

Bachelor Thesis

Student: Max Philipp Jänicke (s0202436)

Am Bagno 8

48301 Nottuln, Germany

m.p.janicke@student.utwente.nl

Supervisor: Dr. Veronica Junjan

Second Supervisor: Dr. C.T. van Ham

Title: Compliance with EU's political criteria in the judiciary of Poland

*University of Twente: Faculty of Management and Governance
Bestuurskunde: European Studies*

Abstract

In my Bachelor thesis I am intending to find an answer to the following research question:

Which factors were most likely to influence compliance with the EU's political criteria in the Polish judiciary before and after accession to the EU?

The units of analysis in this context are policy measures in Poland stressed by the EU to be important to access the EU. In this research external factors are scrutinized, namely policy measures required by the EU to adjust the Polish judiciary to Western-European standards. In this field it is not straightforward, which influence EU conditionality had on compliance with the EU's political criteria in the field of the judiciary. Therefore, the judiciary needs to be addressed in more detail. In order to answer the research question I address the following sub-questions:

1. What constitutes compliance with the EU's political conditions for the field of the judiciary?
2. What is political conditionality?
3. What is the effect of size and credibility of EU conditionality on compliance with the EU's political criteria in the Polish judiciary before accession to the EU?
4. How do determinacy and strength of EU conditionality differ during the accession to the EU and influence compliance with the Polish judiciary?

This research aims at explaining the mechanism of EU conditionality in the context of EU enlargement in the policy field of the judiciary. I am planning to highlight how different variables impact on compliance with the EU's political criteria. This is done in the policy field of the judiciary in Poland in three different periods. Firstly, the period after the establishment of a credible and conditional EU membership perspective in 1998 and 1999 is investigated. Secondly, the period of the accession process closely tied to accession is illustrated, with respect to 2002 and 2003. Finally the period after accession is presented with respect to compliance with the EU's political criteria for the judiciary, in 2005 and 2006. The last two years are supportive for the research approach, as the effects of EU conditionality largely disappear, due to membership to the EU (Schwellnus & Schimmelfennig, 2006), therefore we can control the effects of our independent variables to a certain degree.

My dependent variable is compliance with the EU's political criteria in the field of the judiciary, whereas the independent variables are the factors, or parameters impacting on the compliance with the EU's political criteria in the respective field. The factors or parameters, which I am going to illustrate are; size, strength, credibility and determinacy of EU conditionality. Those factors are chosen, as they appear to be dominantly selected to explain successful or unsuccessful functioning of EU conditionality in theory. In theory those factors explain the functioning of EU conditionality in general. Nevertheless each policy field has to be regarded individually with respect to the functioning of EU conditionality. I am going to check for the effects of those factors in the field of the judiciary, which is representing an individual policy field. So Poland's judiciary is investigated in relation to the impact of EU conditionality and compliance in return.

Concerning the case selection of Poland we can underline that Poland is a best-case scenario with respect to the working of EU conditionality in general. Therefore, we might expect that the respective factors affected compliance positively, meaning that they contributed to compliance with the EU's conditions. On the other hand the policy field of the judiciary is a peculiar field and might reveal ambiguous results about the effects of the chosen factors on compliance with the EU conditions in the judiciary. I am intending to address the research question by carrying out a within case analysis and process tracing in official policy documents written by the EU and an analysis of the NGO Freedom House reports. Moreover data from the CIRI human rights project is supplementing the analysis to scrutinize compliance with EU conditionality in the respective years.

Table of contents

I. List of acronyms (p.5)

II. List of figures (p.5)

1. Introduction (p.6)

1.2 Research question (p.7)

2. Theory (p.8)

2.1 Political conditionality and the political criteria for the judiciary (p.8)

2.2 The external incentives model (p.9)

2.2.1 Factors enhancing EU conditionality (p.10)

2.2.2 The Hypotheses (p.11)

3. Methodology (p.13)

3.1 Research Design (p.13)

3.2 The dependent variable (p.14)

3.3 The independent variables (p.18)

3.3.1 Size of EU conditionality (p.18)

3.3.2 Credibility of EU conditionality (p.19)

3.3.3 Determinacy of EU conditionality (p.19)

3.3.4 Strength of EU conditionality (p.19)

3.4 Case Selection (p.21)

3.5 Possible effects of case selection (p.22)

4. Analysis (p.23)

4.1 Compliance and effects on compliance 1998 (p.24)

4.2 Compliance and effects on compliance 1999 (p.24)

4.3 Compliance and effects on compliance 2002 (p.26)

4.4 Compliance and effects on compliance 2003 (p.27)

4.5 Compliance with the EU political criteria in 2005 & 2006 (p.28)

4.6 CIRI data (p.28)

4.7 Summary of the findings (p.29)

5. Conclusion (p.30)

6. Reference List (p.32)

7. Appendix (p.35)

I. List of acronyms

CEE = Central Eastern European

CEEC = Central and Eastern European Countries

CIRI = Cigranelli-Richards

EC = European Commission

EU = European Union

FDI = Foreign Direct Investment

IFI = International Financial Institution

IMF = International Monetary Fund

ISPA = Instrument for Structural Policies for Pre-Accession

MECU = Million of European Currency Unit

NGO = Non Governmental Organisation

OECD = Organisation for Economic Co-operation and Development

Phare = Programme of Community support for the CEECs which applied for EU membership

SAPARD = A community framework for sustainable agricultural and rural development in the central and eastern European applicant states

II. List of figures & tables

Figure 1 = Hypothesis 1 p.10

Figure 2 = Hypothesis 2 p.11

Figure 3 = Hypothesis 3 p.11

Figure 4 = Theoretical expectation case selection p.19

Table 1 = Dependent Variable p.15

Table 2 = Dependent Variable p. 16

Table 3 = The independent variables p. 19

1. Introduction

The effects of conditionality are going to be emphasized throughout the thesis by approaching the question, how conditionality influenced the judiciary in Poland to meet the demands, set up by the EU during the Copenhagen summit in 1993. In this Bachelor thesis the focus is on scrutinizing compliance with the EU's political criteria for the judiciary in the period after the establishment of a credible and conditional membership perspective, the period closely tied to accession and the period after accession. Poland signed the treaty of accession on 16th April of 2003 in Athens and joined the EU on the 1st May 2004. During the Copenhagen summit 1993 the European Council announced for the first time that the CEEC could join the EU, if they wish so and if they fulfil the criteria set up during the summit. At the Luxembourg summit 1997 the EU accepted the Commission's opinion on Poland and invited Poland to start talks on its accession to the EU. The negotiation process started on the 31st March 1998 (Stawarska, 2011).

To check on compliance with the EU's political criteria in the Polish judiciary the following years are the focus of the analysis, namely 1998, 1999, 2002, 2003, 2005 and 2006. The years are chosen representing the time closely tied to the signing of the accession agreement in 1997, namely 1998 and 1999. 2002 and 2003 represent the time period closely tied to accession. Finally 2005 and 2006 represent the time period after accession. The independent variables are parameters exerting influence on the compliance with the EU's political criteria for the judiciary, whereas the dependent variable is compliance with the EU's political criteria for the judiciary. It is intended to sketch, which factors were decisive for compliance with the EU conditions under the Copenhagen political criteria in the policy field 'judiciary'.

Derived from the theory in the field of EU conditionality, the factors dominantly explaining compliance or non-compliance are; size, strength, credibility and determinacy of EU conditionality. Therefore, in the analysis emphasis is put on those factors to check if they are relevant for compliance with the Copenhagen political criteria in the policy field of the judiciary. Can those factors explain compliance with the EU's political criteria for the judiciary? This question is addressed by conducting a within case analysis and process tracing in the respective years. Mainly by carrying out an analysis of official documents by the EU and the NGO Freedom House. Additionally the results of the CIRI human rights data project and its rule of law indicator are used to support the analysis and check on compliance with EU conditionality in the respective years (1998,1999,2002, 2003, 2005 and 2006). The main research questions is this:

Which factors were most likely to influence compliance with the EU's political criteria in the Polish judiciary before and after accession to the EU?

Central and Eastern Europe (CEE) underwent major changes in the last 20 years. Striking events were the breakdown of communist dominance and transition to democracy as well as transition to capitalism and state building. All in all ten countries joined the European Union on 1st May 2004, in addition Bulgaria and Romania joined in 2007. The European Union in this context was perceived as a key driver behind the inclusion of the CEECs. A vast amount of publications accompanied the process of Eastern enlargement. Books by Grabbe (2006), Hughes et al. (2004), Jacoby (2004), Kelley (2006), Pridham (2005) and Vachudova (2005), among others, shed light on the question how the EU was involved in the inclusion process of the Eastern European states (Tim Haughton, 2007). This literature states that the EU's enlargement policy had a striking influence on the transformation of the new Eastern member states within a decade. Moreover, the respective literature underlines the impressive political and economical transformations from the beginning of the 1990s that occurred in the CEECs.

The major integration tool the EU applied, was the conditionality principle of offering full membership to the Union under the precondition of fulfilling prescribed criteria, namely the Copenhagen criteria (Noutcheva & Bechev 2008). A country that sought to be regarded as a credible accession candidate needed to prove to fulfil the Copenhagen criteria. The Copenhagen criteria are briefly; to be a working liberal democracy, supplemented by a

working economy guided by market rules. Many studies of European integration on conditionality supported the view that accession conditionality for democracy promotion had been influential. Respective literature emphasizes that the credible perspective of becoming a member of the European Union is the best instrument to foster democratic reform (Grabbe, 2006). Accession conditionality needs commensurate domestic politics in the respective country to unfold its potential. Literature suggests that the EU's external incentives stimulated domestic reforms towards democratization and economic reform (Schimmelfennig & Scholtz 2008).

Historically conditionality was set up as the granting of rewards in exchange of compliance, as applied by the IMF (International Monetary Fund) back in the 1950s. In convergence with the rationalist, incentive-based explanation, which is the predominant approach in the literature on conditionality, it is emphasized that conditionality was especially effective when the EU offered a credible membership and when the stakeholder government was not taking domestic costs of compliance into consideration (Epstein & Sedelmeier 2008). Negative and positive conditionality have to be explained, to understand external incentives provided by the EU to exert influence on candidate countries. Positive conditionality can be seen as offering financial benefits or other incentives to a second country, to make the second country change its political status quo towards a desired direction. Negative conditionality is different in so far that it aims at altering current occurrences, as economic relations or external political relations. Inherent in negative conditionality is thus, a deprivation of certain rewards, as second parties are not willing or capable of implementing rules set up by the EU (Veebel, 2009).

Nevertheless, we have to bear in mind that the concept of EU conditionality is broader and cannot be simply reduced to an offer of accession to the EU. The EU developed an extensive portfolio of conditionality demands and supplemented the Copenhagen criteria from 1993 to safeguard risks accompanied by enlargement (Pridham, 2010). This is also true for the policy field of the judiciary in Poland, which represents a unique field. On the one hand Poland represents a best-case scenario, as it was successfully integrated into the EU and was fast in transposing the *acquis communautaire*¹ and in fulfilling the EU's political criteria (European Commission, 1998). Therefore, we can expect that the respective independent variables size, strength, credibility and determinacy of EU conditionality had a degree, which was successfully leading to compliance with EU conditionality requirements. On the other hand the judiciary represents a unique field and compliance with EU conditionality requirements throughout time was rather ambiguous in this field. A within case analysis and process tracing in official documents of the EU, Freedom House and the CIRI data project can possibly address the research question and point at the factors that were dominantly responsible for compliance or non-compliance in the policy field of the judiciary in Poland.

1.1 Research question

In the theory part the most important concepts with regard to my thesis are presented. Moreover, in the Methodology section it is underlined how my research question is addressed and additionally the methodology discusses possible limits of my approach. The analysis emphasizes the empirical part of the thesis and carries out the data analysis. Finally the conclusion discusses the findings and puts forward future directions research in this field could take. The research question is this:

Which factors are most likely to influence compliance with the EU's political criteria in the Polish judiciary before and after accession to the EU?

Sub-questions, which are addressed in the upcoming parts, in this context are:

¹ The accumulated EU legislation; Legal acts and courts decisions, which constitute the body of EU law.

1. What constitutes compliance with the EU's political criteria in the field of the judiciary? (Addressed in the Theory)
2. What is political conditionality? (Addressed in the Theory)
3. What is the effect of size and credibility of EU conditionality on compliance with the EU's political criteria in the Polish judiciary before accession to the EU? (Addressed in the Analysis)
4. How do strength and determinacy of EU conditionality affect compliance during the accession to the EU in the Polish judiciary? (Addressed in the Analysis)

2. Theory

In this part of my proposal I present the main concepts and theories used in my Bachelor thesis, viz. compliance with the EU's political criteria and sorts of conditionality and how they function in relation to the independent variables. At the end of the section three hypotheses are underlined which are addressed throughout the thesis. One important aspect is the comprehension of the political criteria set up during the Copenhagen summit 1993, which need to be fulfilled to start accession negotiations with the EU. In my case I need to stress the Copenhagen political criteria in relation to the judiciary. Which conditions did the EU put forward to gain access to the EU? Moreover, decisive parameters that exert considerable influence on the working of conditionality are underlined. Another feature which has to be taken into consideration to understand EU conditionality, is the point in time in which EU conditionality takes place, rather before a credible EU membership perspective, at the point in time, when a credible membership perspective was put in place, or the time after the accession to the EU. In this research, the dependent variable is compliance with the EU's political criteria for the judiciary and the independent variables are the factors exerting influence on the compliance with the EU's conditions, namely size, strength, determinacy and credibility of the EU' conditionality.

The EU put forward political conditions in the fields of democracy and human rights that were necessary to start accession negotiations (Schimmelfennig & Schweltnus, 2006). Broadly formulated the Copenhagen criteria are: the need for democratic institutions, respecting the rule of law and minorities and having a working market economy being capable of facing the competition within the single market. Moreover, members are required to strive for the aims of political, economic and monetary union (Sadurski, 2004). At the beginning, just after the fall of communism, EU conditionality put emphasis mainly on human rights and on democratic stability. Conditionality was predominantly conducted via cooperation and association agreements with CEE states under the guidance of the principal assistance programme Phare. In general the Copenhagen conditions are different from traditional conditionality for benefits incurred by IFIs (International Financial Institution) in several aspects. IFI conditionality illustrates receiving benefits for the fulfilment of certain conditions. In the context of the IMF and the World Bank conditionality is mainly about the implementation of particular economic policies, e.g. for structural adjustment. The central benefit is finance by one of the institutions. On the other hand the EU conditionality for CEEs is not simply a set of conditions to receive certain benefits, but a developing process, which is highly political from the EU and CEE perspective. The content of EU conditionality and receiving particular benefits is rather opaque in comparison to IFI conditionality. This can be explained according to the complexity of EU rules, which are not catered to quantitative assessment to demonstrate clearly when they have been fulfilled (Grabbe, 2002).

2.1 Political Conditionality and the political criteria for the judiciary

Political conditionality, on the other hand, gained some strength after 1997, after the Commission began to judge the progress of candidate states in annual reports in the following areas: democracy and the rule of law (with subcategories on the parliament, the executive, the judicial system, and anti-corruption measures) and on human rights and the

protection of minorities (Sadurski, 2004). At the Madrid European Council in 1995, these conditions were narrowed down. The Commission added the need for adequate administrative and judicial capacities to the original Copenhagen criteria and started to benchmark countries in various reports accordingly in 1997. Countries heading for a membership in the European Union were demanded to match the criteria set up at Copenhagen and further to implement the judicial body of the European Union to their domestic judicial systems accordingly, without bailing out (Tim Haughton, 2007). The Copenhagen criteria for the judiciary can be illustrated as follows: First, the independence of the judiciary needs to be warranted. Secondly, the training of judges is of importance. Thirdly, the filling of judicial vacancies needs to be addressed. Fourthly, people need effective access to justice. Fifthly, the handling of cases needs to be improved and lastly court decisions have to be enforced effectively (Kochenov, 2004). With regard to a textual analysis of Copenhagen related documents, the following criteria have to be fulfilled to meet the EU standards of Democracy and rule of law for the judiciary. These criteria are similar to the ones declared by the EU. The judiciary should be independent, well staffed, well-trained, well-paid, efficient, respected, and accessible to people. Other branches should not interfere in the judiciary's self-governance. Especially, the judiciary's self-governance should be respected in the training of judges, the work of their self-governing bodies, and their nomination, as well as the work of courts (Kochenov, 2004).

Political conditionality includes, as mentioned before, the imposition of democratic rules put forward by the EU by candidate countries in order to receive rewards, in the form of financial aids or institutional assistance, or in the best-case membership. Conditionality is perceived as being mainly positive expressed in an often cited phrase saying 'the EU offers and withholds carrots but does not carry a big stick' emphasized by Smith and Young (as cited in Schimmelfennig & Scholtz, 2008 p. 5). This expression puts forward the idea that countries, which fail to meet the criteria set up by the EU, are simply denied assistance, membership or the support by EU grants. Usually the EU does not exert additional punishment, except for denying conditional grants to countries, failing to fulfil its criteria. The EU is rather warning the applicant countries continuously, to stick to the postulated criteria to receive grants or funds. This leads us to two policy instruments, which are important in relation to my independent variables, namely negative and positive conditionality. Positive conditionality can be described as, mutually, valuable mechanism of partnership between the EU and a partner country to foster social, political and economic development, by providing an effective motivation system. Since the 1990s, the concept of conditionality developed strikingly. Today an official comprehensive form with demands, an evaluation model, rewards and possible sanctions, supplements conditionality. Conditionality can be seen as the fulfilment of certain conditions for receiving benefits desired by another state. On the other hand, regarding negative conditionality and the failure to meet certain conditions, it can be described as rejection to pay rewards, or as receiving punishments and sanctions (Veebel, 2009).

Compliance with EU law became a large subfield in EU studies. So far it is not certain which factors account for compliance, or rather non-compliance. Many factors exist that presumptively have an influence on compliance with the EU conditions, but still, the dominant variable or the key to explain the compliance patterns was not found (Sedelmeier, 2008). An explanation might be that there is literally no dominant variable, but this is a question that needs to be addressed in another section. The general literature defined two main forms of non-compliance; *vis.* deliberate choice or involuntary defection as a result of constrained state capacity of the CEECs (Pridham, 2008). The external incentives model, which is described in the literature as a rationalist bargaining model is a useful theory to understand the concept of compliance properly.

2.2 The External incentives model

2.2.1 Factors enhancing EU conditionality

Following the external incentives model, with reference to the EU, it is underlined that EU external governance predominantly applies the strategy of conditionality to impose its rules on the CEECs. In return the EU offers possible rewards, like institutional ties, assistance in fields of trade and co-operation agreements, accelerating full membership of a candidate country in the EU. The starting point for the negotiations, or the bargaining between the EU and a candidate country, is the domestic status quo, which is not convergent with the EU's preferences. This status quo, of e.g. a CEEC, is described as a domestic equilibrium, which is modelling the preferences of the domestic government. By being exposed to EU conditionality, the domestic equilibrium is upset. This is done directly by intergovernmental bargaining or indirectly by affecting particular power holders in the domestic environment. In the last case, the EU exerts power in changing the opportunities in the domestic environment for peculiar actors to increase the likelihood of adopting EU rules. On the one hand, the harmonisation of domestic law requires the support of the domestic government; the domestic government intends to mitigate the influence of the EU, or other international actors, to maintain a high degree of political benefits for its own. Therefore, the following equation can be derived from the external incentives model: That is to say, that a state is prone to adopt EU rules, if the benefits of EU rewards are higher than the costs of domestic adoption. The benefits on the one hand and the domestic adoption costs on the other hand are presented as size of EU conditionality. Adoption costs are characterized by losing other rewards than the EU rewards, or welfare and power costs by private and public actors. Contrarily adoption costs can be equalized by EU rewards; therefore adoption costs can possibly become negative, because adoption costs are changing into net benefits for some or all the domestic actors (Schimmelfennig & Sedelmeier 2004). Factors in enhancing the effect of conditionality in general are: the determinacy of conditions for the external rewards, the size and credibility of external incentives, and the strength of conditionality. These factors are explained in the upcoming part.

External incentives were low before the start of the specific accession process in the mid-90s and again after accession 2004. Whereas during the accession process EU conditionality and its success depended on the clarity of EU demands for accession and the linkage of fulfilment of particular rules to receiving certain benefits, this is emphasized as strength of conditionality. In general conditionality is effective if the benefits (of e.g. financial and institutional rewards by the EU) are clearly conditional, determinate, credible and high, so that they can surmount the domestic costs of compliance with the EU conditions. Size and credibility of EU incentives have been proven to be important regarding the effectiveness of EU conditionality. Firstly, credibility of external incentives is described by the promise of membership and threat of being excluded from the accession process if conditional rules are not adopted. Research in the field of European studies (Kelley 2004a, 2004b; Vachudova 2005; Schimmelfennig, Engert und Knobel 'forthcoming') strongly underlined that a credible and conditional membership perspective was a necessary requirement to foster the adoption of political rules in candidate countries (Schimmelfennig & Schwellnus, 2006). Credibility was especially low at the beginning of the transformation process in Eastern Europe. At the beginning there was no membership perspective for the CEEs. The EU solely offered association agreements including only a fractional opening of markets and no political participation in the EU or decision power about financial transfers. Credible accession conditionality entered the stage in 1997, when accession negotiations started with the first four CEECs (Schimmelfennig & Schwellnus, 2006).

These conditions vary over time, but not within most of the CEECs. Secondly, in order to illustrate differences in policy transfers across countries and issues, determinacy and strength of conditionality have to be emphasized. Strength of conditionality refers to the degree of dependence on compliance with peculiar conditions. A country will not adopt rules of the EU, if they are not part of conditions necessary to receive a reward (Schimmelfennig & Schwellnus, 2006). Moreover it is of importance in how far the EU benchmarks peculiar

conditions and demands its fulfilment. Strength of conditionality can be explained by conditions, which are continuously underlined, which makes it comprehensible for countries, which conditions are of major importance for the EU. On the other hand, if the EU only partially announces conditions and emphasizes a lack of interest concerning certain policy issues, the respective countries are prone to disregard those policy issues, as presumptively compliance plays a minor role in enlargement decisions. Thirdly, determinacy of conditionality takes account of the clarity and determinacy of conditions themselves. So a 'rule is determinate if it is formulated in an unambiguous and binding way' (Schimmelfennig & Schwellnus, p.5). If a rule is indeed formulated in a clear and unambiguous way, the respective government of a country knows precisely which measures they have to take to fulfil the EU conditions. Moreover a higher degree of determinacy creates a higher degree of trustworthiness to receive the payment of the reward, as the EU cannot change the meaning of a determinate and clear rule to its advantage (Schimmelfennig & Schwellnus, 2006).

According to Schimmelfennig and Sedelmeier (2004) rule transfer from the EU to the CEECs and the variability in its effectiveness is best understood, as already mentioned, by the external incentives model. Conditionality requires credibility, in respect of withholding the rewards for the case of non-compliance and on the other side for the case that the EU has to share funds, in case of compliance. Literature confirms that the credibility of the threat was always given in the EU candidate's relations. Generally the dependence on the EU for candidates was bigger than vice versa, in terms of economy and regarding the size of the EU's internal market (Moravcsik & Vachudova, 2003 as cited by Schimmelfennig & Sedelmeier, 2008, p. 5). Still it is important to highlight that there is no unique pattern to encompass political conditionality as a whole. Conditionality patterns have rather varied within countries and several issues (Pridham, 2008). All in all, following the strategy of reinforcement by reward, effective external governance should possess the dominant bargaining power of the external agency and certainty of the conditional payments on the side of the receiving state. In line with the external incentives model the size of domestic adoption costs and their distribution within domestic actors will explain partially if the candidate states accept or reject the conditions.

2.2.2 The Hypotheses

As mentioned above, the possible membership for the EU should be more powerful than association and assistance offers, because the visibility of the reward in terms of credibility and size of the reward is higher. This can explain that the EU-impact on candidates for membership is bigger than on states that are not selected as potential member countries in the European Union. Finally, the longer a country has to wait to receive the reward, the longer it will wait with compliance to EU rules. As a consequence the effectiveness of rule imposition increases with the size and the credibility of receiving the reward (Schimmelfennig & Sedelmeier 2004). Because of that the period closely tied to accession is interesting to investigate.

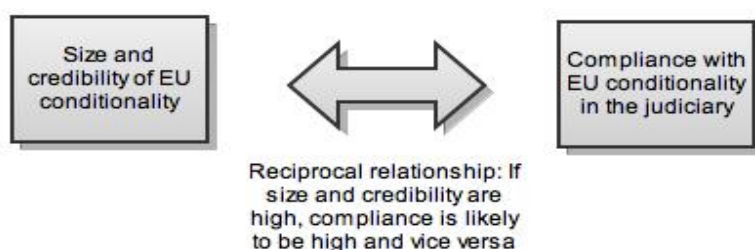
An important question to address is, why new member states after having gained full membership to the European Union are not seduced to stop their reform ambitions, as the external incentive of becoming a member state is exhausted and reforms have been so costly. If the costs for domestic post-compliance remain high, from the rationalist perspective, the compliance in areas where the EU is not able to threaten the particular state should decline. These areas can be divided by rules that are part of the *acquis communautaire*, areas in which EU institutions are still capable of exerting conditionality after accession, rules that were part of its political conditionality and rules that were not at all part of conditionality (Sedelmeier & Epstein, 2008). Accordingly, compliance with the EU conditions in the new member states could decrease. In fields where the EU is exerting topic-specific conditionality after accession, compliance is prone to issue and country specific attributes (Sedelmeier & Epstein, 2008).

For the subject of EU accession, size and credibility of external incentives were flexible throughout time. Especially, before the particular accession process, size and credibility were

low in the mid 90ies and after accession in 2004. Whereas during the accession process size and credibility of external incentives depended on the determinacy and strength of EU statutes, with respect to the formulation of rules necessary for the fulfilment of EU conditionality demands. At the beginning the EU did not provide any membership perspective. Later on association agreements were designed, which consisted only out of a fractional opening of markets and no specific rights for the CEECs. From 1997 credible accession conditionality was put in place, when it was decided to start accession negotiations with four of the CEECs.

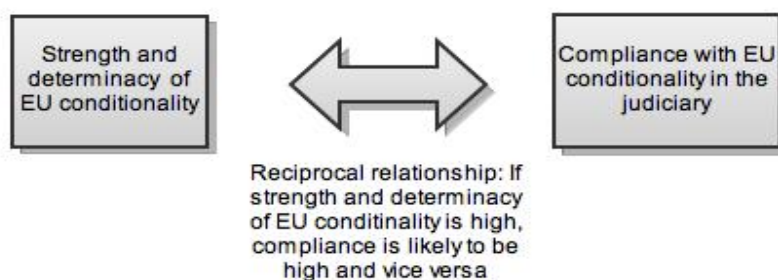
Hypothesis 1: *Before accession: If size and credibility of EU conditionality were high, compliance with the EU's conditions in the Polish judiciary was likely to be high.*

Figure 1: Hypothesis 1:²



Hypothesis 2: *Before accession: If strength and determinacy of EU conditionality were high, compliance with the EU conditions in the Polish judiciary was likely to be high.*

Figure 2: Hypothesis 2:²



After enlargement in 2004 conditionality decreased significantly, because the reward (membership) had been given and could not be withdrawn in case of non-compliance (Schimmelfennig & Schwellnus, 2006). Therefore one can distinguish between ideal typical constellations with regard to the effectiveness of policy transfer. Firstly, phase one represents the time before the establishment of a credible and conditional membership perspective, where the effectiveness of EU conditionality was independent from the strength of conditionality and the determinacy of conditions was generally rather low. Secondly, phase two is described as the period after the establishment of a credible and conditional EU membership perspective, vis. the second half of the 90ies. Thirdly, the final phase of the

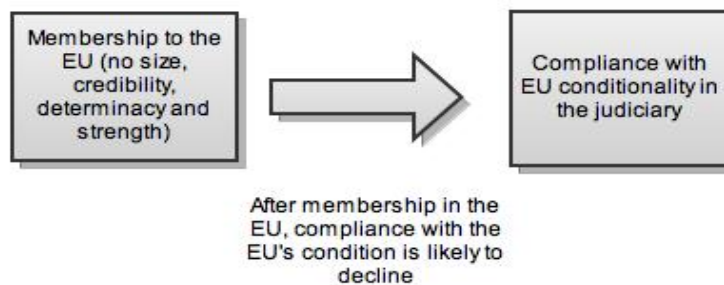
² Figure: 1: Personal realisation based upon the analysis of Schimmelfennig & Schwellnus, 2006

³ Figure 2: Personal realisation based upon the analysis of Schimmelfennig & Schwellnus, 2006.

accession process, namely the period closely tied to accession, is emphasized as phase three. Additionally, one can portray the period after accession to observe how compliance patterns change. As it was stated above, one expects compliance to decrease after membership was reached.

Hypothesis 3: *After accession: After Poland reached full membership to the EU, compliance with the EU's conditions for the judiciary was likely to decline.*

Figure 3: Hypothesis 3:⁴



3. Methodology

In this part of thesis I am going to present the research design of the research approach. Moreover the measurement of the independent and dependent variables are explained and what constitutes the independent and dependent variables is highlighted. Finally the case selection and possible effects of the case selection on the findings are discussed

3.1 Research Design

For the analysis I am going to apply within-case analysis, which is a mode of causal inference in which researchers can test hypotheses in the light of various features of their cases in question. Within case analysis is a technique applied for qualitative data analysis. Moreover within case analysis is sometimes described as causal process tracing. George and Bennett (2005) put forward the concept of process tracing to underline the relevant causal processes between an independent variable or variables and the outcome of the dependent variable. A common pattern for within case analysis in comparative politics includes stressing the intervening mechanisms connecting a hypothesized variable to an outcome. For small sample studies this helps researchers to prevent confusion between spurious correlation and causal association, when it is emphasized which mechanisms connect a presumed explanatory variable with the outcome variable (James Mahoney, 2005).

Process tracing is conceptualized, as the systematic examination of diagnostic evidence, chosen and evaluated commensurate to the research question and hypotheses postulated by the researcher. Process tracing possibly can describe political and social phenomena and evaluate causal claims (David Collier, 2011). Furthermore, process tracing pays particularly attention to sequences of independent, dependent and intervening variables. To find evidence, which can be described as diagnostic, prior knowledge is necessary. Moreover one has to understand that process tracing, as a tool of causal inference, puts emphasis on the unfolding of events, or situations, over time. Thus, the descriptive element of process tracing is concerned about selecting proper snapshots at a series of specific moments, instead of observing change or sequence (David Collier, 2011).

⁴ Figure 3: Personal realisation based upon the analysis of Schimmelfennig & Schwellnus, 2006.

In my research I am going to investigate a policy field, namely the judiciary in Poland, concerning compliance with the EU's political criteria, throughout three different periods of time. Moreover I am investigating four factors possibly exerting influence on compliance with the EU's political criteria for the judiciary, namely size and credibility of EU conditionality and strength and determinacy of EU conditionality. The research design is longitudinal in nature, as the data for each variable is measured at different time periods. Longitudinal data is helpful in this case, to carry out the measurement of differences or change in variables in several time periods, to point at the causes for compliance patterns. Moreover, I reserve the right to deviate partially from the qualitative approach to explore relevant theoretical issues consistently (Yanow, Schwartz-Shea & Freitas, 2008).

The first time period is the period after the establishment of a credible and conditional EU membership perspective. Hence the years 1998 and 1999 are presented. Secondly, the phase of the period closely tied to accession is investigated. In our example the years 2002 and 2003 are scrutinized. Finally the period after accession is illustrated in the years 2005 and 2006. The different time periods were chosen to illustrate the different effects of the independent variables, in the three different phases. In the time period after the accession agreement was signed, size and credibility of EU conditionality were high. Strength and determinacy of conditionality is expected to be especially high, after the accession agreement was signed, but even higher in the years closely tied to accession, respectively in 2002 and 2003. In the time period after accession, exemplified in this approach by 2005 and 2006, the effects of the independent variables are likely to decline, due to membership to the EU.

In order to shed light on the research question: 'Which factors were most likely to influence compliance with the EU's political criteria in the Polish judiciary before and after accession?' regular reports encompassed by the EU and Freedom House reports are going to be analysed to see how EU conditionality led to compliance in the policy field judiciary in Poland. Moreover the results from the CIRI human rights data project are included in the analysis to scrutinize compliance with EU conditionality (CIRI Human Rights Data Project, 2011). Therefore historical events closely linked to political conditionality and the fulfilments of its conditions in Polish judiciary have to be regarded in detail. In this approach the compliance with the EU's political criteria is going to be investigated in the three before mentioned time periods. By doing that I can find out, which factors exerted considerable influence on compliance with the EU's conditions. Especially size, credibility and determinacy and strength of EU conditionality are measured, to find clues about the most dominant parameters leading to compliance. I am carrying out a deductive research approach, where I am taking given theories and hypotheses testing them in an analysis of official policy documents by the mentioned organisations.

3.2 The dependent variable

In this research design the dependent variable is 'compliance with EU conditionality regarding the Copenhagen political criteria for the judiciary'. In order to measure that we have to see which obligations the EU envisaged for Poland for the judiciary and how Poland succeeded in implementing those requirements throughout time. This can be emphasized by progress made in the transposition of EU regulations from year to year respectively. Therefore I am taking account of the relevant changes noted in the regular reports from 1998 to 1999, 2002 and 2003 and in the Freedom House reports from 2003, 2005 and 2006. A state can be regarded to be under compliance, if it has either signed a treaty or adopted law on the basis of a rule postulated by the EU and the Commission declared by itself that the respective condition was met. The reports will explicitly underline if compliance is the case or not. Therefore, with respect to the judiciary, certain criteria have to be regarded. Moreover the CIRI data provides information about the condition of the judiciary in Poland on a scale from one (low) to ten (high) by the inclusion of several indicators as perceptions of incidents of crime, the effectiveness and predictability of the judiciary and the enforceability of contracts. The CIRI results are presented in an extra section in the analysis part.

As mentioned in the theory part, the EU requires an independent, reliable and efficient judiciary including sufficient human resources (qualified staff), adequate and modern equipment, acceleration of court proceedings (to avoid unreasonable delays), reduction of the number of pending cases, measures to ensure the enforcement of judgements, and procedures to ensure the ethical conduct by the judiciary and the effective access to justice (European Commission, 2005). We can follow these criteria from year to year to scrutinize the degree of compliance. If e.g. in 1998, in a regular report or Freedom House report, it is criticised that the judiciary e.g. is lacking independence or that judges miss professional knowledge and that sufficient staff is missing, we conclude that compliance is problematic. If the report on the other hand states that all measurements have been taken and the judiciary is sufficiently meeting the requirements, we underline that compliance was probably rather successful. By comparing the number of requirements that have been successfully or unsuccessfully fulfilled, we can determine whether compliance or non-compliance is rather the case. The weights of the single attributes are not pre-assigned, rather the analysis by itself will account for a rational comprehension of compliance with EU conditionality, with the several aspects of the judiciary. Therefore we rely on the judgement of the Commission reports, clarifying whether compliance is at hand or not. This approach is supplemented by the according CIRI data in the relevant years.

Nevertheless we can strengthen the approach by including reports on the Polish judiciary in the respective years by another organisation, namely Freedom House, which uses similar indicators to benchmark the judiciary. We are conducting the same approach for measurement, in stressing the deficiencies the report emphasizes in the respective years and comparing it to the political criteria the EU put forward for the judiciary. If most of the criteria are met, we can underline that compliance with the EU criteria is high. On other hand if most of the criteria lack fulfilment, we underline that compliance is low. Freedom House ranks the quality of the judicial framework for Poland, since 2003. We can make use of the regular reports only until accession in 2004; therefore we are going to judge on the compliance with EU conditionality after accession by analysing the Freedom House reports of 2005 and 2006. The measurement of compliance in 2005 and 2006 is a very helpful feature to understand the effects of the disappearance of EU conditionality, as the effects of the independent variables largely disappear after accession (Schimmelfennig & Schwellnus, 2006). Accordingly we have an insight into the Polish judiciary and the degree of compliance with the EU's political conditions without the effects of size, credibility, strength and determinacy of EU conditionality in 2005 and 2006. Possibly the Polish judiciary in 2005 and 2006 and the degree of compliance with the EU's political conditions looks different than in comparison to the previous years, where the effects of the independent variables are given. The measurement of the independence of the Polish judiciary is additionally adjusted by data from the CIRI human rights project, which describes the independence of the Polish judiciary according to various indicators, which are emphasized later on.

With respect to Freedom House, we can expect a more critical view towards the judiciary in Poland, as it is a Non-Governmental Organisation. Due to that Freedom House is neutral with respect to the success or deficiencies of EU conditionality or the degree of compliance and can possibly observe the situation from a rather objective perspective. One factor, which could bias the judgements of the European Commission in the reports, is that the EC is involved as a stakeholder in the formulation of the conditions for the judiciary and the declaration of successful or unsatisfying compliance with the EU's conditionality. This point has to stay in mind, while carrying out the analysis. On the one hand compliance might be embellished and the standard for compliance is set too low, to warrant successful overall-compliance. On the other hand this negative aspect of the measurement of compliance in the regular report might be balanced by the fact that the EU has an economic and social interest in improving the situation, which is partially contradicting the statement that the EU intends to embellish the situation of the candidate countries in the regular reports.

In general the measurement of an appropriate level of a country's judiciary can be done in several manners. Still the elements, we chose to put our emphasis on, are defendable, as they cover most of the spheres of a judiciary in a democratic state. Concerning the measurement of the single elements, we have to admit that we are focusing dominantly on

the judgements from Freedom House and the European Commission. The judgement of the CIRI human rights data project and its rule of law indicator for the years 1998, 2002, 2003, 2005 and 2006 are presented in a separate section in the analysis part. For the year 1999 no data was available. We could increase the quality of this approach by including in depth analyses of all the elements. Additionally, we could have contacted other organisations or legal experts providing information on the judiciary in Poland. In defence of our approach, we can underline that numerous experts and organisations collected the information in the regular and Freedom House reports. Moreover the Rule of law indicator, as part of the CIRI human rights data project, among others used by the World Bank is included in the analysis. The Rule of Law indicator measures, by inclusion of various indicators, the degree to which agents follow the rules of society. Indicators, which are part of the rule of law estimate, are perceptions of incidence of crime, the effectiveness and predictability of the judiciary and the enforceability of contracts. Each year a score with respect to the quality of rule of law of a country is assigned ranking from (1) low to (10) high

Due to the inclusion of several sources measurement error is expected to decrease in spite of the flaws they have.

Table 1: Dependent variable⁵

Compliance with the EU's Political Criteria for the Judiciary	Measurement in the Regular Reports and Freedom House Reports	Indicators: Sufficient; Not mentioned, Insufficient
Sufficient Human Resources	<i>Textual analysis:</i> Are the reports underlining that sufficient human resources are in place or not? Is it an urgent problem or is it a rather small problem? What is the report saying?	Sufficient; Not Mentioned; Insufficient
Adequate and Modern Equipment	<i>Textual analysis:</i> What is the state of art of technological equipment described in the reports? Is it described as a major problem or rather a small issue, which needs to be addressed? How is the wording?	Sufficient; Not Mentioned; Insufficient
Acceleration of Court Proceedings	<i>Textual analysis:</i> Are the reports underlining that an acceleration of court proceedings is necessary? Are the reports rather underlining that speed of court proceedings is satisfying?	Sufficient; Not Mentioned; Insufficient
Reduction of Number of Pending Cases	<i>Textual analysis:</i> Is it emphasised that there is a significant amount of pending cases?	Sufficient; Not Mentioned; Insufficient
Measures to Ensure the Enforcement of Judgements	<i>Textual analysis:</i> Is the enforcement of judgements warranted or conducted rather sloppy? What are the reports underlining?	Sufficient; Not Mentioned; Insufficient

⁵ Table 1: Dependent variable. Personal realisation.

Procedures to Ensure the Ethical Conduct by the Judiciary	<i>Textual analysis:</i> Is it criticized in the regular reports and Freedom House reports that the judiciary is proceeding unethical?	Sufficient; Not Mentioned; Insufficient
Effective Access to Justice	<i>Textual analysis:</i> Do Polish citizens have an effective access to Justice? What are the reports suggesting?	Sufficient; Not Mentioned; Insufficient

Criteria that constitute 'not mentioned' indicators in the analysis constitute a flaw in the analysis, as they cannot be sufficiently addressed. They can be addressed in future studies by application of alternative measures as expert interviews or other official papers of the Polish government or information provided by respective twinning projects concerned about the Polish judiciary.

Additional aspects on which the analysis of the dependent variable pays regard to are: Independence of the judiciary in general, the political independence of judges and the selection of judges. Additionally to the textual analysis of Freedom House and the Regular reports we will add data from the CIRI Human rights Data project to supplement our analysis. With regard to the 'ciri_injud variable' derived from the CIRI Human rights Data project we can check the independence of the Polish judiciary on control from other sources, as e.g. another branch of the government or the military in the respective years. The degree of independence in the CIRI data in the respective years is described as 1. (0) Not independent; 2. (1) Partially independent; 3. (2) Generally independent. Unfortunately this data is solely provided for 2007 and 2008 (CIRI Human Rights Data Project, 2011). Nevertheless we can use the criteria formulated in this approach and check in the regular reports and Freedom House reports for the criteria and whether they are emphasized as sufficient, insufficient or if they are not mentioned at all.

We use a separate table here, as these are the criteria proposed by the CIRI human rights data project.

Table 2: Dependent variable⁶

Compliance with the EU political criteria for the judiciary	Measurement in the Regular Reports and Freedom House Reports plus CIRI data	Indicators: Sufficient; Not mentioned; Insufficient
Political independence	<i>Textual analysis:</i> What are the reports explicitly say about the political independence of the judiciary in Poland?	Sufficient; not mentioned; Insufficient Plus CIRI data: Not independent, Partially independent, generally independent
Selection of judges	<i>Textual analysis:</i> How is the appointment of judges carried out? It is based on fair democratic procedures or rather catered to the desires of influential politicians e.g.?	Sufficient; not mentioned; Insufficient Plus CIRI data: Not independent, Partially independent, Generally independent

⁶ Table 2: Dependent variable: Personal realisation

Independence of the judiciary	<i>Textual analysis:</i> What is written about the independence of the judiciary? Can it be seen as rather independent or dependent on external influences?	Sufficient; not mentioned; Insufficient. Plus CIRI data: Not independent, Partially independent, generally independent
-------------------------------	---	---

3.3 The independent variables

The independent variables in this research are the factors, or the parameters exerting influence on compliance with the EU's conditions. I am investigating several factors according to my hypotheses, predominantly the size, strength, credibility and determinacy of EU conditionality in three time periods.

3.3.1 Size of EU conditionality

Firstly I am going to investigate on the effect of size: Size refers to the size of domestic adoption costs and their distribution within domestic actors, which can explain if the candidate state accepts or rejects the conditions set up by the EU. Adoption costs are characterized by losing other rewards than the EU rewards, or welfare and power costs incurred by private and public actors. Adoption costs can be balanced by EU rewards, therefore adoption costs can become negative and they are becoming net benefits, for some or all the domestic actors (Schimmelfennig & Sedelmeier 2004).

I measure this by analysing the regular reports for the respective years put forward for the analysis. In general the size of the net benefits was high since the accession agreement in 1997, as the main reward was the foreseeable membership. Still other rewards or domestic adoption costs can be drawn into consideration. In the regular reports, it is emphasized, which rewards Poland received and which rewards were withdrawn due to missing compliance. Unfortunately, it cannot be traced back clearly in all the cases, due to which lack of compliance a reward was withdrawn. Nevertheless, if a reward was withdrawn or handed out, due to successful or unsuccessful compliance with the EU conditions in the judiciary, I will point that out. Adoption costs will be complicated to measure as well, as the analysis is constrained on the Regular and Freedom House reports. But, if it is emphasized that e.g. a law concerning the immunity of judges could not be adopted due to the fierce opposition of a peculiar veto player, we can underline that adoption costs in this respect were high. On the other hand if a law from one year to the other year was passed easily, and it is explicitly described like that, we can stress that adoption costs were low. The measurement of the independent variable cannot be carried out in a way that all constraints can be addressed, regarding the scope of a bachelor thesis. It is too exhaustive to clearly figure out for each and every single condition, which adoption costs played a role and which benefits were there on the other side. This makes the measurement of this independent variable concerning the suggested approach rather sloppy. Luckily, we know that size of EU conditionality was high since the accession agreement was signed in 1997 and that size of EU conditionality became stronger with the upcoming accession and after signing of the accession treaty in 2003 (Sadurski, 2004). Therefore we can still investigate the impact of the independent variable size by referring to the fact that the size of benefits, or the external reward, continuously increased since 1997 up to 2004 and then largely disappeared, due to membership.

3.3.2 Credibility of EU conditionality

Secondly credibility is underlined as independent variable: Credibility in this case means both, the credibility of promise of membership and the threat of being excluded from the accession process, or the withdrawal of certain benefits, if rule adoption is refused. Credibility for receiving the main reward membership was high, since the accession agreement in 1997. Moreover with respect to the theory, credibility of the threat was always given in the EU candidate's relation (Moravcsik & Vachudova, 2003 as cited by Schimmelfennig & Sedelmeier, 2008, p. 5). In our analysis the credibility of handing out, or withdrawing particular rewards linked to the fulfilment of peculiar obligations, is expected to be higher in the period closer tied to actual accession. Still we can investigate if we can discover deviations from this pattern in the policy field judiciary. We can have a look in the regular reports to investigate if the withdrawing or handing out of rewards concerning the judiciary was credible or not. So, if we can find information emphasizing that compliance was low in the policy field of the judiciary and reward was paid nevertheless, we conclude that credibility of withdrawing the external reward had a rather weak influence on compliance and vice versa. When it is underlined that compliance was rather successful in the judiciary and the external rewards were handed out, we can suggest a higher degree of credibility for this policy field.

Still as mentioned before, in the regular reports, it is hard to trace back payments and withdrawal of rewards to peculiar incidents in the compliance or non-compliance in the judiciary and it can be done rather superficially. Nevertheless, we know that credibility of the external reward was continuously high since 1997. Moreover the credibility of the external reward became bigger in the period closely tied to accession in 2004. Therefore we can take for granted a high degree of size, concerning the external reward, and credibility of EU membership, in the years of analysis. After accession the credibility of EU membership as a factor exerting influence on compliance disappears, due to membership (Schimmelfennig & Schwellnus, 2006).

3.3.3 Determinacy of EU conditionality

Thirdly determinacy of EU conditionality is emphasized as an independent variable: Determinacy refers to the clarity of the conditions themselves. A rule e.g. is determined if it is formulated in a way, which is coherent and binding. In this case, the target country knows what to do and in which case it accomplishes the goals set up by the EU and in which cases it fails to do so. So a rule is determinate, if it is formulated in an unambiguous and binding way. We can figure that out by investigating the formulation of the respective rules in relation to the judiciary, in the several regular reports throughout the years. If it is clearly and in detail underlined in the regular report, what Poland's judiciary has to accomplish and which measurements have to be taken, we can suggest that the degree of determinacy was high. If in the regular report the formulation of the obligations is rather sloppy and short, we can stress that determinacy was rather low. The measurement of the independent variable determinacy can be regarded as coherent, as the intention behind the regular reports was to benchmark the respective countries and create a sense of urgency around the compliance with certain issues. Therefore, investigating on the formulation of rules and statements in the regular reports on their degree of coherence and clarity can be emphasized as a valid measurement technique of the independent variable determinacy.

3.3.4 Strength of EU conditionality

Fourthly, strength of conditionality is highlighted as an independent variable: Strength of conditionality is a statement about the importance of compliance in a particular policy field vis. a vis. other policy fields (Schwellnus & Schimmelfennig, 2006). Conditions, which are continuously underlined, make it comprehensible for countries, which conditions are of major importance of the EU, so we can speak of strong conditionality or high degree of strength of conditionality. Additionally if it is clearly underlined, which issues need to be addressed to

receive a peculiar reward, we speak of strong conditionality or a high degree of strength of conditionality. This can be respectively described as strong conditionality. So if we can detect rules, which were mentioned again and again in the 4 years before accession, we emphasize that strength of conditionality was high accordingly and vice versa. Or if we detect rules, which are clearly conditional for receiving a peculiar reward, we underline that strength of conditionality is high respectively. This approach is again coherent concerning the idea of benchmarking and naming behind the regular reports. So the regular reports serve as a valid data set. Still, possibly it is hard to encompass all the measurements and pressures, which could be emphasized as belonging to strength of conditionality, used by the EU to enhance compliance with EU conditionality for the judiciary. But regarding the scope of the thesis the focus on the analysis of strength of conditionality in the regular reports is justified.

Table 3: The independent variables¹

Independent Variable	Description of the Independent Variable/ Criteria	Measurement of the Independent Variables in the Reports/ Qualitative Indicators
<u>1. Size of EU Conditionality</u>	-Size of the Domestic Adoption Costs and Distribution within Domestic Actors - Adoption Costs balanced by EU rewards = net benefits	-Is the report underlining that certain Domestic Actors had to face significant adoption costs in the respective years? Did the risk was high to loose political or societal power due to EU demands? If yes, can this be emphasized as high in comparison to the amount of benefits they were receiving? Which EU rewards did the Polish judiciary receive (Phare ² e.g.)? What is illustrated with respect to that in the Regular reports?
<u>2. Credibility of EU Conditionality</u>	-Credibility of promise to membership -Credibility of the threat of being excluded from the accession process, or the withdrawal of certain benefits, if rule adoption is refused	-The credibility of promise to membership was high since 1997, additionally the threat to be excluded from membership was given, too - Credibility refers to whether money/reward is given or withdrawn in response to sufficient or insufficient compliance - Did the EU hand out/ withdraw money in the case of sufficient/insufficient compliance?
<u>3. Determinacy of EU Conditionality</u>	-A rule e.g. is determined if it is formulated in a way, which is coherent and binding. In	<i>Textual analysis:</i> How are the regular reports addressing deficiencies in

¹ Table 3: Independent variables: Personal realisation

² Phare: A Programme of Community Support for the countries, which applied for membership. Partially Phare was subsidizing the judiciary sector.

	<p>this case, the target country knows what to do and in which case it accomplishes the goals set up by the EU and in which cases it fails to do so.</p> <p>-Determinacy of conditionality is the clear description of rules by the EU, which need to be transferred by a candidate country</p>	<p>the Polish judiciary? Is it clear and binding or rather brief and sloppy? (Formulation, Precision)</p>
<p><u>4. Strength of EU Conditionality</u></p>	<p>- Strength of conditionality is a statement about the importance of compliance in a particular policy field vis. a vis. other policy fields. If it is clear which policy area needs to be addressed to receive a reward we can speak of strong conditionality and vice versa.</p>	<p><i>Textual analysis:</i> Is it clearly emphasized, which rules need to be transferred? (Formulation, Frequency of statements)</p> <p>Is it clear which areas of the judiciary needs to addressed in order to get a reward paid or withdrawn?</p>

3.4 Case selection

Poland as a country and policy measures within Poland, as unit of analysis is interesting to consider, as Poland is generally a best scenario case for the functioning of EU conditionality. Poland is the biggest country from the CEECs, which entered the EU. Prospect candidates and the EU can presumptively learn important lessons from the accession of Poland, a country encompassing around 38 Million people. The accession of Poland can be seen as successful, as e.g. Poland nowadays still puts itself on the map with successful news about its steady rising economy and impressive growth rates throughout the last years. Especially with regard to the possible accession of a huge sized country like Turkey some comparisons might be drawn, concerning organisational process to supervise the transformation of a 'similar' sized country (Baldwin, Portes & Francois, 2007). Poland might be presented as an outlier case, due to its high economic impact on the EU, due to its vote power in the council with respect to its population of around 40 million and in relation to its success story, its economic rise in spite of the financial crisis. After the financial crisis broke out the global economy declined. Poland was the only country in the EU representing a country with steady rise in GDP, respectively 1.7 % in 2009. The strength of the Polish economy was especially striking considering the comparison with other CEECs, whose economies shrank to a similar extent, as the EU-15 economies (Konopczak & Marczweski, 2011).

Another example underlining that Poland is a best scenario case, with respect to EU conditionality, is that in 1997 the Commission pronounced that some countries already fulfilled the democracy requirements under the Copenhagen criteria. Among the leading group was Poland. Moreover the domestic area in Poland can be described as highly supportive. Initial institutional changes in Poland resulted from domestic public pressures, where the democratic opposition elites pressed forward (Sadurski, 2004). The EU continuously underlined the proper functioning of political institutions in Poland. Elections in 1991 and 1993 were described as free and fair, like the presidential election in 1995 (European Commission, 2002). Moreover it was illustrated that the opposition played a normal role, in the context of the working of the institutions. But on the other hand the judiciary was regarded more critically. It was stated that still a lot of efforts have to be done to

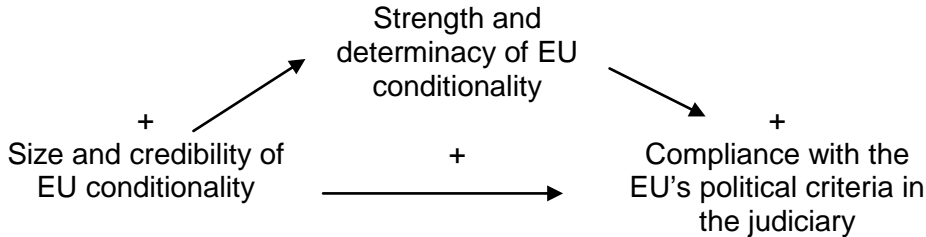
improve the judicial system (European Commission, 2002). The judiciary played an important role in adjusting the Polish legal system to the requirements of the *acquis communautaire*. In the pre-accession period, the scope of action of the courts was constrained, as EU law was not part of the domestic legal system. The EU rules of supremacy, direct applicability and direct binding were not binding on Polish courts, as those rules were only applicable in member states of the EU. In many cases the courts faced the dilemma to either apply domestic law accordingly, or to stick to the requirements of the *acquis*. During the pre-accession period, non-conformity with EU law in Poland appeared several times, due to striking economic and legal concerns.

The lack of necessary legal procedures was not the only flaw in adopting the *acquis* legislation. Moreover the state administration was often missing coordination and the staffs were often too inexperienced to apply EU law and new legislation (Kochenov, 2004). On the other hand, the transition to democracy in Poland did not entail a tough break to the former regime in the judiciary. Old staffs of the former communist regime were integrated in the new system. In 1952 the constitution was changed to introduce principles of judicial independence. Secondly, the final constitution of 1997 formalised the High Judicial Council, which was introduced in 1989 (Piana, 2005). In the system of governance of the Polish judiciary, veto players had many possibilities to intervene. After the transition, the Ministry of Justice was responsible for the budget process and due to that, to a far extent able to exert influence on the judicial offices and the actions of the presidents of the courts. The Ministry of Justice under the supervision of the High Judicial Council chose the presidents of the courts. Moreover the Ministry of Justice was able to influence the judicial administration by selecting, promoting and evaluating judges. After the transition the High Judicial Council was implemented as the sole advisory body. This sole advisory body was missing authority and did not guarantee the independence of the judiciary.

Another point is that judicial independence in Poland was seen as the right to act alone, derived from the Polish legal culture in which discussion or criticism towards the judge is seen as constraining his independence (Piana, 2005). Presumptively, similar reasons and the lack of national judicial training led to delays in judicial procedures. Contrary, during the last period of the communist regime academics safeguarded the maintenance of scientific research and the university was almost the only place where independent thought was accepted. This rather liberal tradition was transferred to the departments of law and explains to a certain extent, why the Polish academia used to have good contacts with legal experts from Western countries. Therefore the new departments of law were accessible for new thoughts and reform. Still contrarily, the judiciary in Poland is described as weak, in spite of efforts, which were made (Piana, 2005).

3.5 Possible effects of case selection

Expected elaboration model: In the partial interpretation, the original bi-variate relationship remains intact (albeit slightly weaker), but the test variable interprets part of the original relationship. Figure 4: Theoretical expectation case selection:³



³ Figure 4: Theoretical expectation case selection. Personal realisation of the figure.

The integration of Poland to the EU happened relatively smoothly. Poland can be illustrated as a prime example of a country that successfully complied with the EU's conditions throughout the years in various fields. Therefore one can expect theoretically that size of the external reward, credibility of the external reward and determinacy and strength of EU conditionality were high before accession. The judiciary in Poland, in the context of EU conditionality, is interesting to consider, as theoretical derived mechanisms of conditionality do not seem to be straightforward at first sight. Rather it can be expected that the empirical test, of the effects of the independent variables on compliance with the Copenhagen political criteria in the EU's regular reports and Freedom House reports, will lead to ambiguous results. Theoretically we can expect that compliance with EU conditionality in Poland was high, due to the expectation that size, credibility, strength and determinacy were high. Further, it is underlined that those four independent variables are dominantly used to explain successful compliance with the EU's condition in general and in most of the policy fields. On the other hand, the judiciary in Poland and the judiciary in candidate states in general was ever a problematic case (Kochenov, 2004). Therefore we can expect that compliance with EU conditionality will lack in the respective years of analysis, in spite of favouring overall conditions, which is thus representing rather a puzzle, which is putting forward the idea that EU conditionality did not have a strong effect on the judiciary. Nevertheless it was continuously stated that compliance with the political criteria was met, so deviations, which lead to other conclusions will be outlined in the respective part of this thesis. Therefore, at this point we can expect that size, credibility, determinacy and strength of EU conditionality exerted some influence on compliance with EU conditionality in the judiciary, especially if all the four factors exerted influence on high level. If this is really the case needs to be addressed in the analysis and conclusion part.

4. Analysis

In this section of the thesis the empirical part is carried out. The third and fourth sub-questions are addressed and the analysis of the EU regular reports and the Freedom House reports is conducted. This is done as described in the methodology section above. Moreover in the Appendix tables illustrate the precise record of the indicators used throughout the document analysis. In this section partially information are deviating from the criteria and indicators listed in the methodology section. This was done as these information were seen as supportive to address the research question and to a broader view on the topic.

4.1 Compliance and effects on compliance 1998

In the section describing the judiciary in Poland in the regular report of 1998, it is illustrated that difficulties and constraints remain in this field. Explicitly, delays in first instance judgements in civil matters and criminal procedures, the maximum detention time before trial, treatment of cases relating to real estate issues and the enforcement of court rulings and access to the courts, were criticised. With regard to compliance especially in the fields of acceleration of court proceedings, effective access to justice, procedures to ensure the ethical conduct by the judiciary, reduction of the number of pending cases, sufficient human resources and overall the efficiency and reliability of the judiciary illustrates problems with compliance with EU conditionality (European Commission, 1998). Therefore, in 1998 overall compliance can be emphasized as generally low in the field of the judiciary. At the same time it is highlighted in detail in which fields progress was made. Finally, in a short concluding sentence it is expressed that more efforts are required to improve the status of judges, prosecutors and officials. Furthermore, it is stated that especially the level of enforcement of judicial decisions and the length of judicial proceedings in commercial matters particularly need striking improvement (European Commission, 1998).

The independent variable 'size' can be regarded generally as high, due to the prospective membership to the EU. In the field of the judiciary on the other hand, it does not become clear, which are the benefits linked to the fulfilment of the peculiar conditions. The Phare

programme provides considerable amounts of money, namely 150 MECU⁹ (approximately 150 € million). This money is shared dominantly for the fields, stated as 'Accession Partnership Priorities', among others the judiciary. It is underlined that 34 MECU of this reward were withdrawn. This money was withdrawn because projects under Phare were not sufficiently met (European Commission, 1998). So comparing these amounts one could underline that the benefits of the external rewards were high. But regarding the rather ambiguous compliance patterns for the judiciary one could expect that domestic adoption costs were higher. Unfortunately, this does not become clear in the Regular Report.

Concerning credibility we can suggest that in 1998 credibility of receiving the reward was given. Big parts of the Phare allocation was handed out and at the same time the credibility of withdrawing the reward was given too. The amount decreased by 34 MECU due to deficiencies in carrying out projects under Phare. We only know that Phare measures support the judiciary, but we do not know which amounts exactly the judiciary received, or which amounts were withdrawn. This can be regarded as a critical point concerning strength of conditionality as well. On the one hand, we can state the regular report of 1998 takes account of the deficiencies in the judiciary in a 'determinate' way. It is underlined, in which areas adjustments have to be made. On the other hand, this is done not too precisely and rather in a vague manner. There are no statements made about the need to address them urgently or how to address them e.g.. The statements are rather determinate in a sense that it is underlined that there are deficiencies, but there are no explicit demands, or explicit threats of withdrawing a reward, if certain measurements are not taken.

Under the section Administrative and Judicial Capacity, described as key areas for the implementation of the acquis, the report again strongly emphasizes that Poland needs to improve the administration of the judicial system, due to long periods of court proceedings in criminal cases. Moreover enforcement of court rulings and access to courts continues to present problems. Concerning strength of conditionality we can emphasize that in the 1998 report it is underlined in two sections of the report that the length of court proceedings in criminal cases and the administration of the judicial system needs to be addressed (European Commission, 1998). As the report includes an extra section, with regard to the judicial system we can accentuate that the strength of conditionality is higher than in other fields, as benchmarking is done in two sections. Still we cannot illustrate that strength of conditionality is high, as it is not at all shown how the success or deficiency to fulfil particular conditions is linked to receive a reward or how it is linked to get a reward withdrawn.

4.2 Compliance and effects on compliance 1999

In 1999 Phare was the main tool to provide financial support to Poland in its pre-accession period. 30 % of the total Phare allocation is distributed to operations used for institution building to improve the countries capacities to implement the acquis. In the 1999 Phare programme Poland received 230.5 € million. In the field of institutional and administrative capacity Poland received 20.5 € million. In 1998 the total allocation of Phare money decreased by 34 € million by order of the Commission, because certain projects did not meet the priorities of the Accession Partnership. Contrarily in 1999 the report puts forward that the accession partnership priorities were met. At the beginning of the section it is underlined that Poland fulfils the Copenhagen political criteria and especially progress was made concerning civil rights protection and legislative measures with respect to penal and criminal proceedings (European Commission, 1999). This statement lets us conclude at first sight that the overall compliance is regarded as sufficient. Still we have to point out in detail, which peculiar areas lack compliance with the EU's conditions in the judiciary in 1999.

In the section concerning the judiciary it is underlined that in Poland progress was made in improving the situation criticised in the last report. The report underlines anyway that average times for processing court cases in civil, criminal and commercial cases still remained too long. As a result enforcement of court rulings and provisions of access to the courts did not

⁹ MECU= Million of European Currency Unit

enhance. Moreover, the proceedings in cases related to real estate still illustrate a problem, as the land register is poorly organised (European Commission, 1999). This is now mentioned repetitively in both reports. So we can expect that strength of EU conditionality got stronger concerning this aspect. Furthermore, the report states that the independence of the judiciary is given, but it is doubted that the positioning of the Public Prosecutor's office under the Ministry of Justice is a good idea. The report underlines that this could possibly constrain the independence of the judicial process from political pressures (European Commission, 1999). This can be elucidated as an alarming or determinate statement. The independence of the judiciary is a necessary requirement for the compliance with the EU's conditions for the judiciary. Moreover, it is clear that the Commission strongly suggests not to position the Public Prosecutor's Office under the Ministry of Justice.

Progress is on the other hand notified, as the new Criminal Procedures Code, new Penal Code and new Code of Penal Procedures, emphasized in the 1998 report, came into force on first September 1998. The 1999 report additionally criticizes that the status of judges, prosecutors and officials needs to be addressed and that they need more training. A last point of criticism in this report is that the level of enforcement of judicial decisions and the length of judicial proceedings, especially in relation to commercial matters needs strong improvement (European Commission, 1999). Relating this information to compliance with EU conditionality in the field of the judiciary we can detect deficiencies in several fields. In the fields of the independence of the judiciary, technological equipment, sufficient human resources, acceleration of court proceedings, effective access to justice, and measures to ensure the enforcement of judgements. So all in all in three key areas of compliance with the EU's political criteria for the judiciary, reliability, independence and efficiency of the judiciary, we can highlight flaws. As a consequence compliance with EU's political criteria in the judiciary is rather medium to low and not significantly higher than in 1998, in spite of high overall compliance with the Copenhagen political conditions in 1999.

In the section 'Administrative capacity and judicial capacity: key areas for the implementation of the *acquis*', it is stated that rate of progress needs to be increased to safeguard meeting the requirements of accession. Progress is here illustrated due to the number of judges, which went up to 8013 in 1999. Additionally the number of public prosecutors increased by over 500 up to 5538 in 1999. Moreover, it is stressed that the share of State budget for Justice affairs remained at 2.2 % in 1999. Due to poor administration many judicial levies are not recovered; even though the court system could be self-financing. Furthermore, it is underlined again that the average length of civil/commercial matters, as well as the average length of criminal cases went up significantly and does not show striking signs of improvement. Due to that so-called 'borough courts' to handle small disputes have been introduced. Nevertheless, inefficient and bad paid staff cannot succeed in improving the situation with insufficient technological equipment. Additionally the report puts forward that there is no national training scheme for judges and prosecutors, which is normally carried out by courts or tribunals. As a result, training lacks uniformity and continuity (European Commission, 1999).

With respect to the analysis of the report from 1999 we can detect a higher degree of strength and determinacy of EU conditionality in the field of the judiciary. This can be noted, as the report is more extensive and more explicit on details, which have to be addressed within the Polish judiciary. Still strength of conditionality lacks force partially, as it is never clearly emphasized, which rewards or punishments for deficiencies in compliance are linked to the fulfilment of peculiar conditions. Another aspect, which might explain that the strength and determinacy of conditionality increased in the field of the judiciary, is the amount of text and number of improvements illustrated in the paragraph about the judiciary. It cannot be figured out clearly in the regular reports, which external benefits Poland received for fulfilling the criteria set up under the judiciary. It is hard to put a clear statement forward for the effect of the independent variable size. Nevertheless regarding 230.5 million € allocation payments under Phare for Poland and the foreseeable membership we can underline that size of EU conditionality was high. The same holds true for credibility of receiving the external reward of the EU. In 1999 Poland received the full amount of 230.5 million €, as no major deficiencies concerning projects under Phare were detected. Therefore, we underline that size and

credibility of the EU external incentives was high in 1999.

4.3 Compliance and effects on compliance 2002

Since 2002 there is a separate section included in the regular reports regarding Accession Partnership priorities. In this section it is emphasized as well, which progress Poland made in implementing the measures put forward by the Action plan to enhance administrative capacity. This Action plan was developed in cooperation of the European Commission with each candidate country in spring 2002. The jointly developed Action Plan aims at reaching a proper level of judicial and administrative capacity by the time of accession. In this section it is emphasized that training of judges and the establishment of a national training standard for magistrates lack sufficient efforts. Another aspect is that the problem of public access to law needs to be addressed and measures are in need to check the degree of immunity of judges. Additionally it is accentuated that civil service legislation lacks adequate training for civil service clerk. There has been no reduction in length of proceedings in civil law cases. The length of proceedings remained the same. In Warsaw the length of proceedings in civil law cases is considerably longer with up to 40 months. Another point of criticism put forward in report is that procedures for assessing judge's professional performance stay unclear. Again it is underlined that training of staff and judges stays a point of interest and accordingly it is said that the need is high for a uniform national training for judges and the establishment for a national training centre for judges.

Strength and determinacy of EU conditionality can be perceived as stronger in 2002. This can be noted as the judiciary for Poland has two separate more elaborated sections in the regular report of 2002 emphasizing deficiencies and matters, which need to be addressed. Moreover it is underlined that rules, which need to be transposed are supported by several twinning projects. By providing two sections in the report and twinning partners in the judiciary it can be expected that conditions are clear and determinate. The same holds true for the strength of conditionality and the knowledge of the relevant stakeholders and in how far fulfilment of conditions are linked to receive rewards respectively. These measurements can be seen as an upgrade in strength and determinacy of conditionality. It becomes more comprehensible, which actions have to be done to comply with the EU's conditions. With respect to compliance with the EU's political criteria in the judiciary the 2003 report the following was underlined: In the fields of sufficient human resources, effective access to justice and procedures to ensure ethical conduct by the judiciary certain deficiencies appear.

Judicial independence was an issue in the 2001 report and foregoing reports. It is stressed that the situation improved. The Act of Common Courts in Poland puts the courts of appeal in charge and not disciplinary tribunals for taking away the immunity of judges. Moreover an improvement in the transparency of judicial disciplinary processes was recognizable. 'Poland's political institutions have continued to function properly and in a stable manner. The 1997 Constitution has proved and continues to be a stabilising factor since its introduction.' (European Commission, 2002, p.19) The report states that steady progress is registered and that especially the introduction of a new layer court, the acceleration of procedures, the computerisation of the judiciary and the prosecutors let to more effectiveness. Still public access to justice is a critical point and further concerns about corruption among the judiciary prevail. Especially the penal immunity of judges is a hurdle in uncovering corruption incidents (European Commission, 2002). Compliance cannot be seen as completely sufficient in 2002, but in comparison with 1998 and 1999 we can underline an increase in compliance with EU's political criteria in the Polish judiciary.

The 2002 Phare programme (one third of allocation goes to institution building) encompasses 342.2 million € for the national programme. 51.8 million € is added under the Phare 2002 supplementary institution building facility. We can conclude that 'Size' of conditionality is higher due to the higher amount of money given. Still the same problem to clearly refer back, which ratio of the reward is linked to the fulfilment of which conditions in the policy field judiciary remains. This is weakening strength of EU conditionality, as it is

more effective if one can clearly refer it to certain rewards or punishments. The same is again true for credibility of EU conditionality.

4.4 Compliance and effects on compliance 2003

The report judges on the judicial capacity that steady progress has been done, but still the efficiency and transparency of the judiciary has to be improved. Especially the reliability on the quality of judgements needs to be improved. Moreover, it is seen in a negative light that access of the public to the judicial system still remains limited. In general, access to information on procedures, legal aid, and state of play of an individual's own pending case is insufficient. Another critical feature is that there is no clear separation of functions for the Minister of Justice and the Attorney General. The report states that draft legislation concerning the issue is discussed, but will not result in more independence for the Attorney General (European Commission, 2003) On the other hand it is underlined in the Freedom House report (2003) that Poland's constitution from 1997 guarantees a judiciary that is independent from the legislative and executive stakes of government. In the 2003 Freedom House report it is underlined that there are many positive signs concerning improvements of the rule of law. Access to courts was facilitated by e.g. introduction of simpler application forms e.g.. On the other hand the report strongly underlines to carry out improvement concerning the waiting periods for access to courts. One court in average has to investigate annually on 7000 cases. 1500 of them are approximately delayed (Freedom House, 2003).

Compliments go out for the reforms at the lowest level of the Polish judicial system due to the introduction of a new layer of courts. Still this reform was not adjusted by a proper increase in the number of judges, administrative staff and equipment. Additionally numbers for the prosecution service and computers and printers still remain too low. Moreover, objective criteria for career assessment, promotion and demotion are not in place. Contrarily, it is underlined that the improvement in the efficiency of the courts does not need more staff, but improvements in the procedures, organisation and distribution of work. Therefore, fully-fledged IT projects shall be integrated in the judiciary to ameliorate access to central judicial databases on current legislation for courts and public prosecutors (European Commission, 2003). The report further regards critically the broad interpretation possibilities for the immunity of judges and does not regard the independence of the judiciary as guaranteed. Another feature of the report is that measurements have been undertaken to accelerate and simplify criminal proceedings to avoid the high number of pending cases and to decrease the workloads. An additional positive remark stated in the report is that the length of cases in criminal law further decreased, but on the other side in the area of civil law length of cases increased a bit. The situation in Warsaw is especially regarded critically in terms of delay in pending cases. Average duration for criminal proceedings is around 12 months, whereas civil cases take 24 months (European Commission, 2003). The same holds true for commercial cases and cases concerning the land register. The report moreover describes critically the system of legal aid as underdeveloped and non-transparent (European Commission, 2003). Clearly it is criticised that there is no rule in the criminal procedure code to inform a defendant to receive legal aid. This lack is severe and possibly leads to the conclusion that legal aid provisions are not given with respect to the 'Convention for the Protection of Human Rights and Fundamental Freedoms'. Another point is the reform of professional training of staff in the judicial system. At least a unit was developed in the Ministry of Justice called the 'Judicial Training Centre' aiming at unifying and harmonising the training system (European Commission, 2003).

All in all one can underline that strength and determinacy of EU conditionality appears to be stronger in this report of 2003 in comparison to the reports of 1999 and 1998. The section elaborating on the judiciary is far more extensive and it is rather clear, which issues have to be addressed. Deficiencies are underlined various times and it becomes clear, where work has to be done. As for the other years the problem of linking credibility and size of EU conditionality to peculiar actions taken in the judiciary persists, but one can stress that these

two factors are high, considering the prospective accession. Considering compliance with EU conditionality we can emphasize that similar issues need to be addressed as in 2002. Therefore the compliance can be regarded on a similar level or slightly better than in 2002. Minor improvements are underlined, concerning compliance with EU conditionality for the judiciary, thus we can accentuate that compliance is a bit higher.

4.5 Compliance in 2005 & 2006

2005 and 2006 represent the years after accession of Poland to the EU in this research approach. We put forward that the effects of size and credibility and strength and determinacy of EU conditionality disappeared or became significantly weaker due to membership in the EU. This was explained in the theoretical outline (Schimmelfennig & Schwellnus, 2006). To check on compliance we analyse reports by the NGO Freedom House. The Freedom House report of 2005 in the section judicial framework and independence describes the legal system of Poland as Poland's weakest branch of government. It is underlined that there are around 6.300 cases, which are lasting since more than five years. One quarter of them are located in Warsaw (Freedom House, 2005). Due to high number of cases carried to the European Court of Human Rights Poland established a law, which simplifies complaints about excessive delays in court proceedings. Another aspect under criticism suggested in the report is the insufficiency of prison facilities. 30.000 people sentenced to prison stay outside the prison, as a result from insufficient space in Polish prisons. In the overall rating from Freedom House authors judge rather critically about the judiciary in Poland. Reforms are described as being cosmetic in nature, as court delays remain striking and corruption within the judiciary is frequently an issue. Moreover Freedom House underlines that bringing former Communist officials to courts is a slow and an ineffective process (Freedom House, 2005). With regard to compliance in 2005 we can illustrate that there are still problems in the acceleration of court proceedings, procedures ensuring ethical conduct by the judiciary and the effective access to justice and the reduction of the number of pending cases. Overall compliance can be regarded, as lower than in 2002 and 2003.

In 2006 the judiciary is still illustrated to be the weakest field of the Polish government. In this context it is stressed that judges and prosecutors broke the law. The court system is depicted as lenient. Still the delay in court proceedings is a striking issue, which needs to be addressed. At the European Court of human rights Poland is losing many cases due to infringements of European law (Freedom House, 2006). Freedom House further expects that prosecutors and the minister of justice were under control of politicians. Prison facilities were significantly constrained and 30.000 people in 2006 waited for their sentences. In Freedom House's ranking Poland's judicial framework and independence in 2006 decreases in comparison to the rank from the year 2005. Generally, according to Freedom House (2006) the quality of the current status of the judicial system is worse than in the years before. In 2006 compliance is not the case with reference to the ethical conduct by the judiciary, the acceleration of court proceedings, concerning the independence of the judiciary, the enforcement of judgements and effective access to justice.

4.6 CIRI data

The CIRI data in the years of analysis reveals the following. As mentioned in the methodology part the CIRI rule of law indicator scrutinized the degree to which agents follow the rules of society. Indicators, which were part of the rule of law estimate, are perceptions of incidence of crime, the effectiveness and predictability of the judiciary and the enforceability of contracts. This was measured on a scale from one (low) to ten (high). The results according to the CIRI data project were the following: 1998: 7.44; 1999 (no data); 2002: 6.13; 2003: 5.57; 2005: 3.62; 2006: 2.78. This reveals more or less the same results as the analysis of the regular and Freedom House reports. Contrarily to the analysis of the reports

the quality of the judiciary in 1998 is regarded as higher (CIRI Human Rights Data Project, 2011). This could be explained e.g. by the use of slightly other indicators.

4.5 Summary of the findings

According to our analysis in 1998 size and credibility of EU conditionality were generally high but lower than in the subsequent years. Strength and determinacy of EU conditionality can be described as rather low, especially in comparison with the subsequent years. Compliance with EU conditionality is rather ambiguous in 1998. But it can be clearly stressed that full compliance with the EU's political criteria for the judiciary is not the case. Several deficiencies are underlined, whereas it is noted that in some fields compliance is reached. In the 1999 report it is underlined that Poland fulfilled the Copenhagen political criteria already. Despite that statement it is rather clear that compliance still lacks in several fields, which were previously emphasized by the European Commission. Fulfilling the political criteria is different from having fully fledged judiciary according to Western- European standards, as deficiencies can still be illustrated in 1999. Nevertheless compliance in 1999 is slightly better than in 1998, referring especially to the Commission's judgement that progress has been registered since the previous report (European Commission, 1999). Another finding in the 1999 report in comparison to the 1998 report is that strength and determinacy is higher. This can be noticed especially by more explicit suggestions, recommendations and the intensity of the report.

With regard to size and credibility we can underline that theoretically these two factors are generally higher since the signing of the accession treaty in 1997. Moreover an increase of size can be recognized as support by Phare e.g. went up significantly throughout the years of investigation. In 2002 we can detect a higher degree of strength and determinacy. Especially due to a separate section in the report clearly addressing progress and deficiencies regarding the state of the judiciary. With respect to the variable size, we can again notify an increase in the financial instruments provided by Phare, which is a small hint that the external reward increased. We can say the same about the independent variable credibility, as accession to the EU approaches. Overall compliance can be described as higher in comparison to 1999. In 2003 we can detect a slightly higher degree of compliance in comparison to 2002. Strength and determinacy of conditionality is on a similar level in 2003 like the foregoing year. Size and credibility can be expected to be higher due to signing of the accession treaty in 2003 (Sadurski, 2004) and the warranted membership as a consequence. In 2005 and 2006 size and credibility of EU conditionality largely disappear due to membership. The same is true for strength and determinacy of EU conditionality (Schimmelfennig & Schwellnus, 2006). With respect to our analysis compliance is lower in those two years in comparison to 2002 and 2003 and comparable to 1998. Compliance was highest, when all the independent variables in total had the highest degree of measurement, namely in 2003.

'If size and credibility of EU external incentives were high, compliance with the EU's conditions in the Polish judiciary was likely to be high' was the first hypotheses. We can corroborate this hypothesis. Compliance with the EU's political criteria for the judiciary increased parallel to an increase in size and credibility of EU conditionality. On the other hand, it is straightforward to underline that compliance with EU conditionality for the judiciary was never really high in spite of a high degree of size and credibility. This can be said as we revealed numerous deficiencies in the Polish judiciary, which did not match the standards of the Copenhagen Political criteria. Therefore we have to falsify the hypothesis and could only corroborate it, if it would be formulated differently. It should emphasize that compliance with the EU political criteria in the judiciary increases if size and credibility of EU conditionality is higher. In our hypothesis we underline that compliance was high if size and credibility were high. This is not the case, as compliance was rather lacking throughout the years.

For the second hypothesis: 'If strength and determinacy of EU conditionality were high, compliance with the EU conditions in the Polish judiciary was likely to be high', more or less

the same holds true. We can notify an increase of compliance with the EU's political criteria for the judiciary, if strength and determinacy is higher. Nevertheless it would be wrong to say that compliance with the EU's political criteria for the judiciary is high, if strength and determinacy of EU conditionality is high. Regarding the third hypothesis, ' After Poland reached full membership to the EU, compliance with the EU's conditions for the judiciary was likely to decline', we can underline that this holds true with respect to our empirical analysis. Compliance with the political criteria of the EU diminished after membership and after removal of the independent variables size, credibility, strength and determinacy of EU conditionality.

5. Conclusion

The answer to the research question posed at the beginning, 'Which factors were most likely to influence compliance with EU's conditionality in the Polish judiciary before and after accession to the EU?' can be answered in the following way. By conducting an analysis of official policy documents of the EU and the NGO Freedom House to detect the influence of the four independent variables: Size and credibility of EU conditionality and strength and determinacy of EU conditionality on compliance with the EU's political criteria in the judiciary, we can emphasize that all four factors exerted influence on compliance and were decisive to reach a higher degree of compliance with the EU's political criteria for the judiciary. Concerning the four independent variables, which have been measured we can suggest that the effect on compliance with the EU's political criteria in the judiciary was highest in the six years measured, when size and credibility of EU conditionality was high and when strength and determinacy of EU conditionality was high too. Compliance was highest in the year 2003, one year before accession to the EU. Strength and determinacy of EU conditionality and size and credibility of EU conditionality had the highest measurement level in total in this year. This suggests that the independent variables reinforce themselves and reach higher compliance with the EU's political criteria by interaction on a high measurement level.

To come up with these results an analysis of policy documents was conducted in four years before accession of Poland to the EU, namely 1998, 1999, 2002 and 2003 to check on the effects of the four mentioned independent variables on compliance with the EU's political criteria for the judiciary. Additionally, two years after accession of Poland to the EU have been investigated, namely 2005 and 2006. This was straightforward as the effects of the four independent variables largely disappeared with membership to the EU and so it was possible to illustrate a link between the decrease of compliance with the EU's political criteria for the judiciary and the disappearance of our independent variables. The measurement of the independent variables and dependent variables was conducted in a process-tracing manner. It was scrutinized how the judiciary improved or got worse from year to year, according to the requirements of a functioning judiciary in a Western democracy. This was done to check on the dependent variable of compliance with the political criteria of the EU for the judiciary.

The measurement of the four independent variables was constituted differently and especially the measurement of size and credibility was difficult to conduct in the official documents of the EU and Freedom House. It was underlined in the theory part that since the signing of the accession agreement in 1997 the variable size and credibility increased until accession in 2004. Due to that it was accentuated that size and credibility were generally high. Other aspects, which served as an indicator for the measurement of size, were the amount of benefits Poland received from the EU under the Phare programme. Some parts of this assistance programme were subsidizing the development and improvement of the judiciary. Still this measurement can be described as somewhat vague and needs to be addressed more in depth. As it is possible to underline numerous indicators for the variable size, with regard to domestic adoption costs e.g., future studies can adjust this study by focusing on the measurement of domestic adoption costs, as an element of the variable size. An investigation of domestic adoption costs with respect to the Polish judiciary would put forward a deep investigation of the structure of the Polish judiciary and its history. Moreover

a deep analysis of the political landscape in Poland and its relation to the Polish judiciary would foster the investigation on the independent variable size. One could investigate if compliance was not the case e.g., due to involuntary defection of state capacities or deliberate choice (Pridham, 2008).

On the other hand the measurement of strength and determinacy seems rather straightforward. Strength and determinacy of EU conditionality was measured by looking on the formulation and number of rules and demands, which were emphasized in the regular reports, with respect to deficiencies and improvements in the field of the judiciary. Nevertheless, it would be desirable to illustrate the degree of determinacy and strength of conditionality in various ways, as measuring strength and determinacy of EU conditionality only in the regular reports remains limited. Therefore one could include more reports or official policy paper from the EU directed to Poland concerning aspects belonging to the policy field judiciary. Moreover one could investigate on policy discourses and speeches from decisive events, as big summits linked to the integration of Poland during the accession process to find out more about the independent variables strength and determinacy. Additionally, one could highlight all the cooperation and twinning projects between Poland and the old member countries. It can be expected that the cooperation between the Polish judiciary and clerks from the old member countries revealed interesting insights to address our research question further. Expert interviews could shed light on important fuzzy aspects and would strengthen the research approach as well.

In the context of studying in the field of EU conditionality, it becomes clear that each political issue in the respective candidate and member countries is different and needs to be regarded from different perspectives. So far it is not certain, which factors account for compliance, or rather non-compliance. Many factors exist, which presumptively have an influence on compliance with the EU conditions, but still, the dominant variable being the key to explain the compliance patterns was not found (Sedelmeier, 2008). This thesis addressed four factors, which play a role in compliance research, but to gather a complete picture other factors as e.g. veto players or an extensive analysis of adoption costs in the respective field have to be addressed. Generally the investigated variables can be regarded as decisive, but encompassing the whole functioning of EU conditionality needs to include more variables and more concepts. The judiciary in Eastern Europe is generally interesting as it is described as a problematic area in all the CEECs and it was not possible to address the functioning of the judiciary consistently before and after accession. Highlighting other variables than the ones on which the EU has influence on, like e.g. internal factors of the respective countries would be straightforward to gather a complete picture on the parameters exerting influence on compliance with the EU conditions for the judiciary in Poland. Concerning this aspect the history of the Polish judiciary has to be highlighted more detailed, as e.g. the Polish judiciary inherited many flaws from the former Communist era, what can possibly explain several 'flaws' in the Polish judiciary over time (Freedom House, 2011). This is e.g. true for practices defecting the independence of state prosecutors. Judicial independence is not sufficiently addressed, what can be explained by a lack of political will, which would refer to the element of 'domestic adoption costs' of the independent variable size and would support the idea to address this issue more consistently. Considering that EU rules need to be adopted and imposed by the government, the effectiveness of conditionality can be linked to the preferences of the government and possible other veto players, which are actors capable of rejecting a change in the status quo. Veto player theory accentuates that change of the status quo, will become more difficult the more veto players exist and the larger their mutual distances of preferences are (Schimmelfennig & Sedelmeier, 2006) Therefore, highlighting veto players, or putting the emphasis on veto players in future studies, would be striking to get deeper in the topic. This would implicate a detailed analysis of the political landscape and the distribution of power in Poland over years.

Size and credibility, strength and determinacy, do support and offer help to improve the judiciary in the respective countries, but do not provide enough incentives to establish a fully fledged judiciary, according to Western-European standards. This leads us to another problem concerning compliance with the EU political criteria for the judiciary. If the judiciary is a component of the political criteria and it was continuously underlined that the political

criteria in Poland were fulfilled, it is somewhat awkward that this was declared regarding the flaws in the judicial system of Poland in the years of the analysis. As it is indicated that compliance with the political criteria of the EU were met, this would mean that ' a heavily understaffed and insufficiently trained body of judges without any technical assistance, slowly passing 'unsatisfactory' decisions, which are not often executed at all', (Kochenov, 2004, p.22), would be sufficient to meet the EU's political criteria of the EU. This underlines that the EU reacted somewhat rash to declare that requirements for the judiciary or the political criteria are fulfilled. Moreover this emphasizes that EU conditionality had a rather minor influence or did not work at all in this peculiar field. As a result the concept of compliance with the EU's political criteria for the judiciary should be sufficiently addressed and renewed with a higher standard. This holds true for candidate countries before accession, but also for member countries after accession. Compliance with the EU political criteria as a political topic has to be addressed sufficiently and tools have to be found to exert influence on compliance with the political criteria for the judiciary after accession to the EU.

Probably, as soon as the issue of clear criteria for the judiciary is addressed sufficiently by the scientific and political community and has reached a higher standard, there is still a lot of space to foster the functioning of the EU conditionality measurements. One can expect that the judiciary of Poland would have reached a higher quality, if EU conditionality with respect to size and credibility and strength and determinacy were stronger. Another last aspect, which would be interesting to address in future studies, is the question in how far the old member states comply or complied with the political conditions for the judiciary set up by the EU. The old member states have not been under such pressures to improve their judicial systems as the new Eastern European member states and it would be interesting to find out if the old member states maintain a good position if you would check them on the same criteria.

6. References

- Baldwin, R. E., Francois J. F., & Portes R. (2007). EU enlargement: Small costs for the west, big gains for the east. *Economic Policy April 1997, Great Britain*
- Boldrin, M. & Canova, F. (2002). Regional policies and EU enlargement. *University of Minnesota and CEPR*.
- Collier, D. (2011). Understanding process tracing. *Political Science and Politics 44, No.4. 823-30*.
- Curtis, S., Gesler, W., Smith, G., & Washburn, S. (2000). Approaches to sampling and case selection in qualitative research: examples in the geography of health. *Social Science & Medicine, 50, 1001-1014*.
- Epstein, R. A., & Sedelmeier, U. (2011). Beyond conditionality: international institutions in post communist Europe after enlargement. *Journal of European Public Policy, (May 2012), 37-41*.
- George, A.L. & Bennett A. (2005). *Case studies and theory development in the social sciences*. Stanford, Georgetown University: MIT press.
- Houghton, T. (2007). When does the EU make a difference? Conditionality and the accession process in central and Eastern Europe. *Political Studies 5, 233-246*.
- Grabbe, H. (2002). European Conditionality and the Acquis Communautaire. *International Political science review 2002 23: 249*.

- Grabbe, H. (2011). How does Europeanization affect CEE governance? Conditionality, diffusion and diversity. *Journal of European Public Policy*, (May 2012), 37-41.
- Kochenov, D. (2004). Behind the Copenhagen facade. The meaning and structure of the Copenhagen political criterion of democracy and the rule of law. *European integration online papers vol. 8 n° 10*.
- Konopczak, K., & Marczewski, K. (2011). Why so different from other CEECs – Poland's cyclical divergence from the euro area during the recent financial crisis. *Bank i Kredyt* 42 (2), 2011, 7-30.
- Mahoney J., (2005). Qualitative methodology and comparative politics. *Departments of Political Science and Sociology University Evanston*.
- Noutcheva, G., Bechev, D., & Politics, E. E. (2008). The successful laggards: Bulgaria and Romania's accession to the EU. *East European Politics and Societies* 22:114.
- Pridham, G. (2008). The EU 's political conditionality and post-accession tendencies: Comparisons from Slovakia and Latvia. *October*, 46(2), 365-387.
- Sadurski, W. (2004). Accession's democracy dividend: The impact of the EU enlargement upon democracy in the new member states of central and Eastern Europe. *European Law Journal* 10(4), 371-401.
- Sasse, G. (2008). The European neighbourhood policy: Conditionality revisited for the EU's Eastern neighbours. *Europe-Asia Studies*, 60:2, 295-316.
- Sedelmeier, U. (2008). After conditionality: post-accession compliance with EU law in East Central Europe. *Journal of European public policy*, 15 (6). Pp. 806-825.
- Schimmelfennig, F & Schwellnus (2006). Political conditionality and convergence: The EU's impact on democracy, human rights, and minority protection in central and Eastern Europe. *CEEISA conference, Tartu, Estonia, 25-27 June*.
- Schimmelfennig F. & Scholtz H. (2008). EU democracy promotion in the European neighbourhood: Political conditionality, economic development and transnational exchange. *European Union Politics* 2008 9: 187.
- Schimmelfennig F. & Sedelmeier U. Governance by conditionality: EU rule transfer to the candidate countries of central and Eastern Europe. *Journal of European Public Policy* 11:4 August 2004: 669-687
- Schimmelfennig F. (2011). Conditionality after the 2004 enlargement: Consistency and effectiveness. *Journal of European Public Policy*, (May 2012), 37-41.
- Stawarska, R. (2011). EU enlargement from the Polish perspective. *Journal of European Public Policy* (May 2012), 37-41.
- Veebel V. (2009). European Union's positive conditionality model in pre-accession process. *TRAMES*, 2009, 13(63/58), 3, 207-231.
- Yanow, D., Schwartz-Shea P. & Freitas, M.J. (2008). Case study research in political science. *Encyclopedia of case study research*. Sage Publications.

Documents & Reports:

CIRI Human Rights Data Project (2011). *From the CIRI Human Rights Data Project homepage*. Retrieved from: <http://ciri.binghamton.edu>

European Commission (1998). *Regular report. From the Commission on Poland's progress towards accession*. Retrieved from: http://ec.europa.eu/enlargement/archives/pdf/key_documents/1998/poland_en.pdf

European Commission (1999). *1999 regular report. From the Commission on Poland's progress towards accession*. Retrieved from: http://ec.europa.eu/enlargement/archives/pdf/key_documents/1999/poland_de.pdf

European Commission (2002). *Regular report on Poland's progress towards accession*. Retrieved from: <http://unpan1.un.org/intradoc/groups/public/documents/untc/unpan008696.pdf>

European Commission (2003). *Comprehensive monitoring report on Poland's preparations for membership*. Retrieved from: http://ec.europa.eu/development/body/organisation/docs/CMR_PL.pdf

European Commission (2005). *Guide to the main administrative structures required for implementing the acquis*. Retrieved from: http://ec.europa.eu/enlargement/pdf/enlargement_process/accesion_process/how_does_a_country_join_the_eu/negotiations_croatia_turkey/adminstructures_version_may05_35_public_en.pdf

Freedom House (2003). *Poland. Nations in transit 2003*. Retrieved from: <http://www.freedomhouse.org/report/nations-transit/2003/poland>

Freedom House (2005). *Poland. Nations in transit 2005*. Retrieved from: <http://www.freedomhouse.org/report/nations-transit/2005/poland>

Freedom House (2006). *Poland. Nations in Transit 2006*. Retrieved from: <http://www.freedomhouse.org/report/nations-transit/2006/poland>

Office of the Committee for European Integration (2008). *4 years of Poland's membership in the UE. Analysis of social and economic benefits and costs*. Retrieved from: http://ec.europa.eu/enlargement/pdf/enlargement_process/accesion_process/how_does_a_country_join_the_eu/negotiations_croatia_turkey/adminstructures_version_may05_35_public_en.pdf

Freedom House (2011). *Poland. 2011*. Retrieved from: <http://www.freedomhouse.org/report/freedom-press/2011/poland>

7. Appendix

Freedom House 2012:

	2003	2004	2005	2006	2007	2008	2009	2010	2011	2012
Electoral Process	1.50	1.50	1.75	1.75	2.00	2.00	2.00	1.75	1.50	1.25
Civil Society	1.25	1.25	1.25	1.25	1.50	1.25	1.50	1.50	1.50	1.50
Independent Media	1.75	1.75	1.50	1.75	2.25	2.25	2.00	2.25	2.25	2.25
Governance*	2.00	2.00	n/a	n/a	n/a	n/a	n/a	n/a	n/a	n/a
National Democratic Governance	n/a	n/a	2.50	2.75	3.25	3.50	3.25	3.25	2.75	2.50
Local Democratic Governance	n/a	n/a	2.00	2.00	2.25	2.25	2.00	1.75	1.75	1.75
Judicial Framework and Independence	1.50	1.50	2.00	2.25	2.25	2.50	2.25	2.50	2.50	2.50
Corruption	2.50	2.50	3.00	3.25	3.00	3.00	2.75	3.25	3.25	3.25
Democracy Score	1.75	1.75	2.00	2.14	2.36	2.39	2.25	2.32	2.21	2.14

Regular reports and Freedom House data:

Years	Sufficient Human Resources	Adequate and Modern Equipment	Acceleration of Court Proceedings	Reduction of Number of Pending cases	Measurement to ensure the Enforcement of Judges	Procedures to ensure the Ethical Conduct by the Judiciary	Effective Access to Justice	Indicator
1998	Not mentioned	Not mentioned	Insufficient	Insufficient	Insufficient	Insufficient	Insufficient	Sufficient; Mentioned; Insufficient
1999	Insufficient	Not mentioned	Insufficient	Not mentioned	Insufficient	Insufficient	Insufficient	Sufficient; Mentioned; Insufficient
2002	Insufficient	Not mentioned	Insufficient	Insufficient	Not mentioned	Insufficient	Insufficient	Sufficient; Mentioned; Insufficient
2003	Insufficient	Insufficient	Insufficient	Insufficient	Insufficient	Insufficient	Insufficient	Sufficient; Mentioned; Insufficient

2005	Not available	Not available	Not available	Not available	Not available	Not available	Not available	Sufficient; Mentioned; Insufficient
2006	Not available	Not available	Not available	Not available	Not available	Not available	Not available	Sufficient; Mentioned; Insufficient

Freedom House reports data:

Years	Sufficient Human Resources	Adequate and Modern Equipment	Acceleration of Court Proceedings	Reduction of Number of Pending cases	Measurement to ensure the Enforcement of Judges	Procedures to ensure the Ethical Conduct by the Judiciary	Effective Access to Justice	Indicator
2003	Not mentioned	Not mentioned	Insufficient	Insufficient	Insufficient	Insufficient	Insufficient	Sufficient; Mentioned; Insufficient
2005	Not mentioned	Not mentioned	Insufficient	Insufficient	Not mentioned	Insufficient	Insufficient	Sufficient; Mentioned; Insufficient
2006	Not mentioned	Not mentioned	Insufficient	Not mentioned	Insufficient	Insufficient	Insufficient	Sufficient; Mentioned; Insufficient

Investigation in the regular reports and freedom House (only 2003, 2005 and 2006) on the criteria formulated by the CIRI project:

Years	Political independence	Selection of judges	Independence of the judiciary
1998	Not mentioned	Insufficient	Not mentioned
1999	Not mentioned	Not Mentioned	Sufficient
2002	Insufficient	Not mentioned	Sufficient
2003	Insufficient	Not mentioned	Sufficient
2005 & 2006	Insufficient	Not mentioned	Insufficient

