

*PhD research proposal*  
*First draft*

**Europeanisation, EU accession conditionality  
and domestic policy structures.  
Isomorphism of Polish competition policy**

**Anna Gwiazda**  
Department of Political Science  
Trinity College Dublin

*Abstract:* Theoretically, I will argue that an isomorphic change of domestic policy structures is dependent on exogenous pressures. I define isomorphism as convergence of national policies towards the EU rules and procedures. The pressures as goodness-of-fit and as conditionality have great explanatory power. Empirically, I will examine how the EU accession conditionality has influenced isomorphism of Polish competition policy. I will claim that while substantial law may show a considerable degree of convergence, procedural law may show a degree of autonomy.

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## Question to be researched

This thesis will attempt to elucidate the impact of the EU accession conditionality on domestic policy structures<sup>1</sup> in Poland. I will argue that isomorphism<sup>2</sup> at domestic level defined as convergence<sup>3</sup> of national policies towards the EU rules and procedures depends on the European ‘exogenous’ pressures. Nevertheless, factors endogenous to political system may play a role if constituent elements of conditionality are not well-defined or are absent.

## Political/Economic relevance

### Europeanisation

Europeanisation matters. Both the EU member states and applicant countries have been affected by “the emergence and the development at the European level of different structures of governance, that is, of political, legal, and social institutions.”<sup>4</sup> Europeanisation shapes domestic policies, practices and politics. However, the conceptual and empirical research on the impact of Europeanisation on domestic change has been restricted to EU member states while applicant countries have been neglected. Hence, this analysis will attempt to address the research deficit.

The European Union governance structures and regulatory models expand to countries of Central Europe. The EU can govern beyond its territory, as the *sine qua non* for accession is the compliance of prospective entrants with the EU requirements. The EU accession conditionality is a tool of

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<sup>1</sup> A focus on policy structures implies more than changes in policy subject matter at the domestic level. I am interested in the political, legal and administrative structures that interpret and implement policies. “Policy structures are issue-area specific and may vary quite substantially across policy sectors in a given domestic policy” (Cowles, Risse, Caporaso, 2001)

<sup>2</sup> I want to avoid confusion arising from a use of Europeanisation as both dependent and independent variable. For me, Europeanisation means the institutionalization of decision-making at the European level. On the other hand, there is Europeanisation of domestic policy which implies the extent to which the policy has been Europeanised. Then, Europeanisation of domestic policy is a dependent variable. I will use the term isomorphism of domestic policy which is synonymous to Europeanisation of domestic policy.

<sup>3</sup> I refer to ‘policy convergence’ and not to a ‘societal convergence’ or global convergence as presented by Dallago, Brezinski and Andreff (1992)

<sup>4</sup> Cowles, Maria, Green, James A. Caporaso, and Thomas Risse, (eds.) 2001. *Transforming Europe. Europeanization and Domestic Change* Ithaca: Cornell University Press

Europeanisation which impacts on applicant countries and changes domestic policy structures. Consequently, the EU has had an opportunity to shape the rules that define the development of new market economies and has affected “the institutional underpinnings of government policy and social organization that are fundamental to the operation of economics.”<sup>5</sup> The EU influences domestic policy-making and political economy far beyond that exerted in previous applicant countries. In some instances, the Central European countries have been asked to meet stricter standards than those imposed on current member states. The very example of this is in competition policy (Estrin and Holmes, 1998).

### The Internal Market and EU Competition policy

The Single Market programme combined with the EU competition policies has promoted a neo-liberal deregulation: the removal of tariff barriers and the liberalisation of most sectors of European economy. Competition policy is essential for the achievement and maintenance of the European Union internal market. Hence, it is not regarded as an end in itself (although maintaining and encouraging competition is one of the goals) but as one of means towards the fundamental aim laid down in the Rome Treaty: 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).

Competition policy consists of antitrust policy and state aid policy.<sup>6</sup> The European Commission is the core EU competition policy institution.<sup>7</sup> Competition policy represents the first truly supranational

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<sup>5</sup> Crouch and Streck (1997) Political economy of Modern Capitalism; Mapping Convergence and Diversity. London: Sage

<sup>6</sup> European competition policy has been as much directed at governments as it has been at private firms, and a central concern has been the regulation of state aids (McGowan, 2000). State aid policy, as a regulatory policy, is crucial for building and consolidation of the internal market. Moreover, it is a very politically sensitive area, “as Commission decisions can, in a very blatant manner, prevent national governments from pursuing their own (national) industrial policies” (Cini, 2001)

<sup>7</sup> McGowan and Wilks (1995) when talking about a core institution make a reference to actors directly involved in the decision-making process – the European Commission, Specifically DGIV, the European Court of Justice, the Court of

policy, one where the EU institutions have been the most active (McGowan and Wilks, 1995). Article 81 of the EEC Treaty outlaws collusions between companies to fix prices or control production to the detriment of trade between the member states (except where it is in the public interest) and which have as their object or effect the prevention, restriction or distortion of competition within the common market. Article 82 [ex 86] outlaws unfair and predatory pricing, exclusive sales agreements and discrimination on the grounds of nationality by large firms with a ‘dominant position’ in a national market, and Article 86 [ex 90] requires member states to ensure that publicly-owned industries abide by EU competition rules. Council Regulation No.4064/89 provided for the merger regulation. State Aid is regulated in Articles 87 to 89 [ex 92 to 94]. Public subsidies to industry that threaten competition and trade between the member states (unless the aid promotes the interests of the Union or specific sectoral or regional objectives) are prohibited.

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, EEC 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 juxtaposition of the validity of European law and national law. In such a case, European law takes precedence over national law (Moussis, 2001).

### Enlarging the Internal Market

Regulatory alignment, i.e. the adjustment to the rules of the internal market, stands out as a key task for prospective members of the post-1992 EU (Sedelmeier, 1998). Under the Europe Agreement<sup>8</sup> and obligations that followed, the applicant countries from Central Europe commit themselves to

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First Instance and to a lesser extent the Advisory Committees. Non-core institutions include interests groups, peak organizations, consumer associations, lawyers and national competition authorities.

<sup>8</sup> Europe Agreement was signed in December 1991 and came into force in February 1994. However, those aspects of the agreements which were the community responsibility, namely, the trade aspects were put into immediate effects in March 1992.

approximating their legislation to that of the European Union, particularly in the areas relevant to the internal market. This includes applying legislation favouring competition and applying state-aid rulings, which are compatible with comparable legislation in the EU aspect.

### Polish competition policy<sup>9</sup>

The legislation and institutions of competition policy became a key issues of microeconomic reform at the beginning of the 1990's. To this end, the Polish Parliament passed the Act on counteracting monopolistic practices and protection of consumer interests<sup>10</sup> in February 1990 which was amended several times.<sup>11</sup> Finally in 2000, two new statutes were passed; the Act on Competition and Consumer protection<sup>12</sup> and an Act on the Conditions for admissibility and the Supervising of State Aid for Undertakings.<sup>13</sup>

### **The EU accession conditionality**

Conditionality is an institutional arrangement. "Conditionality is itself a norm, a standard of behaviour."<sup>14</sup> It constrains political behaviour. In general, conditionality entails the linking by a state of perceived benefits such as aid, trade concessions, cooperation agreements, political contacts, or international organization membership to the fulfilment of conditions relating to certain principles. Principles may refer to rules, regulations, etc. 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

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<sup>9</sup> The evolution of the Polish legislation in the competition field, with the earliest legislation being enacted in 1933, is presented in Harding, Christopher and Marian Kepinski. 2001. "The Polish Law Against Monopolistic Practices." In *European Competition Law Review*, 2001, Issue 5, Sweet & Maxwell Limited, pp.181-189

<sup>10</sup> Law Against Monopolistic Practices and Protection of Consumer Interests (Journal of Laws 1990, No.14, item 88)

<sup>11</sup> 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.

<sup>12</sup> Journal of Laws 2000, No.122, item 1319

<sup>13</sup> Law of June 30, 2000 on the Conditions of Admissibility and Supervising of State Aid for Undertakings, Journal of Laws 2000, No.60, item 704

<sup>14</sup> Smith, Karen, Elizabeth. 1997. The Use of Political Conditionality in the EU's Relations with Third Countries: How effective? EUI Working Papers, SPS No.97/7

with the criteria. In general, to analyse the effectiveness of the use of conditionality, two questions in particular must be answered. First, what the conditions or requirements are and conditionality for what. The second issue which should be raised regards the role of actors involved: Conditionality *by whom for whom*.

Traditionally, conditionality<sup>15</sup> referred to economic conditionality when 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 World Bank and IMF promoted compliance by national governments. The use of political conditionality has grown dramatically in recent years (Smith 1997; Checkel, 2000). 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 reform now on a par with the economic sort.”<sup>16</sup>

The EU conditionality is *sensu largo* exogenous pressures for (policy) convergence so that isomorphism occurs at domestic level. The EU conditionality is *sensu stricto* pressure arising from *acquis* in a particular policy area. In the thesis I will refer to the latter conception as well as ‘economic criterion’ when analysing the case of competition policy.

The EU accession conditionality implies 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 EU. This type of conditionality is *ex ante* and is based on promises made by the EU and member states. Grabbe (1999) defines the EU accession conditionality as “evolving set of conditions for membership. These conditions have progressively been expanded to cover a wide range of policy

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<sup>15</sup> Killick, Tony with Ramani Gunatilaka and Ana Marr. 1998. *Aid and the Political Economy of Policy Change*. London: Routledge.

<sup>16</sup> Checkel, Jeffrey, T.2000. *Compliance and Conditionality*. Arena Working Papers, WP 00/18

outputs, and imply a role for the EU in policy-making in CEE beyond its mandate in the existing member states.”<sup>17</sup>

There are three constituent elements of the EU accession conditionality; rules, incentives and sanctions. Rules are prescribed criteria to be met. They are binding guidelines for action. Incentives as “supply-side measures”<sup>18</sup> are positive, motivational influence which induce support or encouragement for an action. Sanctions are a means of penalizing by reducing, suspending, or terminating benefits if the state in question does not comply with the criteria.

Rules are political, economic and *acquis* criteria<sup>19</sup> for accession to be met by the candidate countries as laid down by Copenhagen European Council in June 1993.<sup>20</sup> The political criteria stipulate that these countries must have achieved “stability of institutions guaranteeing democracy, the rule of law, human rights and respect for and protection of minorities.” The economic criteria require: first, the existence of a functioning market economy; second, the capacity to cope with competitive pressures and market forces within the Union. The *acquis* criteria refer to applicant country’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

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<sup>17</sup> Grabbe, Heather. 1999. A Partnership for Accession? The Implications of EU Conditionality for the Central and East European Applicants. European University Institute, Florence: Robert Schuman Centre Working Paper 99/12

<sup>18</sup> on supply-side economics and supply-side measures see Samuelson P. and W. Nordhaus, 1995

<sup>19</sup> However, it was also recognized that the Union on its part must have the capacity to absorb new members. The Union needs to prepare itself adequately to receive them by making the institutional changes necessary for enlargement: that means ratifying the Treaty of Nice; and providing the budgetary means

<sup>20</sup> The grounds for fully fledged first accession conditions were laid down in Europe Agreement establishing an association between the European Communities and their Member States, of the one part, and the Republic of Poland, of the other part. Article 1. [...] provide an appropriate framework for Poland's gradual integration into the Community. To this end, Poland shall work towards fulfilling the necessary conditions, Article 68. 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 endeavours to ensure that future legislation is compatible with Community legislation.

Article 69. The approximation of laws shall extend to the following areas in particular: 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.

Article 70. The Community shall provide Poland with technical assistance for the implementation of these measures. Moreover, there are guidelines such as: Essen European Council which designed a pre-accession strategy, White Paper, Commission's Regular Reports, Accession Partnership

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). Moreover, in Agenda 2000 the Commission underlined the importance of effective incorporation of Community legislation into national legislation, and even greater importance of implementing it properly in the field, via the appropriate administrative and judicial structures.

Incentives include:

1. Pre-accession benefits; Aid /technical assistance.<sup>21</sup> There are three pre-accession instruments financed by the European Community to assist the applicant countries of Central and Eastern Europe in their pre-accession preparations:

- the Phare programme; 1. Institution building and public administration reform, 2 Twinning. This is a long-term tool which was introduced to serve a purpose of the twinning of administrations and agencies. As one of the main challenges the candidate countries continue to face is the need to strengthen their administrative capacity to implement and enforce the *acquis*, the European Commission proposed to mobilize significant human and financial resources to help in this respect, through the process of twinning of administrations and agencies.
- SAPARD, which provides aid for agricultural and rural development;
- and ISPA, which finances infrastructure projects in the fields of environment and transport.

These programmes concentrate their support on the Accession Partnership priorities

2. EU membership. The Government of the Republic of Poland submitted application for membership in the EU in April 1994. In December 2001 the Laeken European Council reconfirmed the line taken by the European Council of Göteborg in June 2001 in declaring that “the European Union is determined to bring the accession negotiations with the candidate countries that are ready to a

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<sup>21</sup> Article 70 of the Associate Agreement stipulates “The Community shall provide Poland with technical assistance for the implementation of these measures which may include inter alia:- the exchange of experts, the provision of information, organization of seminars, training activities, aid for the translation of Community legislation in the relevant sectors.

successful conclusion in 2002, so that those countries can take part in the European Parliament elections in 2004 as members.”<sup>22</sup>

Sanctions may refer to:

- a delay in enlargement (or in the worst case non-enlargement) would have costs for the applicant countries.<sup>23</sup> The failure to join the Union would weaken the incentive for economic reform, discourage foreign investment and reduce economic growth.
- Reducing or suspending the aid.

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, and negative de-emphasised. There is a preference for “carrots”. Smith (1997) points out that the Community approach is geared to the principle that international cooperation must focus especially on positive measures providing incentives;<sup>24</sup> the use of sanctions should be considered only if all other means have failed.<sup>25</sup> Positive measures help to establish the conditions under which democratic principles and market economy can be protected. Such measures seem to challenge sovereignty less than sanctions do.

## **Theoretical relevance**

The theoretical aim of this research is to identify the work done previously on the topic, to show what gaps or mistakes exist that provide a scholarly *raison d’être* for the project, and to propose alternative theoretical solutions. Given the limited scope of this paper I will only enumerate theories I will discuss in the thesis. I proffer an eclectic approach and I refer to the following theories:

- “The second image reversed” argument (Gourevitch, 1978)

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<sup>22</sup> Laeken European Council, 14-15 December 2001, Belgian Presidency Conclusions

<sup>23</sup> for the Union as well. For example, delay in enlarging the single market, and lower economic growth in the applicant countries, would deprive member states of economic benefits. It could create political instability in Europe, and even undermine the process of democratisation, with potential repercussions for the Union. However, I am only interested in costs entailed by applicant countries.

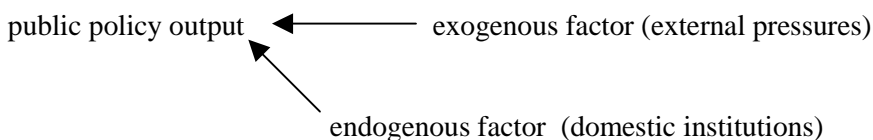
<sup>24</sup> Smith (1997) referred to incentives for the promotion of democracy and human rights

<sup>25</sup> European Commission, “On the implementation in 1993 of the Resolution of the Council and of the Member States meeting in the Council on human rights, democracy and development, adopted on 28 November 1991” Com(94) 42 final, 23 February 1992

- policy transfer (Bennett 1991; Dolowitz and Marsh 2000)
  - isomorphism (Lodge, 2000; DiMaggio and Powell, 1991)
  - convergence (Bennet, 1991)
  - autonomy (Nordlinger, 1981; Kassim and Menon, 1996)
2. Europeanisation
    - Europeanisation is an “essentially contested concept.”<sup>26</sup>
    - goodness-of-fit’ (Knill, 1997) Börzel and Risse, 2000; Cowles Caporaso and Risse 2001)
    - domestic institutions: veto-players’ theory (Tsebelis 1995, Scharpf 1997, Haverland 2000);
    - different outcomes in policy sectors and across countries (Börzel 1999; Börzel and Risse 2000; Heritier 2000; Radaelli 2000; Cowles, Caporaso, and Risse 2001; Schmidt 2001)
  3. Political economy – structural power (Strange, 1994)
  4. Microeconomics; competition
  5. Theories of regulation (Majone, 1996)

### **Proposed alternative theoretical solutions**

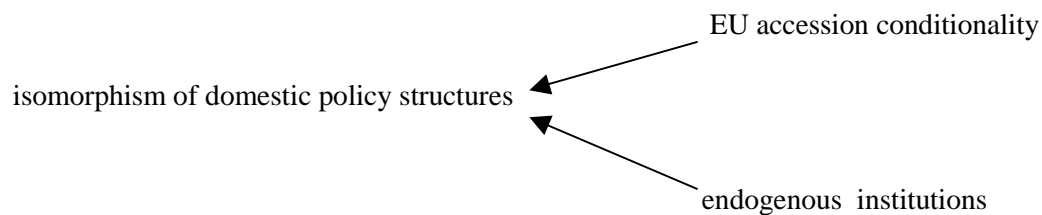
In the model the *explanandum* is public policy output and *explanans* include the exogenous and endogenous factors.



The EU accession conditionality is an exogenous variable. It is a key causal variable. It affects the level of isomorphic changes at the domestic level – a dependent variable.

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<sup>26</sup> Gallie W.(1964) defines the 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.”



Factors endogenous to the political systems may refer to veto points, political and organizational cultures, policy legacies, etc

**The model of European ‘exogenous’ pressures as goodness-of-fit and as conditionality.**

Exogenous pressures derive from Europeanisation defined as institutionalization at the European level of a system of governance with common institutions and the authority to make European-wide binding policies. Hence, they are European adaptational pressures. I argue that the very nature of European adaptational pressures both as a goodness-of-fit and conditionality is important for analyzing isomorphism of domestic policies. Not only does goodness-of-fit matter but also pressures arising from the EU conditionality are salient. Thus, I have constructed the model which includes both kinds of pressures.

Exogenous pressures as goodness-of-fit

First, adaptational pressures are defined as the degree of institutional incompatibility between national structures and practices and the EU requirements. The lower the compatibility, i.e. fit, between European institutions, on the one hand, and national institutions, on the other, the higher the adaptational pressures. European policies might lead to a policy misfit between EU rules and regulations and domestic policies. These policy misfits then exert adaptational pressures on underlying institutions, particularly political and administrative structures.<sup>27</sup> If there is a complete policy fit there are no adaptational pressures; pressures = 0. If there is no fit, there are strong adaptational pressures =1. The need for change is high because existing national policies differ from European requirements.

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<sup>27</sup> Goodness-of-fit argument was developed by Haveland, 1999; Cowles, Caporaso, and Risse 2001

If there is a degree of fit, there are pressures of medium strength = 0.5. The analysis of adaptational pressures as goodness-of-fit is well-developed in the Europeanisation literature (although no quantitative evaluations are offered). Thus, I will turn to a novel approach and a second tenet of European ‘exogenous’ pressures, i.e. pressures as conditionality.

Exogenous pressures as conditionality

There is a need to examine the very nature of conditionality. Three constituent elements of conditionality, i.e. rules’ dimension, positive and negative conditionality are of crucial importance for the analysis. Rules and methods are externally specified. Formal rules pertain to written laws, regulations, directives, etc. Methods refer to procedures to be followed in order to implement the rules. Well-defined rules are exhaustive. They address the problem in details and do not leave much room for alternative interpretation. In contrast, vague rules are very general, may not address the whole problem or they are unclear. Well-defined methods lay down clear procedures to be followed. A vague method lacks explicit prescriptions how to implement the law (Table 1).

Table 1. The level of pressures due to the characteristics of externally prescribed norms and procedures.

	Well-defined rules	Vague rules	
Well-defined method	1	0.5	1 – considerable degree of pressure
Vague method	0.5	0	0.5 – moderate pressure
			0 – weak pressure, (almost) non-existent

Table 2 presents three constituent elements of EU conditionality and what the strength of pressures for adaptation at the domestic level might be. The pressures are the strongest when rules and procedures are well-defined and there are both incentives provided for complying with the rules and there is a risk of sanctions being imposed for not complying with the rules. No sanctions and incentives as well as

vaguely defined external norms and procedures decrease the chances for isomorphism at domestic level.

Table 2. Matrix of exogenous pressures as conditionality

		Pressures															
Rules' dimension	Well-defined rules/ well-defined method	1	1	1	1	X	X	X	X	X	X	X	X	X	X	X	X
	Vague rules/ well-defined method	X	X	X	X	0.5	0.5	0.5	0.5	X	X	X	X	X	X	X	X
	Well-defined rules/ Vague method	X	X	X	X	X	X	X	X	0.5	0.5	0.5	0.5	X	X	X	X
	Vague rules/ vague method	X	X	X	X	X	X	X	X	X	X	X	X	0	0	0	0
Positive conditionality	incentives	0	1	0	1	0	1	0	1	0	1	0	1	0	1	0	1
Negative conditionality	sanctions	0	0	1	1	0	0	1	1	0	0	1	1	0	0	1	1
	Strength of pressure	1	2	2	3	0.5	1.5	1.5	2.5	0.5	1.5	1.5	2.5	0	1	1	2

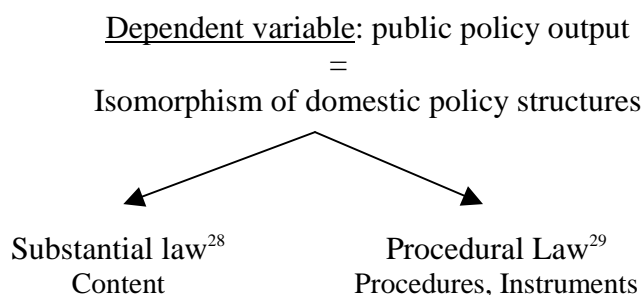
Table 3 combines pressures stemming from goodness-of-fit and conditionality. There is one important prerequisite; the model of pressures as conditionality does not apply if there is complete fit (harmonization) of domestic norms and procedures with the EU ones. There are no adaptational pressures for change then.

Table 3. European ‘exogenous’ pressures as goodness-of-fit and as conditionality

		Goodness-of-fit			
			Misfit	In-between	Fit
Conditionality			1	0.5	0
	Weak	0 0.5	1 1.5	<b>0.5</b> <b>1</b>	Prerequisite applies
	Moderate	1 1.5 2	2 2.5 3	1.5 2 2.5	Prerequisite applies
	Considerable	2.5 3	<b>3.5</b> <b>4</b>	<b>3</b> <b>3.5</b>	Prerequisite applies

Hypotheses:

1. The pressures are the strongest when exogenously prescribed rules and procedures are well-defined and there are both incentives provided for complying with the rules and there is a risk for sanctions being imposed. Moreover, incompatibility (misfit) between national structures and practices and the EU requirements increases European pressures for change. Consequently, there is very little room for policy autonomy. There is isomorphism of domestic policies.
2. No sanctions and incentives as well as vaguely defined external norms and procedures accompanied by a degree of misfit (0.5) decrease significantly the chances for isomorphism at domestic level.
3. The exogenous pressures are negatively correlated with autonomy; the higher the pressures the lower the autonomy. When the pressures are considerable, states have only limited institutional discretion when deciding on the concrete arrangements in order to comply with the European requirements. Conversely, if exogenous pressures do not play as great a role as endogenous factors, there is a high degree of autonomy, domestic preferences and policies dominate. Autonomy implies that policy change has occurred as a result of national institutional arrangements, preferences and processes.



Isomorphism is defined as convergence of national policies towards the EU rules and procedures.

Domestic policy structures consist of substantial law and procedural law.

To what extent may Polish domestic competition policy reflect European provisions? *How much isomorphism?* I will claim that there may occur only bounded isomorphism. First, in pre-accession stage not all provisions may be ‘approximated.’ The very example is Regulation 17/62 which granted sole authority to the Commission to apply Art.81(3). Second, there is a territorial aspect of EU competition law and Polish competition law. The former refers to the area of the European Union. In the latter case the Act on Competition and Consumer Protection, Article 1.2., stipulates that “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.” As a result, for example, Polish competition law cannot replicate the exact goals of the EC competition law, i.e. the emphasis on market integration. Thus, isomorphism is bounded because of the above mentioned reasons.

### Observable implications

If the model of European ‘exogenous’ pressures holds, I would expect that strong pressures result in the isomorphic change of Polish competition policy. The government is expected to take the obligations seriously because the membership in the European Union constitutes the main strategic

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<sup>28</sup> It refers to the statutes

<sup>29</sup> Procedures and Instruments: 1. Formal characteristics: name, funding, human resources; 2. Functional characteristics: publish decisions, annual report, market studies, dominance register; 3. Organizational characteristics: decision-making and Procedures: selection of cases, deciding cases, appeals. This taxonomy follows Fingleton’s et al (1996)

goal of Poland's foreign policy. I would expect that the statutes have been progressively changed to approximate EU law. Domestic policies are "approximated" to the EU competition policy. Hence, there is (bounded) isomorphism of substantial competition law in Poland.

However, if the procedures prescribed by the EU are not well-defined this leaves room for maneuver for domestic actors. Indigenous competition law traditions may dominate. I would expect that the Office for Competition and Consumer protection would benefit the most. This is the institution responsible for implementing competition policy in Poland. The Head of the Office could rely upon the obligations to approximate to EU law to urge pro-competition policies and to ingrain the 'competition culture.' Hence, "the pressure against the implementation of competition and anti-subsidy rules in the associated countries which were always strong"<sup>30</sup> may be diminished.

#### The advantages of the model

- Universal applicability

The model is universal in a sense that it may be applicable to both applicant countries and EU member states. In the latter case one can call it the EU conditionality model. For Member states as well as applicant countries there may be either incentives to comply (harmonize) with the EU rules or sanctions for not complying. Furthermore, European rules and procedure may be well-defined or vague. To give the example of EU conditionality *in praxi*, I will present competition policy in one of the member states and applicant countries.

In the case of competition policy, applicant countries are obliged to harmonize their national law with the EC law<sup>31</sup> by reason of Article 68 of the Association Agreements. The EU Member States

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<sup>30</sup> Mayhew (1998) claims that "the pressure against the implementation of competition and anti-subsidy rules in the associated countries was always strong. It was therefore very important to establish independent cartel offices which had real independent power"

<sup>31</sup> Before the competition negotiations can be provisionally closed, three elements must be in place in the applicant



## **Policy significance of the research**

- Europeanisation; the EU law as a source for internal competition policy

The research raises an important empirical question regarding the degree to which the EU competition law is a basis for internal competition policy in Poland. Studies of Europeanisation in Central European countries constitute a relatively unexplored terrain. Hence, there is a need to invest effort in empirical research. This research will offer empirical evidence on how the EU has stimulated transformation of patterns of governance in applicant countries.

- a challenge to the applicability of the EU regulatory models in Central and East European countries (Young and Wallace, 2000)

There is the issue of the appropriateness of the EU legislation as a basis for domestic legislation in Central and East European countries (Estrin and Holmes, 1998). The requirements and role of (and benefits from) competition policy in the aftermath of central planning are not obviously identical to those in an established market economy (Fingleton et al, 1996). The EU regulatory models were not designed for countries in transition. They were the outcome of bargaining among member states. The candidate countries might have any legitimately distinctive regulatory preferences and tastes of their own. As regards regulatory policies “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” (F.Millard, 1998). Consequently, the question arises on the extent to which the EU’s socio-economic models are congruent with transformation trajectories of Central European countries.

- implications of EU membership

The analysis will propose certain amendments to existing legislation, which will be necessary after enlargement, to guarantee the full and smooth applicability of Community competition law. Moreover, there will be a change in law enforcement against competition restricting practices actually or potentially affecting intra-Community trade.

- EU competition policy reform; challenge of the post-Maastricht subsidiarity and decentralization

Decentralization messages of the Commission suggest that national regulatory institutions are expected to play a leading role in the future. In September 2000, the Commission adopted its far-reaching proposal for a regulation modernising the rules implementing Articles 81 and 82 of the EC Treaty. A “new divisions of responsibilities of responsibilities” between, on the one hand, the Commission, and on the other hand, national competition authorities (NCAs) and national courts. The subsidiarity principle will be more evident in the EU competition law enforcement. Hence, it is important to analyse the competences of the Office for Competition and Consumer Protection.

### **Theoretical significance of the research**

1. The research offers a conceptual analysis of such key notions as Europeanisation, EU accession conditionality, policy convergence and (bounded) isomorphism.
2. A “second image reversed” argument on international sources of domestic politics has been elaborated by concentrating on European ‘exogenous’ pressures as goodness-of-fit and as conditionality. I present a heuristic device that allows us to think more systematically about exogenous pressures. Exogenous pressures take the analytical primacy in the thesis. This is a very novel approach because studies on the impact of Europeanisation in Member states have mainly concentrated on the importance on domestic institutions in mediating external pressure but not on the nature of pressures.
3. I improve a Dolowitz and Marsh model by adding one dimension to their continuum. The EU accession conditionality cannot be said to be coercive (and against the will). Since a country voluntarily wants to join the Union, can any act of the EU be considered coercive? The dimension may be called pragmatic and may be placed between Obligated transfer and Conditionality. It

allows to examine the ways national governments are obliged to adopt programs and policies as part of their obligations as pre-members of international regimes.

4. Idiosyncratic features of convergence are emphasised. First and foremost, this is a unilateral convergence; convergence of domestic policies to the EU rules and procedures. I call this type of convergence isomorphism. Convergence means similarity but not homogenisation. In opposition to Bennet, I assume that the comparative reference point is another country (I mean the EU), but at the same time I agree with him that it is a condition of divergence or variability from some former stage.

### **Methodology:**

- **Research design**

Polish domestic policy will be compared with the EU policy. Hence, an epistemological strategy is case-oriented, namely, comparative case method.

- **Data and data sources**

#### Documents:

- The EC Treaty: Article 81 [ex 85] – Restrictive Practices Policy; Article 82 [86] - Monopoly Policy; Articles 87 to 89 [ex 92 to 94) - State Aid Policy, Council Regulation (EEC) No.4064/89 - Merger Policy, Regulation 17/62
- Case 127/73 [1974] E.C.R. 51; BRT v. Sabam
- Europe Agreement: in particular Article 63, Article 68, 69,70
- Laeken European Council, December 2001; Essen European Council in December 1994, etc
- Avis- Commission opinion on Poland's application for membership of the European Union, 1997
- Regular report on Poland's progress towards accession (years 1998, 1999, 2000, 2001), European Commission,
- Accession Partnership 1999
- Polish negotiation positions and the National Plan for the Adoption of the Acquis, etc.

- Polish bills and statutes on competition policy - Act on counteracting monopolistic practices and protection of consumers interests (Journal of Laws 1990, no.14, item 88). Amended a number of times. Law of June 30, 2000 on the Conditions for Admissibility and Supervising of State Aid for Undertakings Journal of laws 2000 No.60, item 704

The Act on Competition and Consumer protection, Journal of Laws 2000, No.122, item 1319

Interviews with representatives from:

1. Office for Competition and Consumer Protection (Urząd Ochrony Konkurencji i Konsumentów).

- European Integration Department
- Legal Department

2. Office of the Committee for European Integration<sup>34</sup> (Urząd Komitetu Integracji Europejskiej)

- Department of the EC Law
- Department of EU Integration Policy
- Department of European Affairs

3. European Commission

- DG IV - Competition Directorate-General,
- Enlargement Directorate-General

4. The *Sejm* Parliamentary Committee on Competition and Consumer Protection,

**Time span:** The analysis starts in the year 1994, when Europe Agreement came into force and the end date of this project will be December 2002 - by this date the accession negotiations with Poland will have finished. Then, public policy outcome will be assessed.

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<sup>34</sup> Office of the Committee for European Integration was established in October 1996 and took over the responsibilities and tasks of the Government Plenipotentiary for European Integration and Foreign Assistance. The Office programs and coordinates policies related to European integration process, plans and coordinates adjustment measures as well as coordinates actions undertaken by the public administration with regard to foreign assistance.

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