWS deputies; 1 SLD deputy and 3 PP deputies) and two abstained (Table 11).

[93] Document no. 1996, 6 June 2000.

Table 11. Political groups in the *Sejm* and voting on a Competition and Consumer Protection bill.

Party caucus	Seats held on 17 November 2000	Roll call vote, 17 November 2000		
		For	Against	Abstained
AWS	182	155	3	1
SLD	161	138	1	0
UW	58	51	0	1
PSL	26	24	0	0
KdP	8	6	0	0
PP	7	4	3	0
ROP-PC	4	4	0	0
Independent	8	7	0	0
Total	454[94]	394	8	2

Source: Minutes from the 91st session of the *Sejm* on 17 November 2000. Voting no. 75. *Sejm* of the Republic of Poland. Third Term. Warsaw 2000.

With respect to Powerless Actors, three out of seven deputies of Polish Agreement voted against while other Powerless Actors supported the bill. Some minor Senate amendments were accepted in the Sejm. The statute was sent to the President. President Kwaśniewski was pro-European so legislation harmonising Polish law with EU law was supported.

The Act of 15 December 2000 on Competition and Consumer Protection[95] was enacted in December 2000 and came into effect on 1 April 2001. It replaced the amended Act of 24 February 1990 on counteracting monopolistic practices and the protection of consumer interests. The Act stipulated: "The Act governs the rules and measures of counteracting competition restricting practices and anticompetitive concentrations of entrepreneurs and associations thereof, where such practices or concentrations cause or may cause effects on the territory of the Republic of Poland" [Article 1]. A number of new legal instruments were introduced allowing full harmonisation of Polish law with EC law

[94] The total number does not equal 460 because some seats were not filled at a date of a vote.
[95] Journal of Laws 2000, No. 122, item 1319.

in respect of merger control, antimonopoly agreements and the abuse of the dominant position by the entrepreneurs (OCCP 2000, 3). It replaced the existing relative prohibition of the abuse of dominant position by absolute prohibition, and it defined the agreements of minor importance, which by virtue of the act will not be prohibited. Article 7 of this new legislation enabled the Council of Ministers to issue block exemptions and to introduce exemptions related to agreements of minor importance - the so-called *de minimis* rule. The Competition Act also included an increase in notification thresholds in merger cases (now €50 million), thereby improving the old control system that resulted in a large number of mostly unnecessary merger notifications. It also developed procedural rules, and gave independent status to the competition authority in Poland. The new act changed the so-called *rule of reason,* fully adjusting it to the EU blueprint.

Because the Act was adopted only six months after its submission to the parliament, it was a clear indication that the Polish government was taking its promise of fast-track procedures for laws implementing regulations seriously, including a new merger notification form and various block exemptions (Stobiecka 2002, 92). In the area of antitrust, Poland's legislation contains the basic principles of Community antitrust rules, concerning restrictive agreements, abuse of dominant position and merger control (European Commission 2001, 50). According to the Commission (2002), a focus on antitrust activity has been usefully shifting towards anticompetitive practices that most seriously distort competition, e.g. cartels. This approach should be further developed. With regard to mergers, the amended system is expected to improve the old control system, which resulted in a relatively large number of unnecessary notifications (European Commission 2002, 64).

To sum up, EU regulations were transposed in a straightforward manner because preferences of the domestic actors and the European Union were compatible. In particular,

the Chairman of the Office for Competition and Consumer Protection was an ardent supporter of antitrust legislation. In fact, there were few Veto Players in the antitrust area who could oppose legislation unilaterally. Moreover, as policy preferences of Pivotal Actors in parliament, SLD and PSL were consistent with the OCCP Chairman and they supported the bill. Consequently, there was compliance with the EU requirements at domestic level.

Conclusions

This chapter has showed the case study of antitrust policy. It has set out to discover whether the preferences of actors and institutional set-up matter for policy outcome. It has been argued that consistency of actors' preferences may speed up compliance. Episode 4 confirmed that from the beginning the competences of the Chairperson of the Antimonopoly Office were significant in the antitrust field. Prof. Fornalczyk supported counteracting monopolistic practices, so her policy preferences were consistent with the antitrust policy advocated by the European Union. Coalition government parties, the Democratic Left Alliance and the Polish Peasant Party supported the bill in the Sejm. Moreover, the episode showed that there were few potential Veto Players who could oppose legislation unilaterally. Similarly, in 1998 and in 2000 the Chairman of the Office for Competition and Consumer Protection. Moreover, deputies of the Solidarity Electoral Action and the Freedom Union supported the bill. Furthermore, Pivotal Actors in parliament - the Democratic Left Alliance and the Polish Peasant Party - supported the bill when voting in the Sejm. All episodes confirmed that a policy position of a major Veto Player was crucial for compliance with EU requirements.

In the next chapter I will sum up findings of two empirical chapters in the light of the conceptual and theoretical framework of the thesis.

Part IV. Conclusions

Part IV of the thesis presents a final discussion of results and conclusions. Chapter 9 sums up findings of the empirical chapters in the light of the conceptual and theoretical framework of the thesis. It summarises the main findings of the research project on Europeanisation in Poland during its candidacy for EU membership. Chapter 10 is an addendum to the events which I have described and explained in the thesis. It presents the most recent reforms of EU competition provisions and competition law in Poland as well as European constitution building.

Chapter 9. Conclusions about Europeanisation in Poland in the years 1994-2000

In this thesis I analysed the impact of the European Union on domestic policies in Poland in the years 1994-2000. It was the time that Poland was a candidate country for EU membership. I analysed how Poland complied with EU accession criteria. I have explained non-compliance with EU requirements in state aid policy (inertia in state aid policy harmonisation) and compliance with EU requirements in antitrust policy (harmonisation of antitrust policy) in Poland from the perspective of rational choice institutionalism. I have argued that compliance is a result of a few Veto Players whose policy preferences are consistent with EU preferences. By contrast, non-compliance results from many Veto Players with inconsistent preferences. In particular, policy preferences of domestic agenda-setters are essential. Moreover, Pivotal Actors' preferences are important as they also determine the final policy outcome.

In what follows, I will first of all elaborate on the results of an empirical analysis in two policy areas in the light of hypotheses and, subsequently, I will present the contributions of this research project to current theoretical and empirical debates on Europeanisation and states' compliance with international obligations.

Discussion

The first hypothesis assumed that the more compatible the policy preferences of a major Veto Player and the External Actor, the faster the compliance at the domestic level. The reverse of this assumption also holds, namely that, if the preferences of a domestic agenda-setter and the External Actor differ significantly, this may result in non-compliance. In

order to assess whether this hypothesis was corroborated I examined the policy preferences of an agenda-setter in the area of state aid and antitrust in Poland and the policy advocated by the European Union who was the External Actor. The Chairman of the Office for Competition and Consumer Protection and the Minister of the Economy were at different times responsible for state aid control. There was no clear division of their competences in the period 1994-2000. In antitrust policy the major Veto Player was the Chairman of the Office for Competition and Consumer Protection (until October 1996 the office was called the Antimonopoly Office).

In state aid policy, Episode 1 showed incompatibility of policy preferences between the External Actor and the major Veto Player, which resulted in non-compliance at the domestic level. The EU-favoured measures included the strict regulation of state subsidies. Any public aid which distorts or threatens to distort competition by favouring certain undertakings or the production of certain goods was incompatible with the rules of Articles 87 to 89 of the EC Treaty. The major Veto Player in the field of state aid, i.e. the Chairman of the Office for Competition and Consumer Protection, was an agenda-setter. Moreover, the Minister of the Economy had a say in the policy area. In 1996 the Chairman of the Office for Competition and Consumer Protection did not show any interest in state aid control and vetoed a bill on state aid control.

However, both Episode 2 and Episode 3 were examples of compatibility of policy preferences between the External Actor and the major Veto Player in state aid policy which resulted in compliance at domestic level. The European Union advocated state aid control. In Episode 2, a new Chairman of the Office of Competition and Consumer Protection favoured state aid control and proposed a piece of legislation monitoring state aid along with the AWS Minister of the Economy. The act on the conditions for admissibility and supervising of State aid to entrepreneurs was passed in parliament in

2000. Moreover, Episode 3 corroborated the proposition that preference consistency is crucial for compliance at domestic level. The new bill proposed by deputies included provisions which were in contrast to a previously agreed act on state aid control. The Minister of the Economy and the Chairman of the Office for the Competition and Consumer Protection disagreed with the deputies' bill. The legislative status quo was the favoured policy of the EU. Domestic law was consistent with EU law, hence, no change of the legislative status quo was expected. Consequently, the deputies' bill was rejected.

In antitrust policy, all episodes confirmed that consistency of preferences between a major Veto Player and the External Actor was essential for compliance at domestic level in the direction preferred by the European Union. The major Veto Player in the field of antitrust, who was the Chairman of the Office for Competition and Consumer Protection, was an agenda-setter. Episode 4 confirmed that from the beginning the competences of the Chairperson of the Antimonopoly Office were significant in the antitrust field and she supported counteracting monopolistic practices. Similarly, in Episode 5 and Episode 6, the OCCP Chairman was an ardent supporter of antitrust legislation. His policy preference was consistent with the policy advocated by the European Union. EU antitrust provisions based on Article 81 and 82 of the EC Treaty prohibit "agreements and concerted practices between firms" and an "abuse by one or more undertakings of a dominant position." Moreover, the control of mergers and acquisitions is provided for in the Council Regulation. Hence, since there was consistency of policy preferences between the European Union and the antitrust agenda-setter in Poland, compliance at domestic level was possible. Polish antitrust legislation was gradually harmonised with EU law.

In fact, all episodes confirmed that a policy position of a major Veto Player was crucial for compliance with EU requirements. In the case of preference consistency between the European Union and the domestic agenda-setter (Episode 2, 3, 4, 5 and 6)

there was compliance. For episodes 2, 4, 5 and 6 compliance meant that the legislative *status quo* which was previously incompatible with EU law was changed in order to comply with EU requirements. In episode 3, compliance implied that the status quo which was compatible with EU prescriptions should remain. In the case of policy preference inconsistency between the EU and domestic agenda-setter (Episode 1) compliance with EU requirements at domestic level was not possible.

The second hypothesis stipulated that the more consistent the policy preferences of domestic Veto Players, the greater the chances of a major Veto Player winning support for EU-induced legislation, and the faster the compliance. Furthermore, this hypothesis asserted that the smaller the number of Veto Players, the faster compliance would be. Conversely, the greater the number of Veto Players with inconsistent policy preferences, the greater the probability that a piece of legislation harmonising domestic law with EU law would be blocked. Simply, there are more potential actors who can block legislation.

When comparing the two policy areas, it is evident that there was a different number of Veto Players. There were more Veto Players in the area of state aid than in the area of antitrust. According to the classification which I presented in Chapter 5 there were the following Veto Players in state aid policy: the Chairman of the OCCP; the Minister of the Economy; the Minister of Finance; the Minister of the Treasury; the Secretary of the OCEI; parties in coalition government; and the President. On the other hand, there were the following Veto Players in antitrust policy: the Chairman of the OCCP; the Secretary of the OCEI; parties in coalition government; and the President.

In state aid policy there were more Veto Players, and in addition, the policy preferences of actors were inconsistent. It resulted in policy inertia for a significant period of time and non-compliance with EU requirements. The Chairman of the Office for Competition and Consumer Protection shared its competences in state aid with the

Minister of the Economy. Episode 1 was an obvious example of exercising the power to veto and inconsistency of policy preferences among Veto Players. The policy preferences of the Chairman of the Office for Competition and Consumer Protection were different from the preferences of the European Union. Moreover, other Veto Players were expected to veto legislation; for example the Minister of Industry and Trade who eagerly defended the secrecy of state aid given to the mining industry. Similarly, Veto Players in government did not support legislation controlling state aid. On the other hand, the policy preferences of the OCEI Secretary were consistent with EU policy. The Secretary of the Office of the Committee for European Integration was in charge of coordinating the adaptation and integration process as well as of encouraging and supervising the law approximation processes by means of investigating its conformity with Union law, and co-operating with the European Union in this respect. Conversely, Episodes 2 and 3 were examples of consistency of policy preferences among Veto Players. The OCCP Chairman along with the AWS Minister of the Economy, UW Minister of Finance and supported by the Secretary of the Office of the Committee for European Integration, was determined to introduce legislation controlling state aid. In general, the Solidarity Electoral Action and the Freedom Union supported legislation monitoring state aid. President Kwaśniewski was in favour of new legislation. In Episode 3, the party in government, the Solidarity Electoral Action, vetoed the bill which was against EU requirements. Moreover, the Secretary of the OCEI dealing with the conformity assessment vetoed the bill.

In antitrust policy, the restricted number of Veto Players and the consistency of their preferences made compliance with EU requirements feasible. Episode 4 showed that the Chairman of the Antimonopoly Office supported compliance by initiating amendments to an act on counteracting monopolistic practices. Moreover, the Democratic Left Alliance and the Polish Peasant Party and also the OCEI Secretary and President Wałęsa supported

antitrust legislation. Hence, domestic legislation was harmonised with the EU *acquis*. Similarly, Episode 5 and Episode 6 showed again that there were few potential Veto Players who could oppose legislation unilaterally. Yet, the Chairman of the Office for Competition and Consumer Protection, the Secretary of the Office of the Committee for European Integration and also the President supported the legislation which contained fundamental principles of EU antitrust rules, concerning restrictive agreements, abuse of dominant position and merger control. Moreover, the Solidarity Electoral Action and the Freedom Union supported the bill by voting for it in the Sejm.

In general, when analysing the power of Veto Players, veto was exercised on several occasions in state aid while there was no single instance of veto in antitrust. Veto Players who blocked a decision in state aid policy were the following: the Chairman of the OCCP (episode 1); the Prime Minister (Episode 3); the Secretary of the OCEI (Episode 3) and the Solidarity Electoral Action, although indirectly (Episode 3). The Prime Minister, who was an AWS deputy, vetoed the deputies' bill. Moreover, the Sejm committee, dominated by the AWS deputies, expressed its negative opinion on the bill.

The third hypothesis stipulated that the more consistent the policy preferences of Pivotal Actors with the preferences of the major Veto Player, the greater the chances of the major Veto Player winning support for EU-induced legislation, and the faster the compliance.

In particular, Episode 2 (state aid policy) and Episodes 5 and 6 (antitrust policy) showed that the Pivotal Actors in parliament did not set up a coalition of actors to oppose a piece of legislation. Instead, they were always in supporting coalitions. In Episode 2, roll call votes proved that Pivotal Actors in parliament, the Democratic Left Alliance (SLD) and the Polish Peasant Party (PSL) supported the bill. Hence, their policy preferences were consistent with the preferences of the major Veto Players in state aid policy: Chairman of

the Office for Competition and Consumer Protection and the Minister of the Economy. Similarly, in antitrust policy, Episode 5 and Episode 6 showed that Pivotal Actors in parliament, SLD and PSL supported the bill. Hence, their policy preferences were consistent with the preferences of the Chairman of the Office for Competition and Consumer Protection.

Moreover, I classified interest groups as Pivotal Actors. In Episode 1 they supported the existing status quo, namely, no state aid control. They opposed the act controlling state aid because it could threaten their interests. Monitoring state aid, certainly, would involve decreasing public spending and lowering benefits conferred to particular actors in mining, steel, shipbuilding industries, etc. Similarly, in antitrust policy, it was confirmed in the interview with the Chairperson of the Antitrust Office that implementation of antitrust law was hindered by industrial lobbies (Episode 4). However, it is difficult to assess the particular role of interest groups. They did not set up a coalition of actors to oppose a piece of legislation. Instead, they indirectly influenced decision-makers.

The fourth hypothesis predicted that the closer the externally imposed deadline, which was the date of accession, by which time all accession requirements should be fulfilled, the greater the chances for compliance at the domestic level. Benefits of compliance (i.e. EU membership) outweigh short-term costs. It appeared that the temporal dimension was relevant to the extent that decision-makers could manipulate 'time' by delaying decisions, sequencing the process of adaptation and controlling the speed of compliance with the EU requirements.

It was confirmed in the interview that domestic actors were aware of the time constraint and the deadline for harmonisation of domestic law with the EU acquis. In Episode 2, Veto Players in government, namely the Solidarity Electoral Action (AWS) and

the Freedom Union (UW) took the harmonisation of national law with the EU acquis more seriously than the previous governments because the date for accession was approaching. It was confirmed in the interviews with the AWS Prime Minister that when accession negotiations started in 1998 and a deadline for accession approached, complying with the *acquis* criteria became a priority. Consequently, in Episode 3, Prime Minister Buzek vetoed the bill because the acceptance of the deputies' bill would be extremely disadvantageous in the light of accession negotiations. Similarly, the Democratic Left Alliance and the Polish Peasant Party applied the strategy of "policy timing:" introducing the most difficult policies only in the end, while policies, which were not costly, were easily implemented. In the mid-1990's they opposed state aid control, in 2000 they voted for legislation monitoring state aid. Hence, the externally imposed deadline for compliance mattered. This was demonstrated by the manner in which actors rationally took into account external constraints and potential costs incurred by non-compliance which were higher than those of compliance.

Moreover, the problem of counterfactual analysis must be addressed. In short, it allows the confirmation of the validity of argumentation. It has been confirmed in the interview that the situation could have been different in the area of state aid if a liberal party (Democratic Union/Freedom Union) had been in power in the years 1993-1997. Ms Fornalczyk, the Chairperson of the Antimonopoly Office in the years 1990-1995, was asked the following question:

Do you think that if there had been a liberal party in power, for example, the Democratic Union (UD), passing of state aid control law would have been feasible in the mid-1990's?

Fornalczyk answered as follows:

I think so. In February 1993, after receiving a report on EU state aid control prepared by the Antimonopoly Office, the Council of Ministers [headed by liberal Prime Minister, Hanna Suchocka] asked to continue research and prepare the report on state aid control in Poland. It was the Central Office of Planning which was to undertake this project. However, the government coalition changed and the project was withheld (Fornalczyk 2003).

Fornalczyk confirmed that the policy preference of the party in government was crucial for compliance with EU regulations. The Democratic Union (the party was later called the Freedom Union in 1994, after the Liberal Democratic Congress joined), the largest member of the coalition governments between 1991 and 1993, was the party most strongly identified with the liberal economic reforms promoted by Leszek Balcerowicz. The Democratic Union Prime Minister, Hanna Suchocka, supported state aid control legislation. This liberal party opted for regulation of state aid. However, the Peasant Party Prime Minister, who, after the 1993 parliamentary elections followed the Suchocka government, abandoned the project. Consequently, I may claim that the argumentation on the policy preferences of Veto Players is valid. Moreover, supportive decisions of Pivotal Actors in parliament contributed to compliance.

Expectations and outcomes

In general, my expectations have been confirmed. Nevertheless, on several occasions the outcome was different than I had expected. Table 12 and Table 13 show my expectations as regards preference consistency between domestic actors and the European Union in state aid and antitrust policy respectively, and the outcome after the data had been analysed.

Table 12. Expectations of preference consistency between domestic actors and the European Union in state aid policy, and the outcome.

Actors	Expectations	Outcome
SLD Democratic Left Alliance	mixed	No (Episode 1) Yes (Episode 2)
PSL Polish Peasant Party	mixed	No (Episode 1) Yes (Episode 2)
AWS Solidarity Electoral Action	mixed	Yes (Episode 2) No (a group of AWS deputies in Episode 3)
UW Freedom Union	Yes	Yes
Chairman of the Office for Competition and Consumer Protection (OCCP)	Yes	**No** (Episode 1) Yes (Episode 2 & 3)
Minister of Economy (SLD/PSL coalition)	mixed	No
Minister of Economy (AWS/UW coalition)	mixed	Yes
Minister of Finance (SLD/PSL coalition)	mixed	No
Minister of Finance (AWS/UW coalition)	mixed	Yes
Minister of Treasury (SLD/PSL coalition)	mixed	No
Minister of Treasury (AWS/UW coalition)	mixed	Yes
Secretary of the Office of the Committee for European Integration (OCEI)	Yes	Yes
President	Yes	Yes
Interest groups: mining, heavy industry, agriculture	No	No (Episode 1) Yes (Episode 3)
Business clubs	Yes	Yes

The most unexpected finding was a veto of the bill on state aid control by the Chairman of the Antimonopoly Office in 1996. Episode 1 illustrated the case in point. I expected that the Chairman who was in charge of a policy area would support any piece of legislation aiming at monitoring and controlling state aid. The evidence shown in Episode 1 proves

that the Chairman vetoed the bill in 1996 for institutional, political and economic reasons (the explanation is provided on the page 177).

Nevertheless, both SLD and PSL happened to be more pro-European than I had expected. In the period 1993-1997 they supported antitrust legislation while they opposed state aid. In the period 1997-2001 they supported both antitrust and state aid legislation. It seems that their economic platform became less opposed to the economic reforms with each election, though they were continually seen as opposing the reforms and their economic leaders continued to criticise the UW policies promoted by Finance Minister Balcerowicz before September 1993 and after September 1997. How to explain the "evolution" of attitudes? On many occasions politicians representing these two parties stated that EU-induced reforms should be introduced gradually, taking the domestic situation into account. However, they also often expressed their support for European integration. They realised that Poland could only join the EU when accession requirements are fulfilled. In fact, roll call votes showed that PSL and SLD deputies supported the bills which harmonised domestic legislation. During the voting on the bill on the conditions for admissibility and supervising of state aid for entrepreneurs, 154 SLD deputies voted for the bill while only 2 voted against while 15 PSL deputies voted for the bill and 2 against. During the voting on the bill on Competition and Consumer Protection, 138 SLD deputies voted for the bill while only one deputy was against. For PSL, all deputies present voted for the bill. It was a clear indication that both SLD and PSL supported pieces of antitrust and state aid legislation which harmonised Polish legislation with EU regulations.

Table 13. Expectations of preference consistency between domestic actors and the European Union in antitrust policy, and the outcome

Actors	Expectations	Outcome
SLD Democratic Left Alliance	mixed	Yes (Episodes 4,5,6)
PSL Polish Peasant Party	mixed	Yes (Episodes 4,5,6)
AWS Solidarity Electoral Action	Yes	Yes
UW Freedom Union	Yes	Yes
Chairman of the Office for Competition and Consumer Protection (OCCP)	Yes	Yes
Secretary of the Office of the Committee for European Integration (OCEI)	Yes	Yes
President	Yes	Yes
Interest groups: mining, heavy industry, agriculture	No	No (Episode 4)
Business clubs	Yes	Yes

The role of interest groups and, in particular, trade unions was indirect. Moreover, the episodes show that the impact was more pronounced in the case of state aid policy than antitrust policy. Trade union pressure was exerted through Sejm deputies representing trade unions. In fact, it was confirmed in the interview that "AWS and SLD *związkowcy,* [i.e. deputies who, at the same time, belonged to trade unions and political parties], were problematic. They favoured only the particular interests of trade unions and not their parties as such." There is no doubt that the support of trade unions was important for policy formulation and implementation. The impact of All-Poland Trade Union Alliance (OPZZ) on the Democratic Left Alliance (SLD) was significant. The OPZZ trade-union federation was the driving force in terms of providing SLD with political direction and organisational support. In fact, the chairman of OPZZ was an SLD deputy during the third

term of the Sejm. In total, OPZZ had 42 deputies (of 164 SLD deputies) elected in 1997, while there were 61 deputies from OPZZ (of the 171 SLD Sejm deputies) elected in 1993. Similarly, the Independent Self-Governing Trade Union "Solidarity" had a significant impact on the Solidarity Electoral Action (AWS). The chairman of this trade union was a leader of the AWS parliamentary fraction. In total, about fifty deputies (out of 201) came from the Solidarity trade union, including 19 regional chiefs and important leaders of branches such as coal mining and defence.

In the case of the Solidarity Electoral Action, the party was characterized by low party cohesion and discipline (Episode 3). In fact, the phenomenon known as 'fraction hopping' was a major feature of parliamentary life in Poland in the 1990's. AWS was the party which was a broad coalition of Christian democratic, liberal, conservative, nationalist and agrarian parties. Thus, some party defections were not surprising given the variety of interests. As regards the policy preferences of Freedom Union, there were no surprising results. UW consistently supported the liberal reforms and its Finance Minister Balcerowicz was an ardent supporter of reforms and EU integration. It is worth emphasising that following the publication of an unfavourable Commission report in 1999 and an intense debate in Parliament in February 2000, a pro-EU integration consensus emerged among the major political parties. Underpinned by a formal inter-party agreement it continued to hold even after the Freedom Union left government in June 2000.

In conclusion, there are two points to be made as regards the classification of actors. Firstly, the Prime Minister might be a Veto Player as shown in Episode 3. However, it may also be interpreted that Prime Minister just voiced the "official" opinion of his party. He disagreed with a deputies' bill and vetoed it (Episode 3). Secondly, Powerless Actors could not influence the policy outcome. In fact, Episode 3 proved that minor parties in parliament, independent deputies and a few deputies defecting from the

government party could not influence the outcome. Consequently, no change of the legislative status quo was possible.

Contribution

The question posed in this thesis was significant from two perspectives. Firstly, an important achievement of this research is that fundamental questions on the impact of the European Union on a candidate country for EU membership have been raised. The mechanisms of Europeanisation and its effects have been analysed in Poland in the years 1994-2000. Hence, I addressed empirical neglect in the research on EU enlargement and Europeanisation in candidate countries for EU membership from Central and Eastern Europe. Secondly, a valuable contribution of the research is a detailed analysis of the EU conditionality game of accession at domestic level. I characterised the institutional game and all of the players at the domestic level. It was a case study of how accession criteria were met at the domestic level. This is a sphere that hard to see from Brussels or by those unfamiliar with Poland's domestic policy processes. The arguments put forward in the thesis point out the importance of institutional constraints and actors' preferences, which are based on the calculation of costs and benefits. The considerable value of this research consists in very practical factors which influenced the speed and extent of compliance.

In theoretical terms, I have offered the rational choice institutionalist account of the events. Theoretical implications of the foregoing analysis are that actors' expected costs and benefits determine preferences and, in turn, policy preferences of different actors are crucial for a policy choice. I have extended Tsebelis' theory of veto players. In particular, I put an emphasis on the potential importance of different actors: actors who can veto policy change unilaterally, but also actors, whom I called Pivotal Actors and who can set up a

blocking coalition. This theoretical approach, based on rational choice institutionalism, allows us to understand policy outcomes as emerging from the preferences of the political actors and the institutional set-up.

In empirical terms, the most important finding of this study is that compliance with international obligations is highly conditioned by domestic politics. Assessing the evidence, I have concluded that, first of all, domestic actors must agree to comply with international obligations and the more actors there are the more difficult it is to achieve compliance. I argue that compliance was the result of consistency of policy preferences of domestic actors. While in state aid policy some domestic actors did not agree on compliance with the EU requirements because their policy preferences were not consistent with the EU, in antitrust policy domestic actors agreed for compliance. Interviews with key players such as officials from the Office for Competition and Consumer Protection and members of political parties have confirmed the fact that the choice of policy was highly conditioned by preferences. Rational calculation was the basis of decisions taken. However, an interesting observation was that political configuration mattered more in state aid policy. This was because more ministers were directly involved in state aid policy making and more pressure was exerted on the Chairman of the Office for Competition and Consumer Protection who, for a while, was in charge of agenda-setting in state aid policy. Conversely, in antitrust policy it was only the Chairman of the Office for Competition and Consumer Protection who had a say in this policy area.

This brings me to pinpoint four important findings of this study. Firstly, policy preferences of domestic policy-makers are important for achieving compliance with international obligations. If preferences are consistent with EU preferences it facilitates compliance. In particular, the policy preferences of a domestic agenda-setter are essential because the agenda-setter decides on the policy issues. Furthermore, the fewer policy-

makers who decide on the policy, the more chances for compliance. Secondly, the temporal dimension was relevant to the extent that decision-makers manipulated "time" by delaying decisions and sequencing the process of adaptation. The subsequent governments rationally decided when to comply with the requirements. They used rational timing of approximation and implementation of EU law because the implementation of the most onerous or difficult regulation was left until just before accession: state aid control law is a case in point. Thirdly, as regards the Polish party system in the 1990's, one of its characteristics was a high level of defections and proliferation of parties. The overview of Polish parliamentary parties in the years 1993-2001, which was presented in Chapter 6, illustrates the phenomenon. (Moreover, a number of parties voting on the bills is higher than the number of parties which won the seats in parliament after elections). Despite the fact that roll call votes showed a high degree of party discipline, one needs to be cautious about quick generalizations. The idiosyncratic feature of the Polish political system is that the most important discussions (and potential disagreements) on the bill take place in the Sejm committees. It is only then that the bill is submitted for voting. Moreover, there were cases when deputies openly disagreed with the policy of the party leaders. In particular, it was evident among new parties of the centre-right (post-Solidarity parties); for example, in the case of the Solidarity Electoral Action, it occurred that the party was not of high party cohesion and discipline (Episode 3).[96] Fourthly, at the end of the 1990's there were clear signs of a degree of euro-scepticism in Poland. The Polish Agreement, formed in 1999 as a breakaway from the Solidarity Electoral Action, voted against bills harmonising Polish legislation with the EU (this was also the case with bills on state aid control and antitrust). This euro-sceptic movement was strengthening its support. While in 2000, the party had

[96] In fact, in January 2001 a new party was set up, the Civic Platform, *Platforma Obywatelska*, which included deputies defecting from the Solidarity Electoral Action, AWS and the Freedom Union, UW. While in the 2001 parliamentary elections neither AWS nor UW gained representation in the Sejm, the Civic Platform did. In Sept. 2001 the Civic Platform received 12.7% vote and was second after the electoral group of the Democratic Left Alliance and the Labour Union which received 41%.

only 7 deputies, after the September 2001 parliamentary election it had 38 seats in the Sejm. In fact, it was the League of Polish Families, *Liga Polskich Rodzin,* formerly known as the Polish Agreement, *Porozumienie Polskie*, which got 7.8 per cent of the vote. Another example of an openly euro-sceptic stance was the opinion of Secretary of the Office of the Committee for European Integration nominated by the AWS Prime Minister in 1997.

Further research on Europeanisation in countries of Central and Easter Europe is needed; both during the pre-accession and post-accession stages. Moreover, further analysis is advocated as regards compliance. I restricted my analysis only to legal transposition. I did not elaborate on policy implementation. Furthermore, I am aware of the limitations of this research. It did not have the potential to uncover macro-dimensions. Moreover, the data gathered for the research did not help me to understand the linkage at the level of individual voter and how the policies influenced voting behaviour.

To sum up, the thesis examined the external and internal pressures that a candidate country for EU membership faced and what determined their political ability to comply with EU requirements. It considered how developments at the European level and the accession requirements affected the substance of domestic policy in a candidate country and the ability of national governments to translate their policy preferences into authoritative action. In addressing the issue of Europeanisation in Poland, the thesis tackled an issue which is central not only to understanding the mechanisms of EU influence, but also to assessing the capacity for independent action by domestic actors. In fact, it was a study of political power in Poland and who got to determine policy outputs.

I will now move to the closing chapter in which I will inform the reader about new developments in competition policy: the competition provisions in the year 2004, when Poland joined the European Union, differed from those provisions of the 1990's.

Chapter 10. Postscript

In this chapter I present the most recent developments in competition policy in Poland and reforms of EU antitrust and state aid policies. In general, I concentrate on new legislation being introduced and how Polish competition policy interrelates with the EU competition regime during the stage of EU membership. However, before I proceed with the details, it is worth emphasising that EU Enlargement to the East was unique in many respects.

Undergoing four successive enlargements,[97] the European Union faced its fifth enlargement – the biggest in terms of a scope and diversity - in 2004. The number of countries, the area (an increase of 34%), the population (an increase of 105 million) and the wealth of different histories and cultures were remarkable. For the first time, specific political, economic and legal conditions were applied, regular progress reports produced, a pre-accession strategy developed which was founded on bilateral treaty commitments but also incorporating technical assistance and participation by the candidate states in Community programmes (Cremona 2003, 1). Ten countries concluded accession negotiations in December 2002 and they joined the European Union on 1 May 2004. They were the Czech Republic, Estonia, Hungary, Latvia, Lithuania, Poland, the Slovak Republic, Slovenia, Malta and Cyprus. Bulgaria and Romania have been negotiating since 2000 and they are scheduled to join the EU in 2007. The European Council will decide in December 2004 whether Turkey is ready to start EU membership negotiations. Croatia lodged its EU membership application in February 2003 and in the spring of 2004 the

[97] Belgium, France, Germany, Italy, Luxembourg and the Netherlands were the founding states of the Treaties of Paris (1951), establishing the European Coal and Steel Community (ECSC), and Rome (1957), establishing the European Economic Community (EEC) and EURATOM. The first enlargement took place in 1973 when Denmark, Ireland and the United Kingdom joined the EC. In 1981 Greece became the tenth EC member. In 1986 Portugal and Spain were accepted as members followed by Austria, Finland, Sweden in 1995.

European Commission will deliver its response – including a recommendation on when Croatia should start negotiations.

Competition policy in Poland

The episodes in state aid and antitrust policies which I presented in this thesis took place between 1994 and 2000. However, since the year 2001 both the law on competition and consumer protection and that on state aid control have evolved.

In the area of antitrust, the Act[98] of 5 July 2002 on Amendments to the Law on Competition and Consumer Protection, Civil Code and the Law on Unfair Competition came into force 4 months after its promulgation. The amendments mainly aimed to transpose Council Regulation 98/27/EC of 19 May 1998 into Polish law. The Regulation ensured the prohibition of harmful practices and, hence, protection of consumers' common interests.

In the area of state aid control, the Act[99] of 27 July 2002 on the Conditions for Admissibility and Supervising of State Aid for Entrepreneurs replaced the existing legislation on monitoring state aid and came into force on 6 October 2002. The new law clarified definitions such as state aid and monitoring authority and made the interpretation of the law easier. Moreover, state aid schemes were introduced as a means of counting minimal amount of state aid not held under scrutiny. However, it is important to point out that institutional arrangements changed when the 2000 Act was implemented. The Chairman of the Office for Competition and Consumer Protection became solely responsible for state aid policy. There was no longer dualism of agenda-setting.

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[98]The Act of 5 July 2002 on Amendments to the Law on Competition and Consumer Protection, Civil Code and the Law on Unfair Competition Journal of Laws, 2002, No. 129, item 1102.

[99] The Act of 27 July 2002 on the Conditions for Admissibility and Supervising of State Aid for Entrepreneurs Journal of Laws, 2002, No. 141, item 1177.

Under the Special Economic Zones Act of 1994, companies located in the zones could be granted tax exemptions, which constituted operating aid. On January 1, 2001 the Act on Special Economic Zones was modified, at the same time the Act on the Conditions for Admissibility and Supervising of State Aid to Entrepreneurs came into force, and brought it into line with the EU acquis concerning regional investment aid so that the tax exemptions are limited to a percentage of the initial investment costs (European Commission 2004).

However, during the accession negotiations Poland requested a transitional period for those companies, which had acquired rights under the old incompatible scheme up to 2017. Finally, these tax exemptions were allowed until the end of 2011 for small enterprises and until the end of 2010 for medium-sized enterprises. As for large companies, the aid is limited to a maximum of 75% or 50% of the eligible investment costs depending on the date when the company obtained its zone permit (European Commission 2004).

After the accession of Poland to the European Union in May 2004 the domestic antitrust law underwent some minor changes. The provisions of Council Regulation No. 1/2003 of 16 December 2002 "on the implementation of the rules on competition laid down in Articles 81 and 82 of the Treaty" have to be implemented. They give more power to competition authorities in EU member states as a result of decentralisation. The Office for Competition and Consumer Protection has been responsible for the application not only of national law, but of Community law as well. Hence, additional duties of the Office are regulated by the Treaty and acts of EU law. Article 5 of Council Regulation 1/2003 specifies the role of the competition authorities of the Member States while Article 6 provides for the role of the national courts. They have the power to apply Articles 81 and 82 of the Treaty. Moreover, the Office for Competition and Consumer Protection is

obliged to notify the European Commission about its proceedings before or immediately after their commencement. It may ask the Commission for information, e.g. documents, testimony or records. The Office, at the request of the Commission, provides assistance necessary to carry out an inspection. Concentrations with Community dimension are subject to review by the Commission.

As from 1 May 2004 the competence of monitoring state aid shifted from national to Community level. Poland introduced a new Act of 30 April 2004 on the procedural issues concerning State aid, which provides guidance on drafting state aid notifications for submission to the Commission. The Act also regulates the issue of reporting on State aid granted to enterprises in Poland (European Commission 2004). In fact, EC Regulation 659/1999 provides for detailed rules for the application of Article 87 [ex.93] of the EC Treaty in which, *inter alia*, it has been stipulated that "the Commission has specific competence under Article 93 thereof to decide on the compatibility of state aid with the common market when reviewing existing aid, when taking decisions on new or altered aid and when taking action regarding non-compliance with its decisions or with the requirement as to notification." The European Commission is a monitoring authority of state aid granted in Poland. The Commission, in cooperation with Member States, keeps under review all systems of aid existing in EU member states. If the Commission finds that aid granted by a member state or through state resources is not compatible with the internal market and affects trade between member states it adopts a European decision requiring the state concerned to abolish or alter such aid within a period of time determined by the Commission. The Office for Competition and Consumer Protection in Warsaw is a supporting agency (intermediary) between the Commission and Polish authorities granting state aid.

EU competition policy

On May 1, 2004, that is at the same time as the EU took in ten new member states the EU antitrust rules were replaced. The reforms encompass two pillars of European Union competition policy: antitrust and the control of mergers and acquisitions. The former is provided for by Council Regulation No.1/2003 of 16 December 2002 "on the implementation of the rules on competition laid down in Articles 81 and 82 of the Treaty," while the latter is a Proposal for a Council Regulation on the control of concentrations between undertakings.

Council Regulation No.1/2003 of 16 December 2002 "on the implementation of the rules on competition laid down in Articles 81 and 82 of the Treaty," concerned the modernisation of the 40-year-old procedural rules, embodied in Regulation 17 of 1962, which governed how the EU Treaty's provisions on agreements between undertakings which may restrict competition and abuses of dominant position were enforced. The core features of the reform are the following. Firstly, the Council Regulation provides for a directly applicable exception system in which the competition authorities and courts of the Member States have the power to apply not only Article 81(1) and Article 82 of the Treaty, which have direct applicability by virtue of the case-law of the Court of Justice of the European Communities, but also Article 81(3) of the Treaty. Secondly, another characteristic is shifting from a system of authorisation, under which all agreements have to be notified to the Commission in order to obtain antitrust approval, toward a directly applicable exception system. This puts more responsibility in the hands of the companies who need to assure themselves that their agreements do not restrict competition, or in case they do, that these restrictions qualify under Article 81(3). Thirdly, the European Commission and competition authorities of the Member States form a network of

competition authorities, called the European Competition Network, which is a key plank of the new enforcement mechanism. It allows for greater co-operation between the Commission and the national competition authorities and provides for an allocation of cases according to the principle of the best-placed authority. As a guardian of the Treaty the Commission has a special responsibility in the network (European Commission 2002b, 1).

Furthermore, the main legislative proposal in merger control is to re-cast the EU Merger Regulation on the control of concentrations between undertakings (Council Regulation 4064/1989). A new Council Regulation No 139/2004 of 20 January 2004 on the control of concentrations between undertakings seeks to improve efficiency in merger control at the EU level, reduce financial and administrative burdens on industry and improve legal certainty. In general, the proposal simplifies the system for transferring jurisdiction over merger cases between the European Commission and national competition authorities in line with the principle of subsidiarity. Modifications contained in the Regulation include: clarification in relation to the appropriate test to be applied by the Commission in examining the competitive impact of a merger (i.e. the substantive test); flexibility regarding the date for notifying a merger to the Commission; a derogation from the obligation to suspend implementing a merger in certain circumstances; more flexible time limits for the Commission's merger investigations in complex cases; greater power of inspection; and higher fines and penalties. When considering allocation of jurisdiction, the Commission deals with cases of significant cross-border impact, while EU member states deal with cases of a local or national impact.

Conclusions

In the final chapter I have presented the most recent developments in competition policy in Poland and the European Union. I have concentrated on new legislation being introduced in 2002 and 2004 and how Polish competition policy interrelates with the EU competition regime during EU membership. This chapter is important because it emphasises that the present competition regulations differ in some respect from the provisions valid until May 1, 2004. On this day new regulations came into force: Council Regulation No 139/2004 of 20 January 2004 on the control of concentrations between undertakings (EC Merger Regulation); Council Regulation No.1/2003 of 16 December 2002 "on the implementation of the rules on competition laid down in Articles 81 and 82 of the Treaty" (EU Antitrust regulation); Act of 30 April 2004 on the procedural issues concerning State aid (Polish State Aid control Act). Hence, this chapter is an update to the section: "1.2.2. Competition policy in the European Union," which describes the provisions of EU competition policy until 2004.

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Appendix 1: Chronicle of Key Events

Dec. 16, 1991	Association Agreement (Europe Agreement) between the European Communities and Poland was signed and came into force on Feb. 1, 1994
March 1, 1992	Interim Association Agreement came into force
June 1993	Accession criteria were presented at the Copenhagen European Council
Sept. 19, 1993	Parliamentary elections; the post-communist SLD returned to power
April 5, 1994	Poland applied for EU membership
Dec. 1994	Pre-accession strategy was announced at the Essen European Council
May 1995	White Paper on Preparation of the Associate Countries of Central and Eastern Europe for Integration into the Internal Market was adopted
July 1997	European Commission presented its opinion on the Polish application
Sept. 21, 1997	Parliamentary elections; post-Solidarity AWS won
Dec. 13, 1997	European Council in Luxembourg invited Poland to accession talks
March 1998	Accession Partnership was put forward
March 31, 1998	Accession negotiations began
May 1998	Polish government presented a National Programme for the Adoption of the *Acquis*
March 1999	Berlin European Council reached an agreement on Agenda 2000
June, 6 2000	Coalition government of the Solidarity Electoral Action and the Freedom Union formally came to an end. A minority administration of AWS stayed in office.
Sept. 23, 2001	Parliamentary elections; the electoral coalition SLD/UP won
Dec. 13, 2002	Accession negotiations came to an end at the Copenhagen European Council
Feb. 1, 2003	Nice Treaty came into force. It amended the existing treaties and made the institutional changes necessary for enlargement
April 16, 2003	Accession Treaty was signed between the Republic of Poland and the European Union
June 7, 8, 2003	Referendum on EU membership in Poland was held. 77.45% of voters said 'yes' to EU accession while 22.55% said 'no.' The turnout was 58.85%
July 2003	Draft Treaty establishing Constitution for Europe was adopted by the European Convention
May 1, 2004	Poland joined the European Union

Appendix 2: Chapters for accession negotiations

(Source: Office of the Committee for European Integration, 2004, Warsaw, http://www.ukie.gov.pl)

	Polish negotiation position in the area of:	Submitted to the EU (date):	Negotiations opened (date):	Negotiations closed (date):
1.	Science and research	1.09.98	10.11.98	10.11.98
2.	Education, Training and Youth	1.09.98	10.11.98	10.11.98
3.	Industrial Policy	1.09.98	10.11.98	19.05.99 and 22.06.99
4.	Small and Medium-Sized Enterprises	1.09.98	10.11.98	10.11.99
5.	Common Foreign and Security Policy	1.09.98	10.11.98	06.04.00
6.	Telecommunications and Information Technologies	1.09.98	10.11.98	19.05.99 and 22.06.99
7.	Culture and Audiovisual Policy	1.09.98	10.11.98	04.12.00
8.	Customs Union	11.11.98	19.05.99	29.03.01
9.	Statistics	11.11.98	19.04.99	19.04.99
10.	Company Law	11.11.98	19.05.99	28.11.01
11.	Consumers and Health Protection	11.11.98	19.04.99	19.05.99 and 22.06.99
12.	External Relations	11.11.98	19.05.99	12.11.99
13.	Economic and Monetary Union	29.01.99	30.09.99	07.12.99
14.	Competition Policy	29.01.99	19.05.99	13.12.02
15.	Free Movement of Goods	29.01.99	22.05.99	29.03.01 and 28.11.01
16.	Fisheries	12.02.99	19.05.99	10.06.02
17.	Energy	31.05.99	12.11.99	27.07.01
18.	Social Policy and Employment	31.05.99	30.09.99	01.06.01
19.	Freedom to Provide Services	15.07.99	12.11.99	14.11.00
20.	Free Movement of Capital	15.07.99	30.09.99	21.03.02
21.	Transport Policy	15.07.99	12.11.99	10.06.02
22.	Free Movement of Persons	30.07.99	26.05.00	21.12.01
23.	Financial Control	06.08.99	06.04.00	14.06.00
24.	Environment	08.10.99	07.12.99	26.10.01
25.	Justice and Home Affairs	08.10.99	26.05.00	30.07.02
26.	Taxation	22.10.99	07.12.99	21.03.02
27.	Agriculture	16.12.99	14.06.00	13.12.02
28.	Regional Policy	30.11.99	06.04.00	01.10.02
29.	Financial and Budgetary Provisions	30.11.99	26.05.00	13.12.02
30.	Institutions	16.04.02	22.04.02	22.04.02
31.	Others		13.12.02	13.12.

Appendix 3: Parliamentary elections in Poland in the years 1993 and 1997

Table 1. Distribution of seats in the Sejm after elections on 19 September 1993.

Party	%	460 Seats
SLD	37.2	171
PSL	28.7	132
UD/UW	16.1	74
UP	8.9	41
KPN	4.8	22
BBWR	3.5	16
MN	0.9	4

turnout 52.08%

SLD - *Sojusz Lewicy Demokratycznej* Democratic Left Alliance

PSL - *Polskie Stronnictwo Ludowe* Polish Peasant Party

UW - *Unia Wolności* Freedom Union

UP - *Unia Pracy* Labour Union

KPN - *Konfederacja Polski Niepodległej* Confederation for an Independent Poland

BBWR - *Bezpartyjny Blok Wspierania Reform* Nonparty Bloc in Support of Reforms

MN - *Mniejszość Niemiecka* German Minority

Source: Sejm Rzeczpospolitej Polskiej, II Kadencja, Zgromadzenie Narodowe. Informacja o działalności 14 października 1993 r. – 20 października 1997).

Table 2. Distribution of seats in the Sejm after elections on 21 September 1997.

Party	%	460 Seats
AWS	43.7	201
SLD	35.7	164
UW	13.0	60
PSL	5.9	27
ROP/KdR	1.3	4
MN	0.4	4

turnout 47.9%

AWS-*Akcja Wyborcza Solidarność* Solidarity Electoral Action

SLD-*Sojusz Lewicy Demokratycznej* Democratic Left Alliance

UW - *Unia Wolności* Freedom Union

PSL - *Polskie Stronnictwo Ludowe* Polish Peasant Party

ROP - *Ruch Odbudowy Polski* Movement for the Reconstruction of Poland

MN - *Mniejszość Niemiecka* German Minority

Source: Sejm Rzeczpospolitej Polskiej, III Kadencja, Zgromadzenie Narodowe. Informacja o działalności 20 października 1997 r. – 18 października 2000.

Appendix 4: State Aid in Poland, 1996-2002

Table 1. Volume of state aid in Poland, 1996-2002.

	1996	1997	1998	1999	2000	2001	2002
In PLN Million	8355.1	8688.7	6762.3	9076.1	7712.0	11194.8	10277.6
% of GDP	2.6	2.3	1.2	1.5	1.1	1.5	1.3
Per person employed	751.0	717.5	524.0	616.0	598.9	984.2*	260.0

* Per person employed in industry
(Source: Office for Competition and Consumer Protection, OCCP, 2003)

Table 2: State Aid instruments in Poland, 1996-2002.

	1996	1997	1998	1999	2000	2001	2002
Total (%)	100	100	100	100	100	100	100
Group A1	19.3	20.4	25.7	32.8	46.0	25.6	37.8
Group A2	61.7	59.5	50.2	53.2	38.5	31.0	26.9
Group B1	0.0	0.1	0.1	2.1	1.3	0.2	0.2
Group B2	0.6	0.3	0.3	0.5	0.2	0.0	0.0
Group C1	5.6	9.1	7.8	7.3	9.6	15.0	4.0
Group C2	10.2	8.8	15.0	0.9	1.8	5.3	7.1
Group D	2.6	1.7	1.0	3.2	2.6	16.1	21.8

Group A - subsidies and tax relieves
A1 – non-refundable subsidies, subsidies to the interest rate.
A2 – tax relief, forbearance from tax assessment and collection, amortisation of debt. to the government budget, amortisation of debt to the state fund.
Group B – equity participation
B1 – contribution to the company capital, temporary purchase of company's shares for prospective sale.
B2 – debt to equity swap.
Group C – "soft credit"
C1 – preferential credits, conditional credit remittal.
C2 – accelerated depreciation, deferment and spread into instalment of tax payment or tax overdue, deferment and spread into instalments of amount due to the fund.
D – credit warranty.
(Source: Office for Competition and Consumer Protection, OCCP, 2003)

Table 3. Direct subsidies granted to different sectors of Polish economy in 1996.[100]

Sector	Amount (million zloty)	Per cent (%)
Total	1613,92	100
Coal Mining	541,73	28,5
Other mining	96,44	5,1
Fabric production	5,18	0,3
Metal production	37,91	2,0
Production of metal ware except for machines and devices	4,63	0,2
Machines and devices not classified in other sections	83,75	4,4
Other transport machines	14,78	0,8
Transport	463,28	28,7
Post and telecommunication	81,30	4,3
Other sectors	284,92	17,6

Source: Ministerstwo Gospodarki. 1998. *Raport o pomocy publicznej w Polsce udzielonej w 1996 roku podmiotom gospodarczym. Warszawa.*

[100] Majority of aid is granted in the form of subsidies and fiscal operations. Other forms of state aid include: tax exemptions, exemptions from parafiscal charges, preferential interests rates, favourable loan guarantees, reduction in social security contribution, etc (Ministerstwo Gospodarki 1998).

Appendix 5: A Draft Act on State Aid Control, 1996

A Draft Act on State Aid Control, 1996
(excerpts, author's translation)[101]

AN ACT ON STATE AID CONTROL

Chapter 1

General provisions

Article 1

The Act determines the rules for State Aid control granted to entrepreneurs, the means for state aid monitoring, and the assessment of the effects of granted aid on an implemented economic strategy and fostering competition in the market.

Article 3

3.1. State Aid is understood as making expenditures of national public funds for the entrepreneurs or reducing the amounts due from them by bodies granting the aid.

Article 4

4.1. State Aid is a significant element of a state's economic policy.

4.2. Granting State Aid is being supervised in order to maintain its transparency, foster competition in the market, and assess its effects on an implemented economic strategy.

Chapter 2

State Aid Schemes

Article 5

5.1. The Council of Ministers, by way of its regulation, accepts the State Aid Scheme for a given year.

5.2. A Government Centre for Strategic Studies prepares a project of the State Aid Scheme.

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[101] A complete draft act in Polish (*'Ustawa o monitorowaniu pomocy publicznej'*) is available upon request from the author.

Article 6

State Aid granted to entrepreneurs within the State Aid Scheme can be assigned, in particular, for:

1. research and development,
2. environmental protection,
3. restructuring of enterprises
4. restructuring of sectors of the economy and regions,
5. maintaining employment or creating new jobs,
6. developing of small and medium-sized enterprises
7. infrastructure development.

Article 9

A State Aid Scheme is part of a Budget Bill.

Chapter 3

Supervising of State Aid

Article 10

10.1. The Government Centre for Strategic Studies is a Supervisory Authority assessing the effects of State Aid granted to entrepreneurs on an implemented economic strategy.

Article 11

11.1. On the basis of information received, the Antimonopoly Office assesses the effect of State Aid granted to entrepreneurs on fostering competition in the market.

Article 13

The Council of Ministers analyses reports prepared by the Governmental Centre for Strategic Studies and the Antimonopoly Office, and submits to the Sejm, along with the report on the Budget, information on State Aid flows specified in the State Aid programme and on the effects of State Aid granted to entrepreneurs.

Chapter 4

Transitory and final provisions

It specifies amendments to the regulations in force.

JUSTIFICATION

Monitoring of State Aid will allow the creation of a database, which may be used for providing information and, hence, compliance with one of the requirements of the Europe Agreement. It should be noted that this requirement refers to State Aid which affects trade between Poland and the Community. Hence, a need to rationalise public spending will make Poland be prepared to comply with one of the EU accession conditions [...]

In the bill, the main emphasis is put on setting up a framework suitable for future systemic solutions, which will allow for further harmonisation of Polish law with EU law. The act is to regulate State Aid for entrepreneurs in accordance with Article 63 of the Europe Agreement and Art. 92 of the Treaty establishing the European Community. Poland is obliged to comply with obligations stemming from the Association Agreement, *inter alia*, an obligation of transparency with respect to State Aid by informing annually about a general amount of spending, purposes and particular cases of State Aid, etc. [...]

A bill is justified because one of the main weaknesses of public finance in Poland is no regulation concerning public spending which would allow for transparency and its universal register. Much relief often granted according to non-transparent rules and resulting in little economic benefits necessitate naming the authority. The competition authority will be responsible for registering public spending and maintaining transparency of granted aid, fostering competition in the market, and assessing effects of granted aid on an implemented economic strategy. A system of control and monitoring of State Aid is one of the tasks envisaged in a 'Strategy for Poland' programme. In this document it was emphasised that for a programme of State Aid to be effective a new Act on admissibility of State Aid should be proposed. It should stipulate the rules and methods of monitoring and design concrete schemes of aid in accordance with conditions provided for in international agreements to which Poland is a party [...]

This draft act is a guideline for legislators... so that after EU accession Poland will be prepared for State Aid regime in the international dimension [...]

Due to the fact that the subject matter of State Aid is not sufficiently known in Poland... its [the Act's] role is to inform both donors of national public funds as well as beneficiaries [...]

State Aid should focus on targets important for economic growth. What is meant here are the projects which cannot be financed by private investors, for example, infrastructure development, environment protection and creation of new jobs [...]

Granting State Aid is contradictory to free market forces and may distort competition in the market. However, in the above-mentioned areas, negative effects of such intervention may be balanced by benefits that often go with implementing such measures. It is assumed that such aid is not to favour some beneficiaries. First and foremost, State Aid is a source of positive effects for the economy [...]

Authors of the bill emphasised a lack of transparency and no governmental body with a degree of autonomy and political independence which could monitor State Aid and assess its effects for the implemented economic strategy. The Antimonopoly Office could perform this role. This would necessitate, however, not only the change in its name but also the widening of its competences [...]

Given the advancement of administrative reforms which also stipulate establishing the Government Centre for Strategic Studies (GCSS) as the institution supporting the government in programming the economic and social development, the bill envisages that the GCSS will prepare for the Council of Ministers a project of the State Aid Programme and will assess annually the effects of granted aid for an implemented economic strategy [...]

The Act is to harmonise Polish law with EU law.
