

Implementation of Community Legislation in Poland and Institutional Configurations at the Centre of Government

May 2002

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ABSTRACT

The objective of this paper is to explore the extent to which changes in institutional configurations at the Polish centre of government have affected variation in the patterns of implementation of EU legislation in Poland between 1993 and 2002. The dependent variable is defined as the extent to which EU directives are transposed according to a pre-agreed timetable. The paper hypothesizes that the variation in the rate of transposition is linked to changes in institutional configurations at the centre of government.

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1. Research Question

The objective of this thesis is to explore the extent to which changes in institutional configurations at the Polish centre of government have affected variation in the patterns of implementation of EU legislation in Poland between 1993 and 2002.

2 Political and Historical Relevance

By studying the implementation of Community legislation in Poland, this research addresses a broader theme of Europeanization, i.e. the impact of European integration on national politics, politics and policies, with a particular focus on implementation of public policy in a system of multi-level governance (for a recent overview see Hix and Goetz 2000, Olsen 2001, Radaelli 2000a, Schmid and Radaelli 2002).

The growing importance of European level policy-making has raised interesting questions about the nature of the interactions between the European integration and national politics, politics and policies. These have largely fallen into three categories: (i) to what extent the European Union membership influences domestic arrangements, (ii) to what extent do we find convergence in domestic responses to Europe, (iii) what are the factors that facilitate or impede national adaptation to Europe?

The last of these questions becomes most relevant when it comes to the implementation of EU legislation at the domestic level. The European Union has no administration of its own and thus must rely on national administrations for transposition, application and enforcement of its rules. But national administrations have long exhibited major differences in their implementation records (see Sverdrup 2002 but also Borzel 2001). In this context, immediate questions arise as what determines national implementation success or failure. Why do some countries have a better implementation record than other? Why implementation in some sectors fares better in some countries than in others? Why do national implementation records vary over time?

Similar questions have recently become relevant for the countries of Central and Eastern Europe, as countries such as Poland have started systematically to transpose the European Community legislation in anticipation of EU membership. Poland's ability to implement and apply the *acquis communautaire* has constituted a key consideration in the pre-accession process. As a result, both national and European decision-makers have inevitably had to confront the problem of what action may be taken to improve the implementation record.

3 Theoretical Relevance

The existing research on implementation of EU directives assumes that the patterns of implementation of EU legislation depend on three factors: (i) the characteristics of the policy to be implemented (policy legacies), (ii) the preferences of the actors involved in the implementation process, (iii) the characteristics of the institutional setting in which it is to be implemented.

The policy legacies approach has been adopted by Christoph Knill (Knill 1998b, Knill 2001, Knill and Lenschow 2001, Knill and Lenschow 1998a). Knill claims that the adjustment of national policies is contingent on the degree of adaptation pressure which he derives from the 'goodness of fit' or compatibility between European legislation and national administrative traditions. While this approach is fairly intuitive, it suffers from major shortcomings. Knill himself recognizes that his model is best for explaining cases of extremely high or low misfit but has limited explanatory power in (most numerous) cases of medium misfit (Knill and Lenschow 2001). Recently, Knill's model has been undermined empirically by Haverland (Haverland 2000), who - in his study of implementation of the packaging waste directive in the UK, Germany and the Netherlands - shows that variations in the national adaptations demonstrate little correlation with the degree of institutional compatibility (Haverland 2000, p. 85). Most recently, Heritier and Knill have concluded a cross-country comparison of the implementation of the EU transport policy by stating that 'the congruence or incongruence of European and national arrangements ... can neither fully account for the varying degrees nor the directions of domestic adjustment patterns' (Heritier and Knill 2001, p. 288).

As the concept of 'goodness of fit' has been undermined as a major explanatory variable, attention has now moved to the identification of 'mediating factors' that facilitate or impede policy adaptation (Caporaso, et al. 2001b, Heritier, et al. 2001). In this regard, actor-centred accounts are clearly a minority (but see contributions to (Caporaso, et al. 2001b, Heritier, et al. 2001)). Perhaps the most influential one draws on the concept of conditionality in explaining patterns of domestic adaptation in Central and Eastern Europe (Grabbe 2001 forthcoming). Yet, the limelight has been certainly captured by institutional accounts. Börzel and Risse point to two theoretical perspectives that may be adopted in this regard (Börzel and Risse 2000). A rationalist institutionalist perspective assigns explanatory power to the existence of multiple veto points and the availability of formal institutional resources. Sociological institutionalism identifies socialization and learning processes as key drivers of change. Accordingly, norm entrepreneurs and political culture also provide a vehicle for effecting adaptation of domestic policies (Börzel and Risse 2000, p. 2). Börzel and Risse admit that these two perspectives might not be mutually exclusive and that the factors they consider important might affect - in a simultaneous and/or sequential way - the process of domestic change (Börzel and Risse 2000, p. 19).

In keeping with such approaches, Schmidt has argued that, at a macroscopic level of analysis, differential outcomes of Europeanization (inertia, absorption, transformation) may be explained with reference to (i) intervening variables such as economic vulnerability, political institutional capacity, policy legacies, policy preferences, discourse; and (ii) types of adjustment pressure (coercion, adaptation, mimesis, regulatory competition) (Schmidt 2001). With regard to two of these factors, Heritier (Heritier 2001) - in her analysis of liberalization of transport policy in Britain, the Netherlands, Germany and Italy - has found that, while the requirement to implement EU policies affects the preferences of domestic actors by dividing them into losers and winners, these actors' preferences are then filtered through the

preferences of political actors and the capacity of the policy making-institutions for effecting change. Thus, Heritier expects to find adaptation even where there is a high level of divergence between European policies and domestic structures, provided that the political actors are willing to support change and the policy-making structures are characterized by a low number of veto points (Heritier 2001).

Most recently, Knill and Heritier (Heritier and Knill 2001, Knill 2001) have explored in more detail the importance of institutional capacity, relying on Knill's concepts of autonomous and instrumental administrations (Knill 1999a). They argue that adaptation patterns are linked to the level of 'reform capacity' which comprises three principal elements: (i) configuration of executive leadership (unitary/federal states, party competition, judicial review, interest intermediation, ministerial autonomy), (ii) institutional entrenchment of administrative structures (constitutional regimes, legalism, administrative law, fragmented or concentrated organizations, centralized or decentralized organizations), and (iii) influence of bureaucrats (dependence on outside advice, politicization of bureaucracy, bureaucratization of politicians). A similar concept of 'capacity' also features in (Graver 2002, Ibanez 1999).

The 'reform capacity' perspective links up with the concept of 'administrative capacity' which dominates the debate about the implementation of the *acquis communautaire* in Central and Eastern Europe. As a factor facilitating or inhibiting domestic adaptation, the concept of 'administrative capacity' has been approached in two ways. The first approach assumes that implementation of the *acquis* is contingent on developing *generic* features such as a professional civil service and a policy formulation and coordination capacity at the centre of government (Nunberg 1999, OECD-SIGMA 1998). In more functional terms, it implies an ability to ensure that 'a target is set, an agent is given the right and obligation to act, the agent has at its disposal the means to act and finally the agent has the means to evaluate the effects of the undertaken action' (Nicolaidis 1999, p. 27). Another approach is characteristic of studies such that of V. Diakov (Diakov 1999) which presents a complete inventory of administrative infrastructures to be established by candidate countries for every piece of single market legislation. This approach informs most of the actions the Commission has been taking to strengthen the capacity to apply the *acquis communautaire* in CEECs, notably the twinning programme, which involves seconding member state officials to candidate countries to assist in the implementation of specific parts of EU legislation (EUROPEAN COMMISSION 2000a).

4 Proposed Alternative Theoretical Solution

The approach followed in this dissertation is inspired by the new institutionalist literature. Thus, it links varying patterns of EU implementation to institutional factors that prohibit or facilitate such changes. However, in contrast to existing formulations, it rejects macroscopic conceptualizations of institutional variables in favour of an approach focused on configurations of the national executive.

Executive Configurations

Differences in configurations of national executives, their origin and effect on policy outcomes have for a long time been a key concern of comparative government and comparative public administration. At a general level the debate has focused on relative merits of autonomous versus constrained executive power. Taking its cue from research on economic transitions in Latin America, the executive autonomy model posits that the

insulation of the executive from the pressure of interest groups increases the state's capacity to effect policy change or reform (Geddes 1994, Haggard and Kaufman 1995, Williamson 1993). It stresses the importance of small 'change teams' which, with strong political backing, operate in isolation from both bureaucratic and societal demands. Such expectations are confirmed by Peter Hall, who concludes that four factors influence the state's capacity for formulating and implementing innovative policies:

- low number of actors involved – the argument is that power must be centralized in the hands of a few individuals because the greater the number of actors involved the greater the likelihood that some will block the initiative;
- autonomy of the policy-makers – such individuals should be autonomous and unconstrained by organized interests in their decision making;
- access to expertise – such individuals must have ready access to information and expertise in their policy field;
- cooperation between political appointees and officials – the structural configurations must encourage formation of alliances between political executives and bureaucracy (Hall 1983).

More detailed analyses have shown, however, a negative temporal trade-off between state autonomy and state capacity to launch policy change (Evans 1992, Evans, et al. 1985, Nelson 1992, Nelson 1994, Nelson 1994). Such approaches stress that, while an unrestrained executive autonomy may indeed give impetus to policy change, it seems inadequate to underpin successful reform in the long run. It is argued that the absence of communication channels with policy stakeholders may have an adverse effect on policy consolidation (Haggard and Kaufman 1992, p. 23). Against this backdrop, Peter Evans has stressed a need for 'embedded autonomy' which is characterized by a simultaneous existence of (i) self-steering, coherent bureaucratic element, and (ii) ties to social groups and interests (Evans 1992, p. 176). The former implies a higher degree of bureaucratic institutionalization, i.e. a departure from personal, free-floating spirit of 'change teams' and a move towards impersonal, Weberian-type administration. The latter assumes an institutionalization of a network of linkages that provide the state with necessary intelligence about policy implementation. A similar approach is followed by Stark and Bruszt, who argue that the patterns of economic transformation in Post-Communist Europe have proved wrong the executive autonomy model (Stark and Bruszt 1998). It is their contention that policy coherence and effectiveness depends on the existence of 'enabling constraints' on the prerogatives of the executive. In their view, for policy reform to be successful, national executives must be (i) embedded within horizontal (intra-state) and vertical (state-society) networks, and (ii) such embeddedness must be highly institutionalized (Stark and Bruszt 1998, p. 188-191).

The focus on autonomy is also at the heart of the relationship between executives and their supporting parties (Blondel 1995, Blondel and Cotta 1996, Blondel and Cotta 2000, Muller and Strom 2000, Weller 1997). Here the pendulum swings between complete autonomy of governments and parties and their extreme interdependence. Where the two actors are interdependent, their relationship may work in two directions: parties may dominate governments ('party-ness' of governments) or governments may dominate parties ('government-ness' of parties) (Blondel and Cotta 1996, Blondel and Cotta 2000). In contrast to the debate about executive autonomy within a wider political system, the party-government perspective focuses predominantly on conceptualizing and explaining variation in the party-government relationship, and has so far generated very few hypotheses regarding the

impact of such configurations on policy outcomes. Thus, scholars have mainly looked at determinants of cross-country variation (Blondel and Cotta 1996, Blondel and Cotta 2000) as well as have examined the institutional mechanisms for managing interdependence between the party in government, parliamentary party and membership party (Davis 1997, Muller and Strom 2000).

Another major research concern has been to 'open up' national executives and analyze their internal configurations. In this regard, a difference of emphasis may be discerned between comparative government and public administration (Goetz 2001 forthcoming). While the former explores tensions mainly within the political executive, the latter focuses predominantly on the relationships within bureaucracy and those between the bureaucratic and political rationalities.

A key preoccupation of comparative government has been with power relations within the executive leadership. In general, the debate has revolved around two principal dimensions. On the one hand, studies have analyzed the collegiality of political executives, i.e. the degree to which members of their leadership are equal in decision-making processes (Andeweg 1993, Andeweg 1997). Here, the focus has been on whether cabinets display the characteristics of prime ministerial, oligarchic or collegial government. On the other hand, executive research has centred on the degree of collectivity, i.e. the extent to which decisions are always taken in common (Andeweg 1993, Blondel and Muller-Rommel 1988, Blondel and Muller-Rommel 1993, Mackie and Hogwood 1985, Manning, et al. 1999). For example, Mackie and Hogwood have identified seven arenas in which members of the cabinet make decisions: unilateral decision, internalized coordination, bilateral decision, multilateral decisions, cabinet committee decision, cabinet decision, party decision (Mackie and Hogwood 1985). Andeweg has proposed that the collective character of government increases as one moves from fragmented government (individual decisions by ministers) through segmented government (decisions made in committees) to truly collective government (decisions made by cabinet) (Andeweg 1993, Andeweg 1997). Comparative research has used these variations both as dependent and independent variable. Blondel and Muller-Rommel have explored the impact of single party/coalition government distinction on collectivity and collegiality of government. Manning et al. have explored the institutional underpinnings of cabinet government explaining why a cabinet government is a rational response to risks ensuing from the possibility of the legislature amending the government's programme or dismissing the government between elections (Manning, et al. 1999). More recently, Blondel and Manning (Blondel and Manning 2000) have explored the impact of cabinet and presidential structures on the ministerial responsiveness, concluding that collegial structures seem to reinforce the reliability of ministers. Finally, Baylis has used collegiality as both independent and dependent variables in his study of collegial leadership in advanced societies (Baylis 1989)

Most recently, power relations within the executive have come to be analyzed under a new banner of the 'core executive' studies (Dunleavy and Rhodes 1990, Peters, et al. 2000, Rhodes 1995). The core executive is defined as 'a complex web of institutions, networks, and practices surrounding the prime minister, cabinet, cabinet committees and their official counterparts, less formalized ministerial clubs or meetings, bilateral negotiations and interdepartmental committees' (Rhodes 1995). Such new contributions have been informed by a widespread realization that growing sectoralization, budgetary pressures, and cross-cutting nature of the policy agenda have over the last decade underscored the importance of a strong and effective centre of government (Peters, et al. 2000, Weller, et al. 1997, Wright and

Hayward 2000). Indeed, it is claimed that “over the last thirty to forty years there has been a steady movement towards the reinforcement of the political core executive in most advanced industrial countries and, [...] within the core executive, there has been an increasing centralization of authority around the person of the chief executive - President, Prime Minister or both” (Peters, et al. 2000, p.7). Although new in their conceptualization of the centre government, such new perspectives continue to rely on collegiality and collectivity as their principal measuring rods. For example, Dunleavy and Rhodes have identified five viewpoints on executive organizations, depending on which executive actor is dominant: prime ministerial government (monocratic and clique), cabinet government, ministerial government, segmented government and bureaucratic government (Dunleavy and Rhodes 1990, Rhodes 1995) (for other examples see (Elgie 1997, Laver and Shepsle 1994)).

In contrast to comparative government, public administration perspectives draw attention to (i) tensions between political and bureaucratic elements within the executive, and (ii) internal organization of the bureaucracy (Pierre 1995). With regard to the former, the key research themes have revolved around the degree of political control over public administration ('politicization') and the extent of civil service neutrality ('depoliticization'). The standard conceptualisation of this relationship distinguishes between four images of this relationship ranging from strict separation to full convergence of roles (Aberbach, et al. 1981) (for an alternative presentation see (Peters 1987)). It has been suggested that, in Europe, there exist two models of interactions between political appointees and public officials based on the prevailing state traditions (Davis 1997). The continental paradigm underscores the 'political craft' of high civil service (Goetz 1997), while the Anglo-Saxon model stresses neutrality of the public officials (Page and Wright 1999). It has been recently suggested that both these designs may be converging around a new type of political-bureaucratic relationship increasingly based on trust (Page and Wright 1999, p. 275-9). The second theme in comparative public administration is that of the internal organization of state bureaucracy. The key concern here has been that of mapping, explaining, and examining the impact of, variation in the design of public administration (Pierre 1995). In the main, research has centred on conceptualizing differences and/or changes in organizational design in such dimensions as extensiveness, centralization, hierarchy, participation (Peters 1988). It is argued, for example, that over the last two decades or so there has been a discernible move towards decentralization, deconcentration and delegation in public administration (Aucoin 1998, Peters and Wright 1996a). But, at the same time, attention is drawn to a countervailing trend towards centralization, coordination and control (Aucoin 1990, Wright and Hayward 2000). Less attention has been paid to explore the implications of alternative organizational designs for policy outcomes (Egeberg 1999). In this regard, Egeberg uses as independent variables such dimensions of organizational structure as horizontal and vertical specialization, degree of collegialization, structural capacities and degree of coupling (Egeberg 1998, Egeberg 1999).

5 Framework of Analysis

Dependent Variable

The dependent variable is defined as the extent to which EU directives are transposed according to a pre-agreed timetable. In more operational terms, the number of directives envisaged for implementation in a given year is related to the actual number of directives implemented that year. The variation in the dependent variable is measured both (i) across

time, over the period under investigation (1993-2002) and (ii) across policy sectors, in a given year.

Independent variable

This dissertation hypothesized that the variation in the rate of transposition is linked to changes in institutional configurations at the centre of government. The centre of government (core executive) is defined in institutional terms and denotes institutions that support the following processes:

- planning and monitoring of the implementation process
- substantive coordination - settling of disputes between line ministries
- legal review - the verification of compatibility with EU and domestic law
- parliamentary management - the guiding of the draft law through parliament

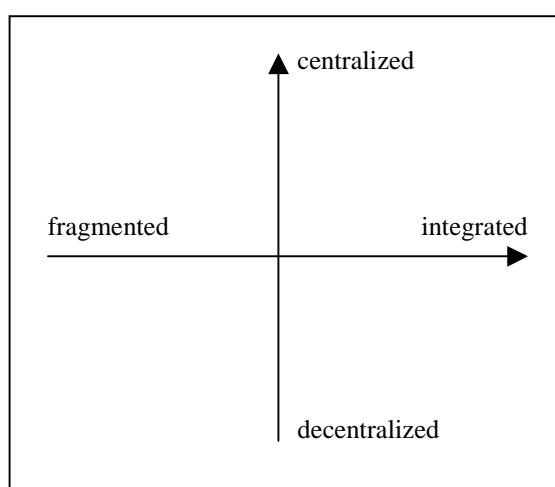
The changes in institutional configurations are mapped over time and across sectors in the following dimensions:

- structural resources

The collective actors (such as ministries, departments, central agencies) have at their disposal action resources which comprise (i) personnel – the stock of people available to collective actors, together with their skills, knowledge and availability; (ii) organization – the institutional ‘hardware’ such as equipment, technology, office space, materials; (iii) finance – the financial resources available to collective and individual actor for the purposes of implementation. Variation in structural resources is measured in nominal terms.

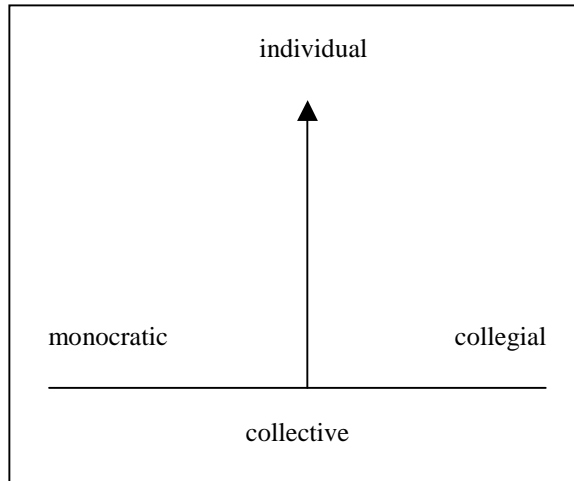
- internal organization

In different areas the executive has a different internal organization. It varies according to vertical and horizontal specialization. The former denotes the length of chains of authority, while the latter the degree of fragmentation.



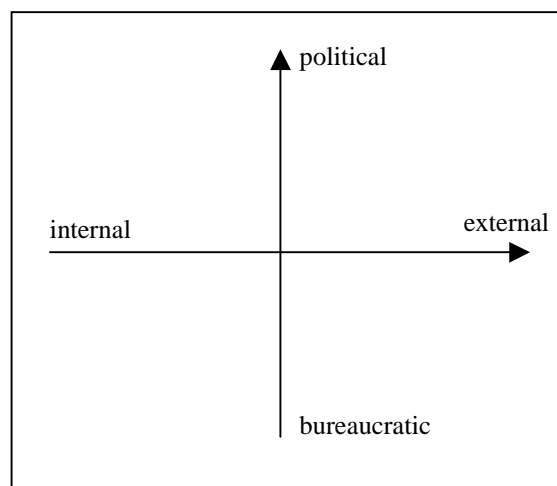
- modes of decision-making

This dimension captures different ways in which decisions are taken. Decision-making modes may vary according to the degree of collectivity and collegiality. Collectivity denotes the extent to which authority to make decisions belongs to a group or an individual. Within the collective mode, it is also possible to measure the collegiality of decision-making, i.e. the degree to which all members of the group have equal vote.



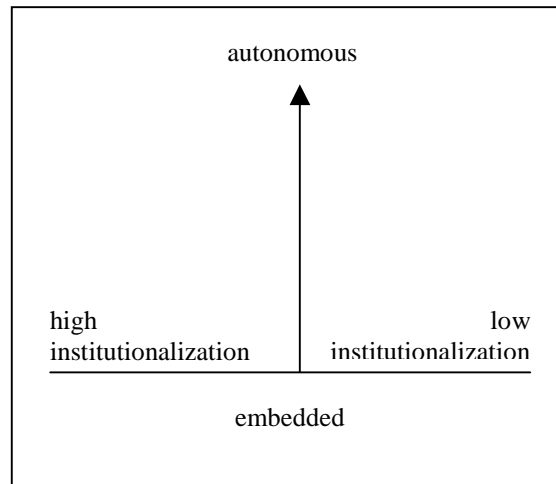
- politicization of decision making

This dimension shows to what extent decisions are made by (party or government) politicians or experts (bureaucrats or external experts).



- executive autonomy in decision-making

This dimension captures the degree of executive autonomy. Variation occurs between autonomous and embedded decision-making, where the former denotes unilateral action by the executive and the latter - action constrained by a requirement to consult social interests. Where decision-making is embedded, linkages between the executive and organized society may be loose and informal (low institutionalization) or stable and formalized (high institutionalization).



6 Theoretical & Policy Significance of the Research

This dissertation makes a threefold contribution to the existing academic literature. At a most general level, it seeks to contribute to closing a relative gap in the understanding of the impact of institutional designs on policy outcomes and performance. This interest has been recently stimulated by the perception of governance capacities as a key element affecting the quality of life and economic performance (WORLD BANK 2000).

Second, by focusing on the process, rather than substance, of national adaptation, it explores the modes and processes by which European designs are fed into the domestic arena. The dissertation departs from the reliance on the 'goodness of fit' as the main explanatory variable and contributes to the current debate about mediating factors that facilitate and impede domestic adaptation. In contrast to the existing studies, it compares Europeanization patterns across policies and, in doing so, draws on insights offered by the study of national executives.

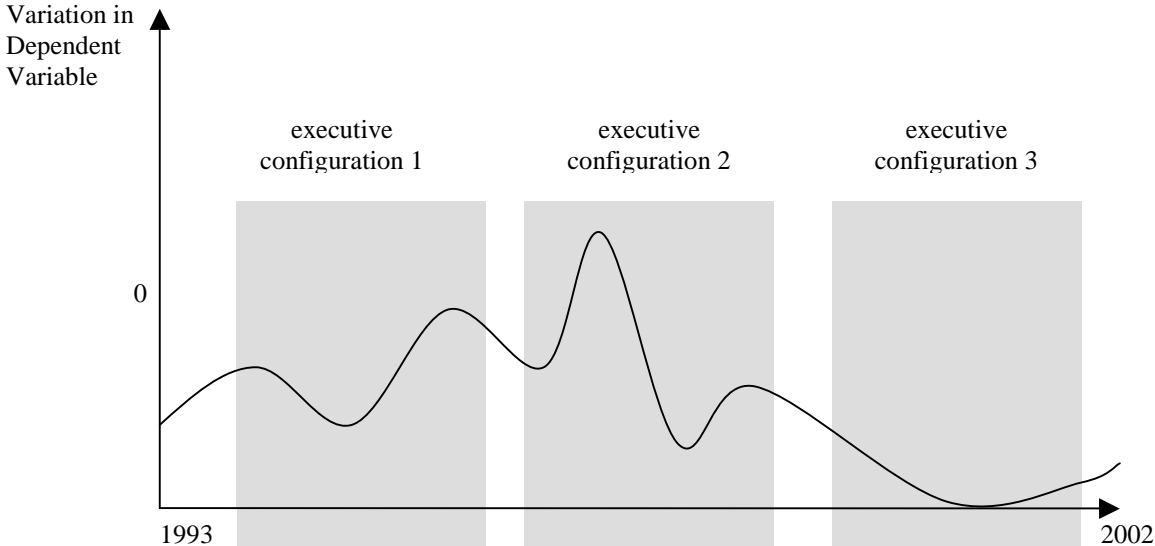
Finally, by exploring institutional configurations of the Polish executive, both across time and policy areas, the dissertation contributes to a better understanding of how post-communist executives work in practice. The state of knowledge in this area is rather limited (Goetz and Wollmann 2001). While the executive organizations in the West have received a close attention, relatively little is known of the internal life of the Central and Eastern European executives. Furthermore, the findings of this research will help 'unpack' the concept of administrative capacity which constitutes a key element guiding the accession of Central and Eastern European countries to the European Union.

7. Research Design

This dissertation links different implementation patterns to different configurations of the executive both (i) across time and (ii) across policy areas.

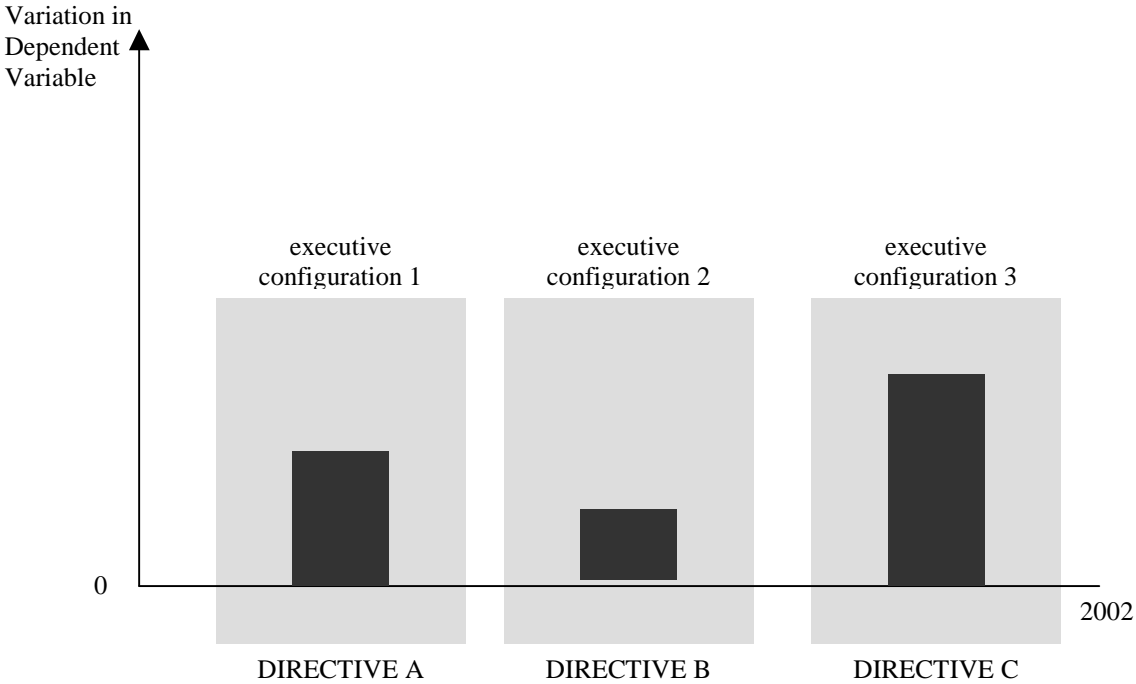
Cross-temporal comparison

As a first step, variation in the dependent variable is measured for each year between 1993 and 2002. This is then related to changes in executive configurations determined by mapping stylized configurations of the executive law harmonization machinery. The diagram below illustrates this stage of the research design.



Cross-sectoral comparison

As a second step, a cross-sectoral comparison will form the core of the dissertation. Detailed executive configurations are mapped and, then, related to the pattern of implementation of six different EU directives. The diagram below illustrates this next stage of the research project.



Case Studies Approach

The dissertation follows a comparative research design based on a selection of quantitative and qualitative methods for data collection. The principal empirical material for testing the key hypothesis regarding the independent variable is drawn from case studies of regulatory policies.

Methods of Data Collection

The following two main methods of data collection will be employed: documentary analysis and non-structured interviews. Documentary analysis will focus on both primary sources (government documents, reports, resolutions, legislation) and secondary sources (academic literature, specialised literature in policy areas under investigation, newspapers, magazines). Interviews will be used to cross-check data and filling in gaps where official sources are of limited assistance.

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