Explaining Legislative Capacity

An analysis of the role of the parliaments in transposing EU-related legislation in Lithuania and Romania

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Introduction

On May 1, 2004 eight former socialist countries became members of the European Union. The event showed that more than a decade of hard and consistent work of trying to comply with the conditions for membership that were adopted by the European Council at the summit in Copenhagen in 1993[1], eventually paid off. The achievement was a remarkable one, given the fact that the countries only a decade and a half earlier had been one-party dictatorships with a command economy and under the dominance of the Soviet Union. Not all candidate countries had reasons to celebrate on May 1, however. Bulgaria and Romania, which for most of the post-communist period have been lagging behind the others, were at a quite early stage considered unable to meet the membership criteria by 2004, and they were instead given the prospects to join in 2007. Trailing behind Bulgaria, at least Romania's entry by that date is all but certain, since the integration process has been slower than expected (European Parliament, 2004).

What is puzzling with the EU-integration process, however, is *not* the ranking order between the countries per se, which can be explained by different starting conditions that are in turn determined by features of the previous regimes in combination with the reform ambitions of the early post-communist governments. For these reasons among others, Bulgaria and Romania were already well behind the others in terms of political, economic and administrative reforms when the integration process started in the mid 1990s (See for example the European Commission's opinion on the progress towards membership 1998; Bojkov, 2004 p 512) What *is* puzzling is that the gap between the eight front-runners and the two laggards widened, after the membership negotiations started,[2] despite the fact that all governments since at least 1997, have shared the ultimate goal of joining the EU. From that point, one would have expected Bulgaria and Romania to stop losing ground, at least in those areas where governments have a substantial influence, such as the harmonization

[1] "Membership requires that the candidate country has achieved stability of institutions guaranteeing democracy, the rule of law, human rights and respect for and protection of minorities, the existence of a functioning market economy as well as the capacity to cope with competitive pressure and market forces within the Union. Membership presupposes the candidate's ability to take on the obligations of membership including adherence to the aims of political, economic and monetary union" (European Council, 1993 p 13).

[2] The Czech Republic, Estonia, Hungary, Poland and Slovenia (the Luxemburg group) started membership negotiations in 1998, while Bulgaria, Latvia, Lithuania, Romania and Slovakia (the Helsinki group) commenced negotiations in early 2000.

of EU-legislation.[3] That has not been the case, however. According to the European Commission, the pace of adopting EU-related legislation has varied considerably between the candidate countries during the last couple of years, with Lithuania being the quickest in that respect among the countries that started membership negotiations in 2000 and Romania arguably being the slowest (Bågenholm, 2002 p 9-10).[4]

There are good reasons to believe that the national policy process is the place to look for explanations for these divergent trajectories. The most apparent indicator of being slow in the transposition process[5] is that EU-related legislation is either not adopted on time, only partly adopted or not adopted at all, i.e. it is to some extent stuck somewhere in the policy process.

Because this study only deals with the adoption of legislation – and not implementation and enforcement - two stages or phases of the policy process is of potential concern here, namely the parliamentary phase, which starts with the registration of a draft law in parliament and ends with its adoption and the pre-parliamentary phase, which starts with the initiation of a draft law by the government or the relevant ministry and ends with the submission of the draft law to the parliament.

In this chapter the main focus is on the parliaments' role in the transposition process, although the pre-parliamentary phase will be also be addressed briefly.[6] Two aspects will be analyzed: one mainly compares the Romanian and Lithuanian parliaments, in order to find out to what extent differences in the legislative process affect the pace of the transposition and the other analyzes the relationship between the parliamentary and pre-parliamentary phases in each country, with the aim to determine who bears the main responsibility for delays in adopting EU-related legislation: the government or the parliament. Taken together, these two aspects will shed light on what effect the parliaments have on quick and timely transposition.

The uniformity of the EU-integration process makes the case of transposition of EU-legislation in the former socialist candidate countries suitable for comparative studies like this one. First, all the governments in the region are committed to EU-membership (Schimmelfennig & Sedelmeier, 2004 p 671), which makes different levels of governmental ambitions in this respect a less plausible explanation. Second, the same directives and regulations are to be transposed in all candidate countries, thus making the task in absolute terms equally demanding for all countries, although differences in terms of, for example, financial, human and administrative resources may also have an effect on the process. Third, there is no ambiguity in what needs to be done, i.e. all candidate countries have full information about the content of the directives and regulations to

[3] This is one of the most demanding criteria for membership and requires the applicant states to transpose, i.e. adopt, implement and enforce the entire body of EU-legislation – the so called Acqius Communautaire – which covers approximately 80 000 pages (Papadimitrou & Phinnemore, 2004:619).

[4] The speed of transposition is based on an analysis of the European Commission's annual Regular Reports 2000, 2001 and 2002 on the progress in transposition made by the Helsinki group.

[5] Following Bursens the term transposition will henceforth be used synonymously with adoption, and will thus not include implementation and enforcement (2002:175).

[6] This study will only analyse those legal measures that must be approved by parliament, i.e. laws. The vast majority of EU-directives and regulations, mainly technical in character, are transposed through secondary legislation, however, i.e. government decisions, ministerial orders etc, which is not subject to parliamentary approval.

transpose.[7] Apart from differences in the initial conditions, the applicant states are similar in many respects, both in terms of their communist past and in terms of the policies that the EU has pursued towards them. The transposition process, finally, is quite straightforward, in contrast to the implementation process. Similar, simple[8] and comparable conditions, in short, make the case of transposition methodologically appropriate.

The chapter is organized in three broad sections. In the first section theoretical and methodological issues are elaborated on. The second one contains the empirical analysis, which is divided in two parts: the first one examines the veto structures in the Lithuanian and Romanian parliaments and the second analyzes the transposition process. In the final section, the results are summarized and conclusions are drawn. The main results are that when Lithuania and Romania are compared, the legislative systems of the parliaments do matter in terms of the pace of the transposition, but that the parliaments to quite a small extent are responsible for delays in adopting EU-related legislation when compared to the pre-parliamentary phases.

Theoretical and methodological considerations

Legislative capacity and efficiency

Being successful in transposing legislation requires that a large amount of legislation that correctly corresponds to EU-directives and regulations is transposed quickly and in a timely manner. The amount of legislation, pace, quality and timeliness are four features that relate to legislative capacity and efficiency, which is the dependent variable of this study.

There is hardly any consensus among scholars over how to define capacity and efficiency, let alone how to measure it. In general terms, capacity denotes the ability to do or achieve whatever task comes up on the agenda, while efficiency is more specifically related to the fulfillment of intended goals (See Nørgaard & Hersted Hansen, 2000 p 15-16 for an elaboration of the concepts). In this study, being efficient and having a high capacity is defined as the ability to achieve intended and ambitious goals.

Depending on what type of capacity that is to be analyzed, scholars in this field operationalize the dependent variable differently, e.g. in terms of policy outcomes (Lijphart, 1999), policy implementation (Painter & Pierre, 2002), or in terms of important governmental functions (Weaver & Rockman, 1993). This study has a more narrow focus, in the sense that it only considers the adoption of laws, not whether these laws are properly implemented, let alone enforced. The flip side of this approach is that there are fewer competing explanatory variables to control for, than is the case when explaining implementation performance or to an even higher extent when using policy outcomes, such as macroeconomic performance as an indicator.

Research on legislative capacity and efficiency has naturally focused on features of the political systems, from both structural and actor oriented points of view. In the next section, I will discuss in more detail how variations in legislative output have been

[7] The ambiguity of the EU conditions for membership in general is stressed in many studies (see for example Bojkov, 2004:517). These caveats apply to a much lesser extent to the transposition of the Acquis, however.

[8] In terms of *grasping* the task, not the task in itself which is very demanding.

explained. This section deals with the dependent variable, however, and in my view this is a weak spot in most studies in this field. The main reason for this is that the actors' intention is missing from the analysis. The studies rather use the amount of legislation, i.e. the number of laws adopted during a specific period (Tsebelis, 1999; Binder, 1999) or the speed of the legislative process (Becker & Saalfeld, 2004) as indicators of capacity and efficiency, regardless of whether the legislative output corresponds to the governments' intentions. To some extent they may be right. A system, which is unable to process a large amount of legislation within a reasonable amount of time, cannot be considered efficient. But the sheer amount of legislation on the other hand, gives us very little evidence of capacity and efficiency, as long as we do not know the size and the scope of the laws and most important, whether the laws turned out the way the government intended.[9] A government that manages to fulfill a small legislative agenda cannot reasonably be considered inefficient and lacking in capacity, while a government that fails to achieve a much larger agenda cannot automatically be regarded as more efficient and capable. The same argument holds when it comes to the speed of the legislative process. Being slow may be a deliberate choice. The government has a capacity problem only if it is unable to accelerate the process if it is deemed necessary.

In this study I try to remedy this shortcoming, by using the National Plans for the Adoption of the Acquis (NPAA) in which the governments' legislative agendas are spelled out in detail, including deadlines for the adoption of specific laws as a starting point, thereby including the governments' intention in the analysis. In contrast to most other cases where this option is not possible[10], the case of transposition allows for close comparative analysis in this regard, thus making the case also theoretically appropriate. Legislative capacity and efficiency is thus operationalized as the ability to transpose intended pieces of legislation, according to the National Plans for the Adoption of the Acquis (NPAA). The extent to which the governmental ambition is fulfilled equates the legislative system's capacity and efficiency.[11]

Constraints in the policy process

The independent variable of this study is constraints in the policy process. How this is operationalized and measured will be discussed in the section on design. In this section I will give a short outline of how scholars have explained capacity and efficiency. As mentioned above, the political system and constitutional design have been much in focus when scholars have tried to explain efficiency and capacity. In particular, the question of whether and how concentration in the decision-making process affects political outcomes has been the subject of much debate without reaching a consensus. The prevailing and intuitively the most reasonable view, however, seems to be that concentration in the decision-making process – i.e. few actors and institutions involved - tends to promote

[9] Although governments do not have monopoly on initiating legislation, a system's capacity must reasonably be related to the government's ability to rule.

[10] The studies that come closest to my approach are those analysing to what extent party manifestos and electoral pledges are fulfilled during the mandate period. These documents are much less detailed and seldom spell out exactly which laws, with what content to adopt in order to achieve the goal (De Winter, 2004). Hence the exact intentions of the government may in many instances be difficult to interpret.

[11] Since EU-membership is such a highly desired goal, I just assume that the governmental agendas are ambitious enough to reach the goal, if followed properly.

efficiency and capacity, compared to systems based on power-sharing. Accordingly, parliamentary systems are assumed to be more efficient than presidential or semi-presidential ones, in which power is shared between presidents and assemblies and in which there is a higher possibility of deadlock (Moe & Caldwell, 1994 p 171-172). During the last decade this view has been challenged empirically as well as theoretically. Empirically by Weaver and Rockman (1993) who found no clear-cut correlation between political and electoral systems and policy making capacity, but rather that different combinations of political and electoral systems, along with a large number of other variables had different effects on different types of capacities. The authors did, however, not offer an explanation for the differences or how to study policy making capacity more generally. Theoretically, the traditional view has been challenged by George Tsebelis who argues that neither parliamentarism nor presidentialism can be regarded as coherent systems in terms of their effect on the policy making capacity. All systems rather have different features, which are conducive and detrimental to the policy making capacity (Tsebelis, 2002) and what matters, is the number of veto players, i.e. actors with veto power, involved in the policy making process. Tsebelis subscribes to the basic view that concentration in decision-making matters, but dismisses the traditional parliamentary-presidential divide.

Among parliamentary systems the electoral system is considered one of the most crucial devices in regulating the extent of the concentration of power. The traditional view has been that majority or plurality representation systems, which tend to produce two-party systems, with strong one-party majority governments are more conducive to efficiency than is proportional representation, which usually produces either one-party minority governments or multi-party majority coalitions (Sartori, 1997 pp 54).[12]

The importance of concentration of power is not limited to the central level of a political system. Equally important is of course, whether a country is organized as a federation or as a unitary state, where the latter system is considered the more efficient of the two because the sub-national levels in such systems cannot veto legislation (see for example Tsebelis & Money, 1997). Bicameralism has been found to be an important factor in explaining legislative stalemates in the US (Binder, 1999). In addition, scholars have studied the effects of concentration of power within the cabinet on political reform processes and efficiency in law adoption and arrived at more or less the same conclusions as mentioned above (Haggard & Kaufman, 1995; Tsebelis, 1999; Brusis & Dimitrov, 2001; Evans & Evans, 2001; Zubek, 2002).[13]

The most elaborated theory behind these lines of thinking is George Tsebelis' veto player theory. As mentioned above, the veto player theory is not fundamentally different

[12] This view has been challenged to some extent by Lijphart (1999) who found that consensus democracies, which among other thing use proportional representation, are outperforming majoritarian democracies on many accounts, such as quality of democracy and keeping inflation down. On other macro-economic indicators Lijphart found no evidence that majoritarian democracies were any better, which is usually claimed. It should be noted though, that Lijphart's study is not focusing on legislative capacity, but on policy effects or outcomes at the very end of the policy process.

[13] It should be noted however, that a system with more actors involved might be more efficient in the long run, since most decisions are preceded by extensive bargaining and compromises, making the agreement more solid than decisions made unilaterally by one party (Stark & Bruszt, 1998; see also Schimmelfennig & Sedelmeier, 2004:676). Such a decision runs the obvious risk of being overturned once the opposition comes to power. Here I will only deal with 'short-term efficiency' however.

from the traditional way of studying policy making capacity in a political system. On the contrary, it clarifies the essence of these lines of thoughts and takes them one step further, by concentrating solely on the veto players[14] in the policy making process. What is new, though, is the regrouping of countries on the basis of the number of veto players in the process instead of the political or electoral systems (Tsebelis, 2002 p 4-5). The central argument is that the only thing that matters in relation to the ability to achieve policy change, is the number of veto players, the ideological distance between them and their internal cohesion. Tsebelis even states that "significant departures of the status quo are *impossible* when (…) veto players are many – when they have significant ideological distances among them, and when they are internally cohesive" (2002 p 2, emphasize added). Everything else being equal, adding a veto player increases the policy stability and thus reduces the possibility of policy change.

The empirical results are mixed. In terms of law production, i.e. the amount of legislation adopted, Kreppel (1997), when analyzing the Italian case, finds that the number of parties in government correlates negatively with the number of laws adopted.[15] Becker and Saalfeld (2004) on the other hand, find no evidence that the number of partisan veto players – i.e. the number of governmental parties - and the ideological distance between them affected the speed of passing legislation. Both Tsebelis and Döring have furthermore found that the number of veto players, diametrically opposed to what the theory states, correlates positively with the overall amount of legislation, a phenomenon called law inflation, and only negatively when it comes to important pieces of legislation (Tsebelis, 1999; Döring, 2000).

One may also criticize the veto player theory for being too abstract, with its impact working only on an aggregate level. Without questioning the value of such findings, the veto player theory implicitly assumes that all veto players are equally important in the policy process. That may be the case, but a fair guess would be that the impact of veto players differs depending on a number of factors. With the veto player theory we are unable to discover such patterns, which could be of crucial importance for policy makers who are trying to reform an inefficient system. It is not of much help to know that the number of veto players matters if you do not know whom the important ones are and under what condition they matter. By studying more closely what happens with specific pieces of legislation in the policy process, it should be possible to understand more about the effects of specific veto players. This study takes at least a few steps in that direction.

None of the studies discussed above have considered the intentions of the government, though, which I have argued constitutes a necessary component when analyzing legislative capacity and efficiency. This is one of the aspects to which this study makes a contribution. Another is by using the case of transposition in Central Europe, which will be addressed in the following section.

[14] According to Tsebelis (2002) a veto-player is an actor whose consent is necessary for a policy change to occur (p.2).

[15] Although it is not mentioned explicitly in the study, the amount of legislation relates to governmental efficiency.

The case of transposition

Although the accession process has been studied intensively during the last couple of years, there is – strangely enough – still very few studies which systematically compare the applicant countries' varied progression towards EU-membership and fewer still, which have analyzed the transposition process in this way.

Over the last two decades there is, however, a growing body of literature that tries to explain transposition and implementation patterns in member states. Only in the last couple of years has the research field expanded eastward to the new member and candidate countries (see for example Sharman, 2004; Schimmelfennig & Sedelmeier, 2004; Bojkov, 2004), but it is still safe to say that there is an empirical gap to be filled. From a theoretical point of view, one may ask what added value to the research field these new countries can offer. I would argue that studies of these countries might offer a substantial contribution, mainly for methodological reasons. Firstly, the 'old' research field is characterized by very little variation in terms of delays in transposition, thus making the studies less politically relevant and in general less theoretically robust (Mastenbroek, 2003 p 373). There are simply too few directives that are considerably delayed by the member states, to draw any firm conclusions as to why variation occurs. The Central European experience by contrast is one of large variation, both between countries, over time, and between policy areas.

Secondly, and perhaps the most important is the question of incentives to transpose, i.e. to what extent governmental ambition and priorities can be controlled for. Even though the European Commission continuously expresses its concern with the number of directives that are not transposed and tries to put pressure on the member states to comply, the lack of power to punish the worst sinners, will ultimately give the national governments the power to decide whether to comply or to make other priorities (Bursens, 2002 p 173-174). It is therefore hard to get around the fact that the transposition deficit in old member states may all depend on the will of the government. The new member states, let alone the current candidate states, were obviously in a very different position. The governments in those countries were of course free not to comply with the Acquis, but at the price or at least obvious risk of missing the next enlargement wave (Bojkov, 2004 p 519). Since all governments were strongly committed to EU-membership (Schimmelfennig & Sedelmeier, 2004 p 661), it is reasonable to argue that the political will to transpose accurately was high and consistent in all countries.

The last argument for the benefit of analyzing the new member states is that the transposition agenda is much larger compared to the ones of the member states and moreover, that most of the tasks need to be accomplished within only a couple of years (Schimmelfennig & Sedelmeier, 2004 p 661). By exposing their policy making and administrative systems to this enormous challenge, the opportunities to test the limit of different aspects of the countries' capabilities are far greater than is the case of the old member states. More variation in the dependent variable, control for critical independent variables, the extent of the task and the possibilities to really explore the determinants behind different aspects of capacities are therefore some of the merits of analyzing the new member states and the current candidate countries.

Let us now return to the subject for this section, namely previous research on legislative capacity and efficiency and see how studies on transposition relate to the theories discussed above. The common starting point for these studies is the so-called transposition deficit, which officially ranges somewhere between one and five percent of all EU-

directives among member states (Mastenbroek, 2003 p 372-373).[16] The major part of these studies seems to be qualitative in kind and seldom comprising more than three cases and often of just one case. Two broad categories of explanations have been suggested, one focusing on factors concerning the EU-level and one focusing on national politics. EU-level explanations stress factors such as the pressure the EU puts on member states to comply and the complexity of EU directives, are mostly used in case studies, which explain why specific types of legislation are delayed in one country (Mastenbroek, 2003 p 374-375). Since the EU factor has more or less the same impact on member and candidate countries alike, this category of factors alone cannot explain the variation between countries. Differences between countries must to quite a great extent depend on differences on the national level.

Turning to explanations on the national level, scholars in the field emphasize different factors. Constraints in the policy process are not among the most prominent, however. One of the most frequently used theories in this approach is the 'goodness of fit', which has found support in empirical analyses. Its basic claim is that transposition will be quicker the closer the national legislation is to the EU-directive that is to be transposed (Risse et al, 2001). The smaller the changes needed to harmonize the pieces of legislation, the easier they are to adopt. This argument is echoed also from an administrative point of view, which claims that transposing directives that also require changes in the administrative system or routines, will be harder to achieve, than in cases where no changes are needed. This factor is closely related to the one about initial conditions that is touched upon in the introduction. It could reasonably be argued that the goodness of fit differed to a great extent between the front-runners and the laggards when they started membership negotiations and would thus account for the variation in the pace of the transposition between Lithuania and Romania. On the other hand the argument rests on the assumption that the country's position as a member state is not at stake regardless of the extent of the transposition deficit. The Central European countries could, on the other hand, not afford to be sluggish in this respect and should – in line with the argument above – have greater incentive to overcome potential problems related to the goodness of fit.

Another factor, which is supported empirically, is the type of legislative measure used for the transposition (Mastenbroek, 2003 p 376-377). Directives transposed by laws which have to be approved by the parliament, are much more frequently delayed, than directives that are transposed by e.g. government decisions. Given that countries differ to the extent to which they use different legislative measures, this factor may account for the aggregated variation in transposition between countries. This study will, however, limit itself to analyze laws, thus making the question of the use of different legislative measures less relevant.

Finally, there are studies that focus on constraints in the policy process – i.e. veto points[17] and veto players – when explaining differences in compliance with EU-directives between the EU-member states (Haverland, 1999). Federal systems in particular, in which a second chamber has veto power, have been found to be an arrangement that is detrimental to timely and complete transposition of EU-directives, regardless of the level of goodness of fit. As argued elsewhere, this type of explanation seems to the most

[16] There is a debate whether these figures are accurate, but that is of no concern for this study.

[17] Veto-points have been defined as "points of strategic uncertainties where decisions may be overturned" (Immergut, 1992:27-28).

probable one in the cases of the new member and the current candidate states. A less substantiated claim in the literature on transposition is the importance of interest organizations (Diuna, 1999). The empirical evidence of their effects on transposition is weak and it seems that this factor is used as some kind of residual category for cases that do not fit in other theoretical frameworks.

To summarize the theories and previous research in the areas of capacity and efficiency in general and transposition of EU-legislation, i.e. legislative capacity in particular, one finds a plethora of explanations, which are however, only tested on quite a small number of old member countries, on a single policy area and even on single directives. This study will broaden the scope somewhat, by bringing in two former East bloc countries – one former and one current candidate – and by looking at all policy areas during a three year period, 2000 – 2002. In the next section the design of the study will be discussed.

Design

Much of the outline of this study has already been discussed at different places in the text. In this section I will merely give a brief comprehensive picture of the design of the study.

In selecting the cases, maximum variation on the dependent variable was the guideline. As mentioned in the beginning, Lithuania has been among the quickest 'transposers' of the Helsinki group between 2000 when membership negotiations started and 2002 according to the European Commission, whereas Romania has been the slowest.

I have argued that capacity and efficiency must be connected to the ambition of an actor in order to get a valid measurement. Fulfilling low ambitions is not necessarily an indicator of high capacity and failing to fulfill over-ambitious aims, may not be an indicator of low capacity. Both aspects must be taken into consideration. In accordance with this argument, this study takes the Lithuanian and Romanian governments' own harmonization plans, (NPAAs) as the benchmark to which the actual achievements are then compared. The NPAAs are drafted and adopted annually by the governments of the candidate countries and they contain deadlines for adoption, which EU-directives and regulations that are to be transposed and by what legal instrument. The extent to which the plans are fulfilled is the measure of legislative capacity, which is the dependent variable of this study. Because this study is about the parliaments' role in the harmonization process, secondary legislation such as government decisions and orders from ministries have been left out. Only laws scheduled for parliamentary adoption are analyzed.

The parliamentary phase begins when a draft law - submitted by the government to the parliament - is registered in the parliament and ends when the law is promulgated.[18]

Less has been said about how the independent variable – constraints in the policy process – will be operationalized and measured. In the following, this will be discussed in more detail. Drawing on the veto player and veto point literature, three types or indicators of constraints are used as analytical tools.

Veto points

A *veto point* is defined as an instance in the policy process, where a piece of legislation can be rejected or delayed by the decisions made at that point.[19] A vote in a parliamentary

[18] The end point in some instances thus contains rulings of the presidents, which formally do not belong to the parliamentary phase. The time elapsed from the adoption of the parliament to the promulgation is in almost all cases short and do not affect the results in any way.

committee or the final parliamentary vote, are typical examples of veto points. This is a much broader definition than is common in the literature, which usually reserves the concept for final rejections of legislation, i.e. decisions that cannot be overruled somewhere else in the policy process. For the purpose of this study I find it reasonable to include also the possibilities to delay, since these powers could have a profound impact on the transposition process and they are potentially greater threats than outright rejection, which is unlikely to happen very often. Veto points may thus differ somewhat in character. A *formal veto point* is where a draft law could be rejected or delayed, without any formal possibilities from other parties to interfere and revise the decision. A typical example is the final vote in parliament. An *informal veto point* on the other hand lacks the formal power to reject and delay a draft law – for example a vote in a parliamentary committee whose conclusion is merely advisory to the parliament, which has the final say. But a committee conclusion could still be very decisive for the decision made in parliament and a committee could moreover delay legislation by just being slow in its procedures, hence the term informal veto point.

Veto procedure

A veto point should be regarded as a necessary, but not a sufficient condition for the possibilities to constrain the policy process. A veto point does however have to be activated to have any effect. The *veto procedures* tell us what is needed for using the veto point, e.g. qualified majority vote or quorum rules, and secondly what actors who have the formal right to participate in the decision-making. The veto procedure thus determines the potential impact of a specific veto point. The more demanding and exclusionary the veto procedures are, the greater is the concentration of decision-making. In cases where the government can legally circumvent veto points by referring to some kind of urgency procedure, the veto point even ceases to exist.

This is a neglected or at least a poorly elaborated aspect of the 'veto-literature'. The procedures for a president to veto legislation and the procedures for overruling a veto for example, are frequently discussed, whereas a discussion on quorum rules, i.e. the number of members of a committee, parliament, governmental meeting etc who have to be present to be able to make a decision, are next to non-existent. A high rate of absenteeism – paradoxically a passive way to make use of veto power – could be as devastating to the legislative capacity as any powerful veto player.

Veto player

According to Tsebelis a veto player is an actor – collective or individual – whose consent is necessary for a policy change to occur. The US, for example, has three veto-players: The President, the Senate and the House of Representatives, while the UK has one – the House of Commons. These are all defined as institutional veto players, whereas political parties in coalition governments are called partisan veto players (2002 p 2). The UK and the US lack partisan veto players, due to their electoral systems, which produce one party majority governments.

In this study Tsebelis' institutional veto players – i.e. the chamber(s) of the parliaments are treated as veto points, or more correctly as consisting of a number of veto points. Veto

[19] It could be argued that the possibilities to amend also should be included. Since the problems of transposition relate to rejection and above all to delay, power to amend will be omitted in this study.

players are defined as the individual or collective actors in parliament, i.e. individual members and party factions respectively. In line with the arguments on veto points I think limiting the analysis to the actors who must agree on a policy change – that is actors who have the formal power to veto legislation – misses potentially interesting informal aspects of policy change.[20]

Even though an actor may not have the formal power to veto legislation, its influence may nevertheless be decisive. In this study a veto player is defined as every actor – individual or collective - who has the mere possibility, whatever the likelihood, to activate any veto point and/or take part in the decision-making. In parallel with the previous discussion on veto points, a veto player could be formal (a member of parliament) or informal (member of a committee). In the former instance the actor has the direct influence over the outcome, in the latter case its vote is just advisory and could be overruled elsewhere in the process. It should be pointed out that the power of a veto player is not limited to reject legislation, but also to delay it.[21] Following, Tsebelis I will also map the distance between the political parties, not in terms of ideology though, but in terms of their position on EU-membership, which is more relevant to this study. Consensus on EU-membership does not preclude conflict over details in the Acquis, however and potential haggling over details makes the transposition process all but a foregone conclusion.

In conclusion, a number of hostile veto players do therefore not necessarily constitute a threat to the legislative capacity, as long as the veto points are few and, more importantly, if the veto procedures are very demanding or if they allow the government to circumvent veto points and as a consequence sidestep veto players. And inversely, actors, which are not even considered to be veto players, may in practice be the ones who determine the outcome.

In summary, none of the three components discussed in this section are in themselves sufficient for analyzing the constraints in the policy process. Explaining the legislative capacity requires an analysis of the interaction between them. The following section will briefly discuss how the study will be carried out practically.

Method

The empirical analysis of this study will be carried out in two steps. In the first step, the constraints in the parliamentary process will be mapped and compared, on the basis of the laws and regulations that govern the legislative process in the parliament (veto points and veto procedures) as well as the political situation in the parliament (veto players). The aim of the first section is to establish if there are any reasons to believe that the parliamentary phase would cause problems in the legislative process.

The second step analyzes the empirical evidence, in order to find out whether the prediction in the first section holds in practice and to what extent the parliaments are the ones to blame for transposition problems. As mentioned above, all laws that are scheduled for adoption between 2000 and 2002 have been extracted from the NPAAs between 1999 and 2002. Laws that were not adopted on time and that were for that reason included again

[20] Sharman (2004) for example treats organized interest groups as informal veto players.

[21] Scholars have been critical to stretch the concept of veto-players beyond its etymological meaning (see for example Ganghof, 2003:6), since some kind of veto-player will then always be discovered and found to have an impact on the policy process. Being more interested in understanding the logic behind constraints in the policy process than testing the accuracy of the veto-player theory, this study is not affected by this criticism.

in the NPAA the following year have not been analyzed. To establish the extent of the legislative capacity and efficiency, the realization of the scheduled laws is then examined. In the governments' reports on the progress of preparing for the accession to the European Union, detailed information on the transposition is given in all the policy areas, which makes it possible to compare the governments' intention with their actual achievements.

It should be stressed, however, that there are several difficulties involved in this process. The main reason is a process that could be called piecemeal transposition, by which scheduled laws are adopted and then amended many times, eventually bringing the national legislation in line with the Acquis. This is thus a question of quality of the laws and the problem is to determine which version of the law that actually corresponds to the original intention. Amending a law does not necessarily mean that the adopted law was imperfect at the time of its adoption, but it could indicate an amendment in the corresponding EU-directive or regulation, thus forcing the candidate country to follow suit.

In addition, the governmental reports, however detailed and useful, do quite often lack information about the destiny of the scheduled laws, in which cases the laws had to be traced in the parliamentary databases. Last, the title of the scheduled laws is not always the same as the adopted one, which makes it difficult to establish whether the scheduled law is actually adopted and in case it is, which law that corresponds to the scheduled one. These difficulties have been overcome in a satisfactory but very time-consuming way, by a detailed analysis of all the laws scheduled for adoption.

Analysis

In this section the role of the parliaments in the process of transposing EU-legislation into national law will be analyzed. The basic question that will be answered is to what extent the parliamentary phase – rather than the pre- or post-parliamentary phases - affects the legislative capacity of Lithuania and Romania and thus accounts for the differences in the pace of transposing the Acquis. The veto player prediction is that parliamentary decision-making systems, which involve many veto players with a large ideological distance between them, will be the most constrained and the slowest one to process the submitted draft laws. As discussed in a previous section, it is hardly the case that all veto points and veto players are equally important in practice, which implies that their constraining impact on the policy process most likely will differ generally – i.e. that some always are more important than others – and according to the policy area and characteristics of the specific draft law under consideration. It would thus be more rewarding and interesting to find which veto points and veto players that really matter and under what conditions.

Constraints in the parliamentary phase

In this section the level of constraints in the decision-making structures in the Lithuanian and Romanian parliaments will be compared, in order to find out whether there are reasons to believe that this phase in the policy process is causing the big differences in terms of pace of the legal approximation. The aim of analyzing the veto points, veto procedures and veto players, is to estimate the possibilities for efficient decision-making in the two countries. The overall guiding question has been: what chances does the government have to get the intended pieces of legislation through parliament?

The analysis of the veto points and the veto procedures is based on the Standing Orders of the Chamber of Deputies, the Standing Orders of the Senate and the Regulation of the Chamber of Deputy's and the Senate's joint sessions in Romania and the Seimas of the Republic of Lithuania Statute.[22] The constitutions and other legal documents have also been examined when relevant. The aim has been to map all veto points and the veto procedures from the initiation of the legislation in the parliaments to the promulgation of the law, asking (1) what type of veto is possible (reject or delay the draft), (2) what the conditions for activating the veto point look like and (3) whether the government has any possibility to circumvent veto points and in case they do, examine the conditions for doing so. The analysis of veto points and veto procedures sets the frame for the governments' legislative capacity and efficiency or to put it the other way around, the opportunities for potential opponents to interfere and influence the process. The actual outcome in this respect is determined by the properties of these opponents, i.e. the veto players.

When analyzing the veto players, the political parties and the deputies are in focus. The number of parties in a parliament, their respective strength and their relation to the government has been studied as well as their position on EU-membership. The least constraining and thus potentially most efficient parliamentary situation is a cohesive one-party majority government while the most constrained situation is when a multi-party minority government, including EU-skeptics hold office.

Lithuania

Lithuania has a unicameral parliament – the Seimas – with 141 seats and whose activities are regulated in the Seimas of the Republic of Lithuania Statutes. This document has been amended several times since it was first adopted in 1994. The version that is analyzed in this study was adopted in November 1999 (Law No I-399, 1999-11-11).[23]

Given that there is a majority government in office, the Seimas (Parliament) Statutes offer few constraints on governmental decision-making. Two political instances have the power to reject a draft law, the Legal Affairs Committee, which may rule that a legislative initiative violates the constitution or that formal procedures have been violated when the draft was submitted to the Seimas (Art 139) and the Seimas (Art. 159). Because the Seimas' Committees have the same composition as the Seimas and because decisions are taken with a majority of the members present (Art. 55 & 113), a unified majority government will always prevail.

The possibilities for delaying the policy process are not much greater, because decisions to send the draft back to the initiator, the preparing Committee or to the public for consideration for instance, are made by a majority vote of the deputies present in the Seimas. In addition, the Seimas can, by applying the Procedure of Urgency (Art. 163) shorten the time periods the draft could be dealt with in each instance and by applying the Procedure of Special Urgency (Art. 164) reduce the possibilities for adding new amendment proposals to the draft. In the Seimas' sessions there are also no quorum rules

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[22] Current versions of the standing orders are available at the parliaments' websites (www.cdep.ro; www.senat.ro and www.lrs.lt) and previous Romanian versions at Superlex (http://domino2.kappa.ro/mj/lex2002.nsf/WebOpenPage?OpenForm) and previous Lithuanian versions in the parliamentary database (http://www3.lrs.lt/n/eng/DPaieska.html).

[23] Between 2000 and 2002 the Statutes have been subject to seven amendments, none of which affects the veto-structure of the parliamentary proceedings.

to consider, while the committee meetings must be attended by at least half of its members (Art. 53.4).

Concerning veto points and veto procedure, it appears that a unified majority government should face few problems, unless it violates procedural or constitutional norms. In the following the parliamentary situation will be briefly commented upon.[24]

In terms of party composition, Lithuania has had three governments between 2000 and 2002[25], one of which was an outright minority coalition that lasted from October 2000 till June 2001, and which consisted of the Lithuanian Liberal Union (LLS) and the New Union (NS). The previous government – a three-party coalition comprising of the Homeland Union - Conservatives of Lithuania (TS-LK), the Lithuanian Christian Democratic Party (LKDP) and the Center Union of Lithuania (LCS) - was in effect also a minority coalition from mid-spring 2000 until the elections in October that year, due to defections from the conservatives. The period of minority coalition governments ended in July 2001, when the Social Union left the coalition and sided with the Lithuanian Social Democratic Party (LSDP) - the biggest party in parliament after the elections in 2000 – to form a two-party majority coalition. Although some deputies left their original parliamentary group, the government still controlled a majority of the 141 seats in the Seimas at the end of 2002.

Turning to the opinion on EU-membership, all major parties,[26] which held seats in the Seimas between 2000 and 2002, were in favor of a membership in the EU. The Center Union though has been considered a soft Euro-skeptic, which implies a principled support for membership, but with objections on particular parts of the Acquis (Taggart & Szczerbiak, 2002).

There has been an overwhelming majority in favor of EU-membership in the Seimas during the whole period in question and despite the fact that minority coalitions have been in office almost half of the time (15 out of the 36 months under investigation) the prediction is that Lithuanian governments should be able to fulfill their legislative intentions. Special attention will however, be paid to the periods of minority governments, in order to find out whether these periods differ in terms of pace and timeliness from periods with majority governments.

Romania

In contrast to Lithuania, Romania has a bicameral parliament consisting of the Chamber of Deputies with 346 seats and the Senate with 143 seats. Their procedures are regulated by three documents, the Standing orders of the Chamber of Deputies, the Standing orders of the Senate and the Regulation of the Chamber of Deputy's and the Senate's joint sessions. The following analysis is based on the versions adopted in 1995 (Official Journal 112/2

[24] This and the following section is based on constitutional update watch in East European Constitutional Review (EECR)1996-2002.

[25] These governments have been headed by five prime ministers.

[26] A major party is defined as one holding at least two seats.

June 1995), 1993 (Official Journal 178/27 July 1993) and in April 1992 (Decision No. 4, 3 April 1992) respectively.[27]

One peculiarity of the Romanian system is that the two chambers have exactly the same functions and prerogatives, which means that a draft must be adopted by both chambers to become law. A draft law may be initiated in either of the chambers first and after that chamber has concluded its treatment of the law and taken a final vote, the draft is sent to the next chamber for the same process. If one of the chambers adopts a text that is different from the one adopted in the other chamber, the draft is sent to a mediation committee, where a compromise is sought (Art. 74).[28] The new version then has to be approved by both chambers and if that fails, the draft is referred for debate in a joint session of the two chambers. That also happens if the mediation committee fails to agree on the wordings of its report (Art. 77). Given the parliamentary structure, it comes as no surprise that the number of veto points is considerably higher than in Lithuania. But adding more veto points to the policy process does not necessarily mean that the risk of a rejection of the draft increases, but it appears unavoidable that the Romanian case should be more protracted.

As in Lithuania, the possibilities for rejecting a draft law when a coherent majority government is in office are limited to two instances. The Senate and the Chamber of Deputies, both make decisions with a majority of those present, but - in contrast to Lithuania – there is a quorum rule of 50 percent of chamber deputies and senators respectively (Art. 119).

The government's possibilities to rule by decree is somewhat stronger in Romania than in Lithuania and drafts concerning the legal approximation to the European Union in particular (Art 107). The urgency procedures mainly shorten the time span in the relevant instances (Art. 107-111), but the Constitution (Art. 114.4) enables the government, upon the approval of the parliament, to adopt emergency orders, "which shall come into force only after their submission for Parliament for approval", which means that parliament makes decisions after the orders have come into effect.[29]

In summary, it could be concluded that the structural constraints in the decision-making process in Romania are not greater than in Lithuania. The Romanian system has more veto

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[27] Just like in the Lithuanian case, these regulations have been amended several times. In January 2001 considerable amendments were made concerning the Standing Orders of the Chamber of Deputies (republished in the Official Journal No. 51/31 January 2001) and the Standing Order of the Senate (republished in the Official Journal No. 58/2 February 2001). The amendments contain no relevant changes concerning veto points and veto constellation, but reduces the possibilities to suggest amendments to draft laws, with the aim to speed up the legislative process (East European Constitutional Review, Vol. 10, No 1, p. 32).

[28] All articles referred to in this section are from the Standing Order of the Chamber of Deputies unless otherwise indicated.

[29] There is a methodological problem related to the government's emergency ordinances (GEO) concerning when a law should be considered adopted. On the one hand the GEO immediately takes effect and thereby transposes the relevant EU-directive. The approval of the GEO by the parliament, which does not treat GEOs differently from other initiatives, only transforms the GEO into law. From that perspective it could be argued that the transposition is finished when the GEO is approved by the government. On the other hand the deadlines in the NPAAs refer to the parliamentary adoption not the adoption of the GEO and the GEO could hypothetically also be rejected or amended by parliament. In this study I have measured the adoption of scheduled law according to their adoption date in parliament.

points and most likely a slower legislative process in general, but on the other hand it has some enabling laws, which might facilitate the government's decision-making capabilities.

Turning to the parliamentary situation in Romania[30] it is quite obvious that it has been more fragmented than in Lithuania. In January 2000 a broad multi-party coalition was in office, consisting of some five parties, depending on how to count the broad Democratic Convention (CDR).[31] Although parties within the CDR tried to break away from the CDR umbrella, the multiparty majority government remained in office until the parliamentary elections in November 2000, which resulted in a quite different composition of the parliament.[32] The winner was the left-wing Party of Social Democracy in Romania (PDSR), which took 155 of the chamber of deputies' 346 seats. Alone they formed a one-party minority government, with informal support from all other parties and a more formalized support from the Hungarian Democratic Federation of Romania (UDMR), which won 27 seats. The PDSR minority government was still in office at the end of 2002.

All parties in parliament during the period in question embraced the idea of a Romanian EU-membership. The Greater Romanian Party (PRM), which gained 4,5 percent of the votes in the 1996 election and 19,5 percent in the 2000 election is considered to be a soft euro-skeptic (Taggart & Szczerbiak, 2002 p 14). PRM was never part of any government during the period in question. There is thus nothing to suggest that the Romanian decision-making process would be more constrained than Lithuania's. The comparison between the five-party majority government (12 months) and the one-party minority government concerning the legislative capacity and efficiency could be an interesting one, revealing whether governmental cohesion is more conducive, than a majority government.

To conclude this section on constraints in the parliamentary decision-making systems, it would be a surprise if the parliaments were causing problems in terms of rejecting EU-related laws submitted by the government. The composition of the parliaments and the political parties' stance on EU-membership suggest that draft laws will pass without amendments through the legislative system and eventually be adopted. That is not to say that the problems of transposition lie elsewhere, i.e. in the preparation of the drafts by the government. The parliament might cause trouble by taking an excessively long time to process the drafts submitted by the government, thereby delaying the process of transposition. On the basis of the analysis above, the prediction is that there will be marked differences in terms of the time EU-related drafts spend in their respective parliament, mainly due to the Romanian bicameral system. It is nevertheless impossible to tell whether these differences will be decisive or not. That is subject for the second step in the analysis, which will be dealt with in the following section.

The destiny of EU-related laws in the national parliaments

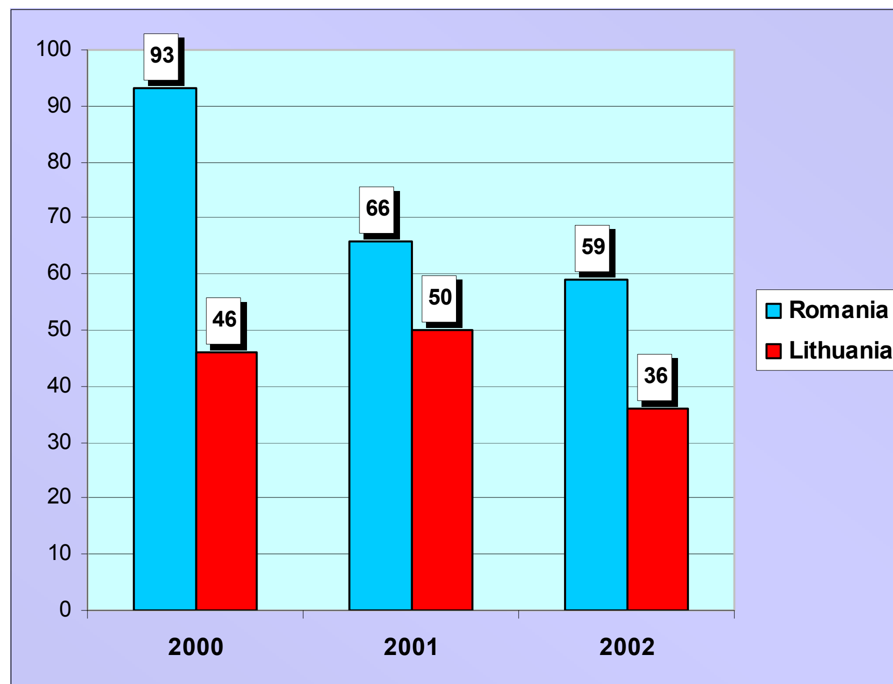
In this section the destiny of the laws scheduled for adoption by the government will be analyzed, in order to find out what role the parliaments play in the transposition process as well as their relation to the pre-parliamentary phase.

In the NPAAs, the projected laws are given a deadline, which indicates when they have to be adopted by parliament and in the Lithuanian case also when a draft law is to be

[30] East European Constitutional Review 1996-2002, updates on Romania.
[31] In the 1996 election CDR comprised some 15 parties.
[32] The government of Romania is formed on the basis of the situation in the Chamber of Deputies, but since elections to both chambers are held simultaneously, the party composition is more or less identical.

submitted to the government for approval. The specificity of the deadlines varies between the countries, between policy areas and over time. The Lithuanian deadlines are generally more specific, usually indicating both quarter and year, while Romania initially just indicated a year. In the more recent Romanian NPAAs, both month and year are indicated. Quite a few projected laws in both Lithuania and Romania lack a clear deadline. If there is no information in other sources about the time for adoption or when it is impossible to make a realistic estimate, these laws will be left out of the analysis. The laws are categorized as adopted on time, delayed or not adopted at all.[33]

Figure 1: Number of laws planned for adoption by year in Romania and Lithuania

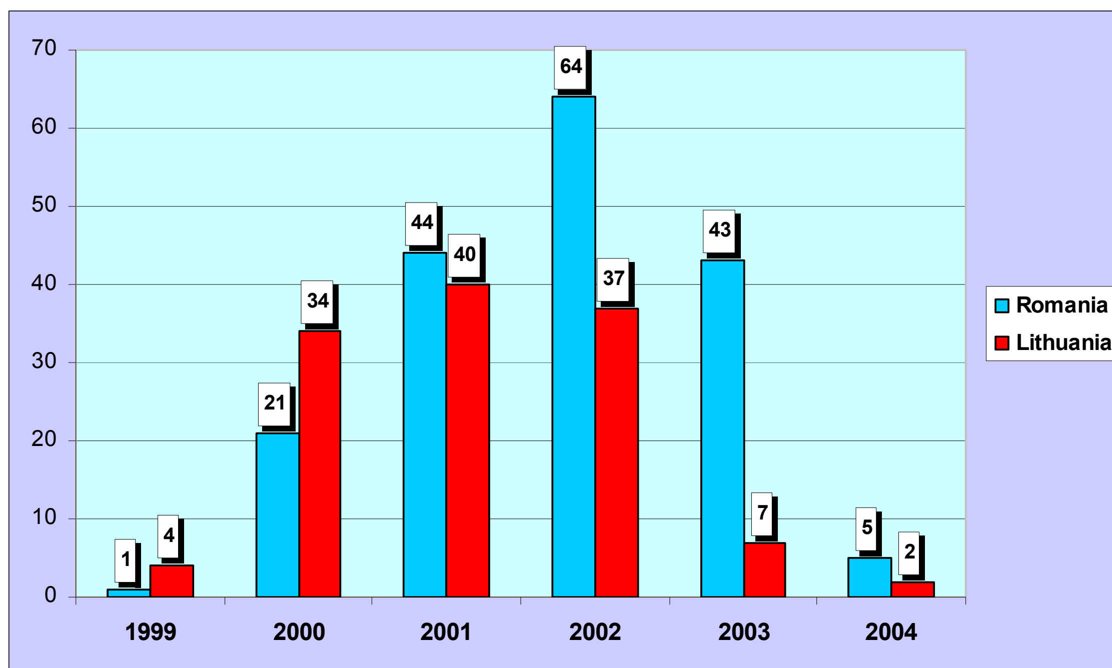


Source: Romanian and Lithuanian National Programmes for the Adoption of the Acquis 1999 – 2002.
Comment: Laws that have been scheduled for adoption on several occasions have only been counted once, in the first document in which they are mentioned.

As shown in figure 1, the number of laws included in the NPAAs between 1999 and 2002 that were scheduled for adoption between 2000 and 2002 differ considerably between Lithuania and Romania. In Lithuania, a total of 132 laws were scheduled for adoption during the period in question, while the Romanian figure is 218. The year 2000 accounts for the biggest difference, during which Romania scheduled twice as many laws as Lithuania. The agenda thus seems to be much larger in Romania than in Lithuania.

[33] It should be noted that 'not adopted' does not equal rejection. Not adopted only denotes laws which so far have not been adopted. They could have been rejected, but they could also be somewhere in the policy process. Moreover, laws could have been delayed due to rejection of earlier versions of the law.

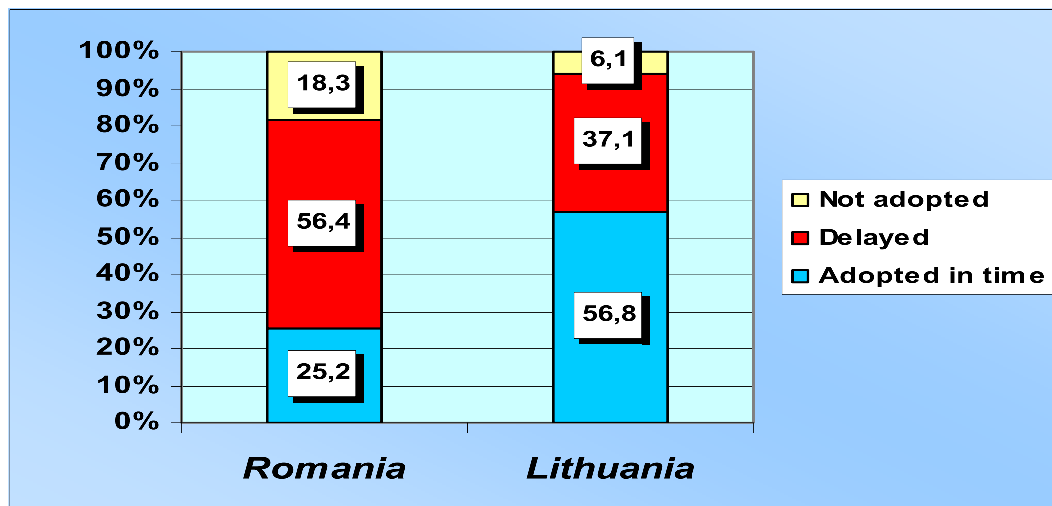
Figure 2: Number of laws adopted by year in Romania and Lithuania



Source: Own compilation, based mainly on the Romanian and Lithuanian Governments' Report on the Progress of Accession to the EU 1999 – 2003.

Figure 2 shows that Lithuania adopted more laws early in the process compared to Romania. Lithuania outnumbers Romania on this account in 2000 despite the vast difference in the number of projected laws and comes very close in 2001 as well. During 2002 and more obviously in 2003, Romania quite naturally adopted far more laws than Lithuania, which by then had more or less finished its transposition of EU-legislation. The figure does not say anything about the timeliness of the adoption.

Figure 3: Laws adopted in time, delayed and not adopted



Source: Own compilation based on Romania's and Lithuania's NPAA and Governmental reports 1999 – 2003 and TAIEX database.

The extent to which the governments' ambitions are being fulfilled is revealed in figure 3. More than half of the projected laws were delayed in Romania and only a quarter of them were adopted on time. In Lithuania by contrast almost 57 percent of the laws were adopted on time and a little more than one third were delayed. In addition, more than 18 percent of the Romanian laws were not adopted at all, while that was true for only six percent of the Lithuanian laws.[34] It is thus quite clear that the transposition process has been more efficient in Lithuania than in Romania, although one has to take the larger Romanian agenda into account. But what role do the parliaments play in this process?

In order to answer that question we need to examine the amount of time that EU-related laws spend in the Romanian and Lithuanian parliaments respectively. According to the prediction above, laws would spend considerably longer in the parliament of Romania than in Lithuania.

Table 1. Time in Parliament (minimum, maximum and average number of days)

	N		Minimum		Maximum		Mean		Std. Deviation	
	Romania	Lithuania	Romania	Lithuania	Romania	Lithuania	Romania	Lithuania	Romania	Lithuania
Total number of days	178	124	13	2	1868	995	329.76	112.48	321.16	128.13
Days in the first instance	178	-	5	-	1406	-	151.85	-	213.26	-
Days in the Senate	178	-	0	-	1406	-	138.83	-	225.67	-
Days in the Deputies' Chamber	178	-	2	-	1471	-	165.53	-	224.74	-
Days in mediation	99	-	0	-	359	-	44.93	-	45.65	-

Source: Own compilation based on data from the Lithuanian and Romanian parliamentary databases.
Comment: Only laws, which were eventually adopted by the parliaments, are included. Non-adopted laws are accordingly omitted.

Table 1 shows the average amount of time a draft law spent in the parliamentary phase in total and in the Romanian case it also shows the time spent in the two chambers separately and in mediation. Not surprisingly, the parliamentary procedures are much quicker in Lithuania, where a draft law on average spent 112 days.[35] The Romanian parliament by contrast needs almost three times as long – 330 days – in processing an EU-related draft. As suspected the bicameral system severely slows the process down. But not even when

[34] It should be noted that there are some uncertainties regarding the laws that were not adopted. Some may have been transformed into other legal measures and others may have been incorporated into laws that were broader than was first planned for. There is however, no indication in the sources that it would have been the case.
[35] All days, working days as well as holidays, are counted.

they are analyzed separately are the Romanian chambers as efficient as their Lithuanian counterpart. A draft law spent on average 152 days in the first instance[36], i.e. more than a month longer than in the Seimas. The legislative process was considerably speedier in the Senate than in the Chamber of deputies, but it was still slower than in Lithuania. The laws, on which the two chambers could not agree, on average spent 45 days in mediation.[37]

It is thus obvious that the parliamentary system has an effect on the speed of processing legislation and that the sluggish Romanian pace of transposition at least partly is a product of its bicameral system. The fact that both chambers individually use more or less the same amount of time, which cannot be said to be excessive, indicates that no particular instance of the parliament is particularly slow, but rather that it is the 'double command' that causes the sluggish overall pace. That is not to say that such a system is doomed to be inefficient and marred with missed deadlines. As long as the government submits its drafts in good time, there should be no problems keeping the deadline. Conversely, it is not at all certain that an efficient parliamentary system results in a fast and timely transposition. It all depends on how the pre-parliamentary phase is structured. To what extent then are the parliaments accountable for the missed deadlines? To find out we also need to look at how the governments act.

We have now established the basic facts concerning the laws scheduled for adoption in Romania and Lithuania. In the next step of the analysis only the delayed laws will be dealt with. In Lithuania 49 of the 124 scheduled laws were adopted after the deadline expired and 123 out of 178 in the Romanian case.

Table 2: Extent of delay

Delay (days)	Romania		Lithuania	
	N	%	N	%
1-90	10	8	15	31
91-183	26	21	12	24
184-365	32	26	8	16
366-730	41	33	12	24
731-	14	11	2	4
N	123	99	49	99

The delays have been much more severe in Romania, 368 days on average versus 279 in Lithuania: a difference of about three months. In Lithuania, more than half of the delayed laws were adopted within six months after the deadline expired, leaving a total of just 22 laws that could be considered seriously delayed. 28 percent of the laws were nevertheless

[36] A draft law can be initiated in either chamber first.

[37] The median time a draft spend in Western European legislative process (concerning working hours and social security benefits) varies between 32 days in Ireland and 620 days in Italy. Only Italy, Switzerland, the Netherlands and Portugal have more protracted legislative processes than Romania. Lithuania in contrast is 'beaten' by seven countries (De Winter, 2004:58).

delayed more than a year. In Romania just one in three of the delays could be discarded as insignificant, while as much as 44 percent were delayed more than a year. But who is to blame for these delays? There are four possibilities: the parliament, the government, both or neither of them.

I have used two criteria for analyzing the distribution of blame: governmental submission of the draft law in relation to the deadline for adoption and the amount of time draft laws spend in parliament. The date of submission of draft laws to the parliament is a good indicator of whether the parliament has any chance of passing the draft law on time. If draft laws are submitted after the deadline for adoption expires, the parliaments have no chance to adopt the law on time no matter how quick they are. In those cases the governments at least have a share in the delay, even though a slow parliamentary proceeding might make things worse, in which case the blame is to be shared. The latter scenario will be addressed shortly. For the parliaments to have any chance to adopt the draft law on time, it is not enough simply to have the draft submitted before the deadline. It must be submitted *well before* the deadline expires. Given that the average draft spends 112 days in the Lithuanian parliament and 330 in the Romanian parliament, it should – as a minimum – be necessary for the government to submit the drafts 30 and 100 days respectively prior to the deadline. Laws submitted less than 30 and 100 days respectively in advance of the deadline will be considered submitted too late and the government will get the blame.[38] If draft laws are submitted earlier in relation to the deadline, the government is considered not guilty for the delays.

The parliament is considered responsible for the delays in cases where draft laws spend an unreasonably long time in parliament. There is obviously no fixed parameter for how much time the respective parliaments normally would need. To get an approximate indicator, the average amount of time EU-related draft laws spend in parliament will be used as a benchmark. Draft laws that spend more time than on average, 112 days in Lithuania and 330 days in Romania will thus be considered to have been processed too slowly by parliament, and the blame in those instances will be placed on the parliament.

By combining the two indicators it will be possible to distribute the blame between the parliament and the government.

- The government bears the sole responsibility for the delay in cases where the draft laws are submitted to parliament later than 30 days (in Lithuania) and 100 days (in Romania) before the deadline for adoption expires and when these drafts spent less than 112 days in the Lithuanian parliament and less than 330 in the Romanian parliament.
- The parliament bears the sole responsibility for the delay when drafts that are submitted to the parliament more than 30 and 100 days respectively before the deadline and when they spend more than 112 and 330 days respectively in parliament.
- The government and the parliament share the responsibility for delays when draft laws are submitted to parliament less than 30 and 100 days respectively before deadline and also spend more than 112 and 330 days in parliament.

[38] This division is quite arbitrarily drawn. The time allocated for parliamentary treatment is still at a minimum in my view, implying that the results are biased in favor of the government.

- Neither the government nor the parliament is responsible for delays when drafts are submitted on time and spend less than the average amount of time in parliament.

Table 3: Responsibility for delayed laws

Responsibility	Romania		Lithuania	
	N	%	N	%
Government	78	63	30	61
Parliament	22	18	8	16
Both	11	9	8	16
Neither	12	10	3	6
N	123	100	49	99

The findings indicate that the governments to a much higher extent than the parliaments are responsible for the delays in the transposition process in both countries. More than 60 percent of the delayed laws fall on the governments' responsibility alone, while the parliaments are the only ones to blame in less than 20 percent of the cases. In addition, it could be noted that the government submitted draft laws after the deadline for adoption expired in 57 percent of the cases in Romania and in 73 percent of the cases in Lithuania, thus reinforcing the governments' responsibility even more. The similarities between Romania and Lithuania in terms of the distribution of the percentages are striking. The 'neither category' consists of laws that both institutions have handled according to what could have been expected from them, even though the laws were eventually adopted a bit late. The extent of the delay in these cases was quite limited (64 days as a maximum in Lithuania and 178 days in Romania) and these laws are therefore neither of theoretical nor empirical interest.

Table 4: Government and parliamentary responsibility for delayed laws

Responsibility	Romania		Lithuania	
	N	%	N	%
Government	89	80	38	83
Parliament	33	30	16	35
Difference	56	50	22	48

Comment: The table is based on the laws, whose delay either the parliament or the government are held responsible for. The laws in the 'neither-category' in table 2 are this omitted, reducing the N to 111 laws in the Romanian case and 46 in the Lithuanian. Moreover the laws in the 'both-category' in table 2 are counted twice, since they have been added to both the 'government category' and 'parliament category'.

When adding the laws included in the 'both category' in table 2 to the government and parliament categories, the total number and the percentage of delayed laws that the government and the parliament have been responsible for is shown. The differences are stark in both cases, around 50 percentage points, with the governments' 'blame ratio' hovering around 80 percent and the parliaments' just around 30 percent.

When looking at the delay of the laws for which the parliaments bear the sole responsibility (see table 3) in more detail, one discovers that the delays in the Lithuanian case are quite limited, whereas they are significant in the Romanian case. In Lithuania only one of the eight laws were delayed by more than three months. In Romania, in contrast, ten of the 22 laws were delayed between one and two years and another five laws between six and twelve months. In addition, when looking at the amount of time spent in parliament there are quite big differences between the countries. Only three laws (38 percent) in Lithuania spent more than twice the average amount of time in parliament (i.e. 224 days), with the longest proceeding lasting 364 days. In Romania twelve laws (55 percent) spent more than twice the amount of time, i.e. almost two years, with a maximum of 1868 days.

Turning to the laws where the responsibility is shared between the government and the parliament, one finds that all these laws (11) have been handled fairly swiftly by the Romanian parliament. Seven laws spent less than one month more than the average in parliament and just one law spent more than three months more than the average. Eight laws were delayed more than a year however, which indicates that the government on these occasions must take the main responsibility for the extent of the delay. Although both institutions share the responsibility for the delays, the government is therefore in most cases to blame for the extent of the delay, if not for the delay per se. In Lithuania the blame is more equally shared. Five of the eight laws spent between eight and 15 months longer than average in parliament. On the other hand, all laws were severely delayed, ranging from 338 to 1385 days, which indicates that the government was equally responsible for the delays as well as the extent of the delays.

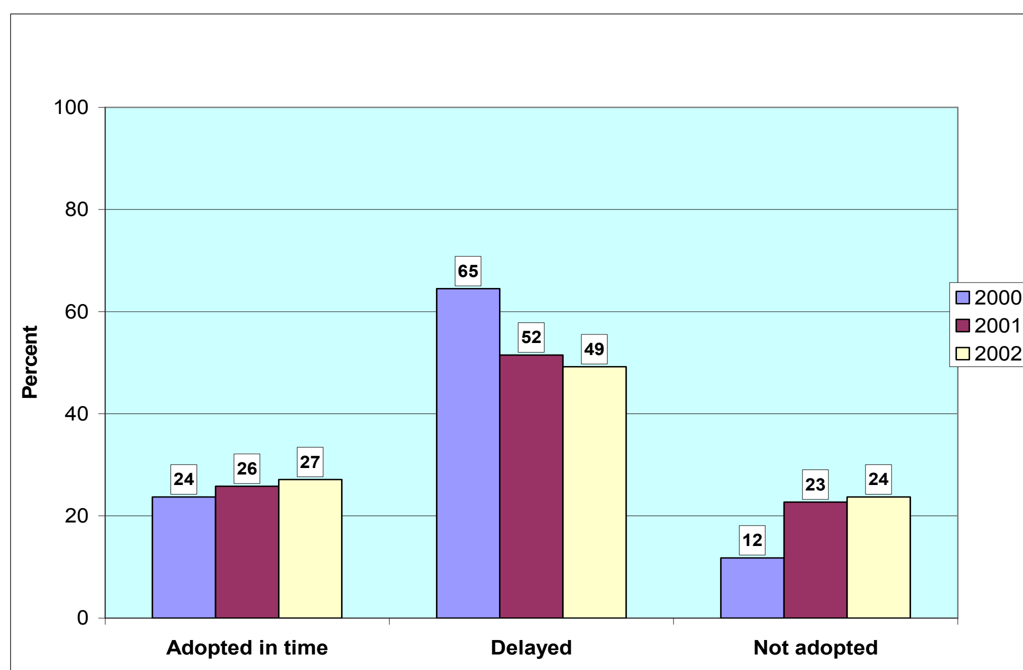
From this more detailed analysis it may be concluded that the Seimas to a very limited extent has had a negative influence on the transposition process. With just a few exceptions the laws that fall under its responsibility have been handled only marginally longer than could be expected and the delays have also in most cases been limited. It is no exaggeration to say that the Seimas has a big part in Lithuania's successful approximation to community standards. The Romanian parliament in contrast, has had a much more negative impact on the transposition process. The laws, for which the parliament bears the responsibility, are in general sluggishly processed in parliament and also often severely delayed. It should be remembered, however, that the parliament still out-performs the government in these respects. The last part of the analysis section will be devoted to the question of whether changes in the constellation of the veto players affect the pace and timeliness of the transposition.

As we may remember the veto player theory claims that the number of veto players and the ideological distance between them determines the likelihood of changes of the status quo, i.e. the adoption of important pieces of legislation. The first part of the analysis concluded that the veto player configuration in both countries looked favorable for the governments' possibility to fulfill their intentions, mainly due to the consensus among the political parties over the merits of a membership in the EU. Two things were however, pointed out as potentially constraining the parliamentary process. First, the fact that parties

may differ on specific pieces of the Acquis or on how to prioritize and second, that minority governments were in office for a significant amount of time in both countries. In the following section, the legislative capacity and efficiency will be analyzed on an annual basis, in order to find out whether changes in veto player constellation affect the timeliness of transposition.

In Romania there was one major change in the veto player constellation during the period 2000 – 2002, and that occurred as result of the parliamentary elections in November 2000. The incumbent government was a five-party majority coalition, without any euro-skeptics and the incoming one was a one-party minority government. The outcome of these changes is hard to predict, but if EU-membership is the overarching goal for all the parties involved, there should be no major differences over time.

Figure 4: Laws adopted in time, delayed and not adopted in Romania on an annual basis



As shown in figure 4, however, there are changes in the legislative capacity and efficiency, with a slight successive improvement, at least concerning laws adopted by the parliament.[39] In 2000, i.e. during the multi-party coalition, 65 percent of the scheduled laws were delayed and only 24 percent of them were adopted on time. The share of delayed laws dropped markedly in 2001 to 52 percent while the laws adopted on time only rose by two percentage points, the reason is the increasing number of not adopted laws, a category which is a bit uncertain. If this category is included, there is almost no change in terms of legislative capacity and efficiency. If it is excluded from the analysis there is a marked increase, especially between 2000 and 2001. Between 2001 and 2002 there is not much change regardless of whether we include the laws that were not adopted. The legislative capacity and efficiency has certainly not decreased over time and my interpretation is that there has been a slight, if not powerful, increase. If that is true, it

[39] As have been pointed out before, there some uncertainties concerning the laws not adopted.

implies that a cohesive minority government is at least as efficient as a majority multi-party coalition. The increase in legislative capacity and efficiency notwithstanding, the overall picture is quite bleak. There is a big gap between what is scheduled and what is achieved every year, and as is shown in the previous section, it is mainly the government's fault.

Turning to Lithuania, the veto player constellation changed three times between 2000 and 2002. The first change occurred during the spring of 2000, when the incumbent three-party coalition, which included one soft euro-skeptic party, lost its majority, due to defections from the biggest party in the coalition. The election in October 2000 represents the second change since it resulted in a new minority government, but without a euro-skeptic party. In July 2001 the government fell and a majority coalition took over power. The veto player prediction would suggest that the last constellation would be the most favorable for legislative capacity and efficiency, since the government both commanded a majority and its coalition members agreed on the issue of the EU. The government that took office after the election should out-perform its predecessor for the latter reason. Since the changes in veto player constellation occurred in the middle of the years, it is more difficult to estimate the capacity and efficiency of each specific constellation.

Figure 5: Laws adopted in time, delayed and not adopted in Lithuania on an annual basis

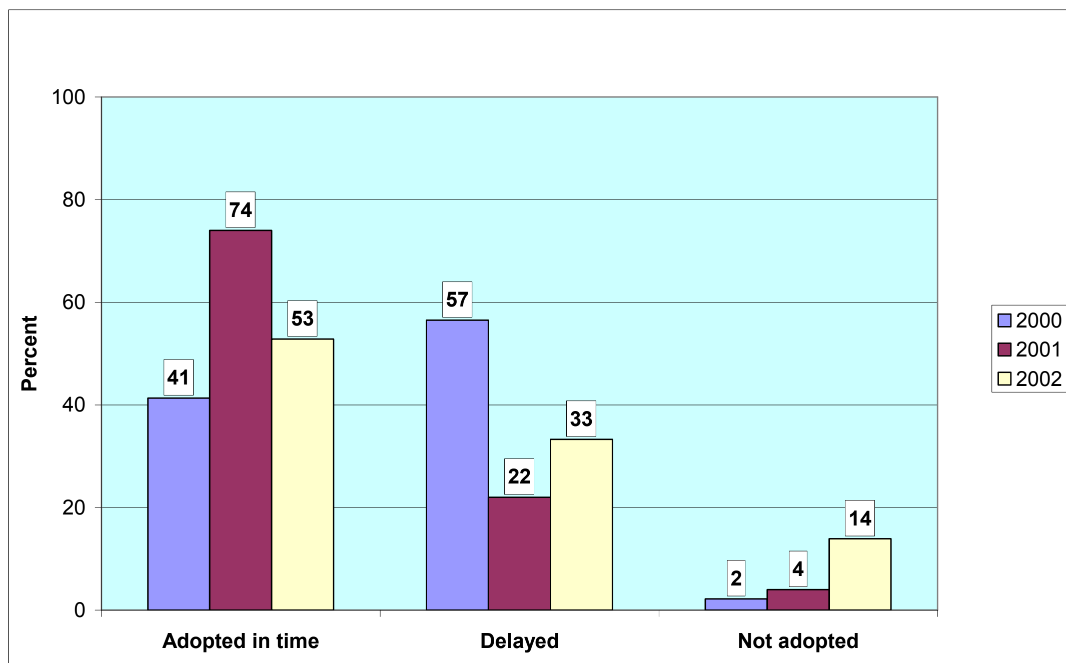


Figure 5 shows that there is much more variation over time in Lithuania than in Romania. The most striking feature is the huge increase in legislative capacity and efficiency in 2001, compared to the previous year. The drop in capacity the following year is also sharp. Starting with the overall level, it seems that much of the Lithuanian success with the transposition could be referred to 2001, when 74 percent of the scheduled laws were adopted on time. This stands in stark contrast to the previous year, when only 41 percent was adopted in time and as many as 57 percent of the laws were delayed, which is a bigger share than in Romania in 2001 and 2002. In 2002 by comparison the share of delayed laws is markedly lower and the share adopted on time higher, which indicates that 2000 was an

exception, had it not been for the share of not adopted laws, which increased manifolds compared to previous years.

It thus seems that the legislative capacity and efficiency has only reached an acceptable level 2001, since the delayed or not adopted laws added together outnumber the timely adopted ones in both 2000 and 2002.[40]

Turning to the potential impact of changes in the veto player constellation, it seems that having a majority government or not is irrelevant to the legislative capacity and efficiency. In 2002, when a majority coalition was in office the capacity was lower than in 2001 when a minority cabinet ruled during the first half and a majority coalition during the second half. Given the drop in capacity between 2001 and 2002 it seems a bit far-fetched to assume that it is the majority coalition that accounts for the high capacity in 2001. Since transposition – from initiation to adoption – is a drawn-out process, it is risky to make short-term assessments. The laws scheduled for adoption in 2001, for example, were most likely often initiated in 2000 and the governments in office in 2001 are in that case, just reaping the fruits of the work of the previous governments. That caveat just holds for the year 2001 however. Even though the governments during 2000 could have done a good job of preparing laws to be adopted in 2001, they nevertheless failed to quite a large extent to adopt the laws scheduled for 2000. Following the veto player logic that could have been the result of having a euro-skeptic party in government, but it would take a more detailed study of the work of the government to verify the truth of that theory, which is beyond the scope of this study.

To conclude this section, no clear evidence has been found that changes in veto constellation affect legislative capacity. In Romania no big changes occurred over time, while the marked changes in the Lithuanian case hardly can be attributed to changes in veto constellations. It should be noted however, that the veto constellation in both countries was predicted to be uniformly not constraining during the period under study. Two striking results do however stand out: first, the fact that the Romanian legislative capacity has been low during the whole period, despite the favorable veto constellation. Part of the answer could be that it is veto constellation within the government, which affects the overall capacity, but as we have seen, the slow parliamentary proceedings have also had a strong negative impact on the timeliness of the transposition; and second, the fact that Lithuania is not out-performing Romania when analyzing the legislative capacity on an annual basis. The best year in Romania was found to be better than the worst year in Lithuania, indicating that some contingent factors also play a role in this process.

Conclusions

In this final section the main results of the study will be presented briefly. The conclusions of this study are:

1. There are marked differences in the legislative capacity and efficiency between Lithuania and Romania, when looking at the whole period under investigation. In Lithuania 57 percent of the projected laws were adopted on time, while that was true for only 25 percent of the laws in Romania. When looking at the legislative capacity and efficiency on an annual basis however, the results are

[40] It should perhaps be remembered that figure 4 and 5 do not say anything about the extent of the delays.

more mixed. For example, in its most efficient year, Romania fared better than the least efficient year in Lithuania. The legislative capacity in Romania has been low, regardless of the division of the time period, while the Lithuanian record has shifted considerably between high and low over time.

2. As predicted, there are also marked differences between the countries in terms of the time that EU-related draft laws spend in parliament, 112 days on average in Lithuania and 330 in Romania. However, while not subject to a more detailed analysis, it is quite clear that the main reason for this is the bicameral structure of the Romanian parliament. The number of veto points thus takes its toll.
3. Projected laws have been much more seriously delayed in Romania than in Lithuania, on average 368 days in Romania and 279 in Lithuania. Moreover, 44 percent of the laws were delayed more than a year in Romania compared to 28 percent in Lithuania.
4. It is the governments that bear the main responsibility for the delays in both Romania and Lithuania. Only in about one third of the cases, do the parliaments have any responsibility, compared to around 80 percent for the government. The similarities in the distribution of whom is to blame are striking between the two countries.
5. Changes in veto player constellation do not seem to matter. In Romania the legislative capacity has lingered on a low level, despite a favorable veto player constellation, and in Lithuania the sharp shifts between low and high legislative capacity over time do not appear to correspond to similar shifts in the veto player constellation.

From this five point list it should be obvious that the parliamentary systems do matter in terms of the pace of the transposition, but that they all the same play an inferior role compared to the pre-parliamentary phase. The Lithuanian parliament has been very efficient overall and processed the draft laws submitted to it speedily, with just a few exceptions and has not caused but a few serious delays. The Romanian parliament in contrast, has been much slower in its proceedings and has to a much greater extent caused serious delays. It is perhaps not so much the bicameral system per se which determines the length of the parliamentary proceedings, but rather the peculiarity of having two chambers with exactly the same competence and proceedings and even more important, the fact that the proceedings are not running parallel to each other, but that they have to be finished in one chamber before the second one can commence its work. In order to accelerate the legislative process, amendments to the Romanian constitution took effect in September 2003, separating the competences between the chambers and eliminating the mediation. But again, to understand why the pace of transposition differs between Lithuania and Romania, it would be more rewarding to study the preparations of the drafts by the government and the ministries in the pre-parliamentary stage.

References

Bågenholm A. (2002) "Understanding Constraints. A research outline analysing varieties in the pace of legal approximation to the Acquis Communautaire in Lithuania and Romania"*, Paper presented at the XIII NOPSA conference in Aalborg* 15 17 August 2002.

Becker R., Saalfeld T. (2004) "The Life and Times of Bills", in *Patterns of Parliamentary Behavior. Passage of Legislation Across Western Europe* (eds.) Döring H., Hallerberg M., Aldershot: Ashgate.

Binder S. A. (1999) "The dynamics of Legislative Gridlock, 1947-96", *American Political Science Review*, Vol. 93, No. 3.

Bojkov V. D. (2004) "Neither here, not there: Bulgaria and Romania in current European politics", *Communist and Post-Communist Studies*, Vol. 37, pp. 509-522.

Brusis M., Dimitrov V. (2001) "Executive configuration and fiscal performance in post-communist central and eastern Europe", *Journal of European Public Policy,* Vol. 8, No. 6.

Bursens P. (2002) "Why Denmark and Belgium Have Different Implementation Records: On Transposition Laggards and Leaders in the EU", *Scandinavian Political Studies*, Vol. 25, No 2, 2002.

De Winter L. (2004) "Government Declarations and Law Production", in *Patterns of Parliamentary Behavior. Passage of Legislation Across Western Europe* (eds.) Döring H., Hallerberg M.), Aldershot: Ashgate.

Döring H. (2000) "Parliamentary Agenda Control and Legislative Outcomes in Western Europe", *Revised paper submitted to the Comparative Legislative Research Conference*, University of Iowa, April 16-18, 1998.

Duina F. G. (1999) *Harmonizing Europe. Nation-States within the Common Market*, Albany: State University of New York Press.

East European Constitutional Review, Vol. 5- 11, 1996-2002.

European Council (1993) "Conclusions of the Presidency", Copenhagen, 21-22 June at http://ue.eu.int/ueDocs/cms_Data/docs/pressData/en/ec/72921.pdf.

European Parliament (2004) "Report on Romania's Progress Towards Accession", Final A5-0103/2004 (Com (2003) 676-c5-0534/2003-2003/2203(INI).

Evans A. & Evans G. (2001) "Improving government decision-making systems in Lithuania and Latvia", *Journal of European Public Policy*, Vol. 8, No. 6.

Ganghof S. (2003) " Promises and pitfalls of veto player analysis", *Swiss Political Science Review*, Vol. 9, No 2.

Haggard S., Kaufman R. R. (1995) *The Political Economy of Democratic Transitions*, Princeton: Princeton University Press.

Haverland M. (1999) "National Adaptation to European Integration: The Importance of Institutional Veto Points", *EUI Working Paper RSC* No 99/17, European University Institute, San Domenico.

Immergut E. (1992) "The rules of the game: The logic of health policy-making in France, Switzerland, and Sweden", in *Structuring Politics: Historical Institutionalism in Comparative Analysis* (eds.) Steinmo, Thelen & Longstreth, New York: Cambridge University Press.

Kreppel A. (1997) "The impact of parties in government on legislative output in Italy", *European Journal of Political Research*, 31 p 327-350.

Lijphart A. (1999) Patterns of Democracy. Government Forms and Performances in Thirty-Six Countries, New Haven & London: Yale University Press.

Lithuania's EU Accession Programme (National Programme for the Adoption of the Acquis) 1999-2002, Republic of Lithuania Governmental European Integration Commission.

Lithuania's Progress towards Accession to the European Union, 1999 – 2002, Government of the Republic of Lithuania. at www.euro.lt.

Mastenbroek E. (2003) "Surviving the Deadline. The Transposition of EU Directives in the Netherlands", *European Union Politics*, Vol. 4, No. 4.

Moe T. M., Caldwell M. (1994) "The Institutional Foundation of Democratic Government: A Comparison of Presidential and Parliamentary Systems", *Journal of Institutional and Theoretical Economics*, Vol. 150, No. 1, 1994.

National Programme for Accession to the European Union 1999-2002 (NPAA), Government of Romania.

Nørgaard O., Hersted Hansen (2000) "State of the State in Latvia", *Demstar Research Report,* No. 1, Aarhus Univserity.

Painter M., Pierre J. (2002) "Unpacking Policy Capacity: Background, Themes and Issues", *Paper to be presented at City University of Hong Kong*, April 5-6, 2003.

Papadrimitriou D., Phinnemore D. (2004) "Europenization, Conditionality and Domestic Change: The Twinning Exercise and Administrative Reform in Romania", *Journal of Common Market Studies*, Vol. 42, No. 3.

Report on the progress in preparing the accession to the European Union 1999-2003, Government of Romania. At www.mie.ro

Risse T., Green Cowles M., Caporaso J. (2001) "Europeanization and Domestic Change: Introduction", in *Transforming Europe. Europeanization and Domestic Change,* (eds.) Green Cowles M., et al., Ithaca, NY & London: Cornell University Press.

Sartori G. (1997) Comparative Constitutional Engineering. An Inquiry into Structures, Incentives and Outcomes (2nd ed.), London: Macmillan Press.

Schimmelfennig F., Sedelmeier U. (2004) "Governance by conditionality: EU rule transfer to the candidate countries of Central and Eastern Europe", *Journal of European Public Policy*, Vol. 11, No. 4.

Sharman J.C. (2004) "Who pays for entering Europe? Sectoral politics and European Union accession", *Journal of Political Research*, Vol. 43, pp. 797-821.

Stark D., Bruszt L. (1998) Postsocialist Pathways. Transforming Politics and Property in East Central Europe, Cambridge: Cambridge University Press.

Taggart P. & Szczerbiak A. (2002) "The Party Politics of Euroscepticism in EU Member and Candidate States", *SEI Working Paper* No 51/ Opposing Europe research Network Working Paper no 6. Sussex European Institute, at www.sussex.ac.uk/Units/SEI/pdfs/wp51.pdf

Tsebelis G. (1999) "Veto Players and Law Production in Parliamentary Democracies: An Empirical Analysis", *American Political Science Review*, Vol 93, No. 3.

Tsebelis G. (2002) *Veto Players. How Political Institutions Work*, Princeton University Press, Princeton.

Tsebelis G., Money J. (1997) *Bicameralism*, Cambridge: Cambridge University Press.

Weaver R. K., Rockman B. A. (1993) Do Institutions Matter? Government Capabilities in the United States and Abroad, Washington D.C: The Brookings Institution.

Zubek R. (2002) "Europeanizing from the Centre? Executive Configurations and Transposition of Community Legislation in Poland", *Paper presented at the 3rd EPIC workshop in Florence,* September 2002.

Databases online:

http://www.cdep.ro/pls/legis/LEGIS_PCK.FRAME Romanian Chamber of Deputies http://www3.lrs.lt/n/eng/DPaieska.html Lithuanian parliament. http://lad.taiex.be Technical Assistance and Information Exchange unit of Directorate-General Enlargement of the European Commission