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Conditionality and compliance in Lithuania: the case of the best performer*

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Abstract: Data from monitoring reports of the European Commission consistently indicate that Lithuania is among the best performers in transposing and implementing EU law. This article analyses whether this is really the case. Through two case studies – the second gas Directive 2003/55/EC and the closure of the Ignalina Nuclear Power Plant – the paper attempts to verify and explain the results of the monitoring report and finds that, in reality, implementation appears more problematic. Non-compliance due to neglect at the administrative level is not an issue, as the process of EU law implementation in Lithuania is well organized. Special planning and monitoring mechanisms and tools developed to ensure transposition and implementation of the *acquis* remained in place in Lithuania after EU accession. On the other hand, these mechanisms are unable to cope with cases of voluntary non-implementation, which is now practiced more often than previously. However, fear of sanctions and reputational damage has replaced pre-accession conditionality as the main driver of compliance, and effectively limits the number of cases of voluntary non-implementation.

Keywords: Europeanization; non-majoritarian institutions; policy coordination; political science

Table of Contents:

- 1. Introduction
 - 1.1. Sources
 - 1.2. Problems and the research framework
- 2. Pre-accession EU conditionality and post-accession environment
 - 2.1. The development of pre-accession conditionality and its outcomes
 - 2.2. Institutional infrastructure for coordinating the implementation of EU law
- 3. Implementation of EU law after accession
 - 3.1. Cases of possible infringement
 - 3.2. Closure of the Ignalina Nuclear Power Plant
 - 3.3. Implementation of the Second Gas Directive 2003/55/EC and other measures on the liberalization of an energy market
- 4. Conclusions
- References

1. Introduction

This article questions if Lithuania's change of status from a candidate country to an EU

member state has led to changes in complying with EU law. Lithuania is particularly interesting in the context of post-accession compliance research. Data from monitoring reports of the European Commission consistently indicate that Lithuania is among the best performers in the transposition of EU law(1).

Table 1 about here

It is difficult to provide a straightforward answer to this question.

- First, there is a lack of comparable data from the pre- and post-accession phases(2) .
- Second, certain data for new member states are simply unavailable, as the time span of their membership has been brief. For example, very few infringement cases launched by the European Commission against new member states have been closed. This short time span prevents generalizations as observed tendencies might be idiosyncratic(3) .
- And, third, it is difficult to track a state's record of implementation because of methodological reasons(4) .

As elsewhere in this special issue, we will distinguish between transposition, enforcement and application of EU law. This article, however, will deal primarily with transposition and enforcement(5) .

The paper will begin with describing the functioning of conditionality in Lithuania during the pre-accession phase and developments in the post-accession period. Then, it will explore the sources of indicators suggesting Lithuania's history of non-compliance and will provide a review of these possible sources. Third, this article will provide a selection of cases for an in-depth examination of past compliance. It will end with conclusions and suggestions for further research.

1.1. Sources

Many compliance studies rely exclusively on statistical data concerning compliance gathered by the European Commission. These sources will be briefly reviewed below. However, the brief time span of new member states' compliance records prohibits one from making far-reaching conclusions. It also points to the need of additional sources. Case studies and qualitative research are particularly important in this context.

This article is therefore based on several cases studies with available statistical data undertaken in one new member state. Case studies, in turn, are supplemented by interviews with government officials, experts and interest groups conducted in the second half of 2008 in Lithuania. Such case studies are still rarely used in compliance literature. Although country specific, these conclusions might help to generate hypotheses, which can be tested in a wider comparative context.

There are several important sources of compliance-related data produced by the European Commission.

- First, there is a series of bi-monthly reports covering the progress of EU member states in transposing EU directives.
- The second important source is the EC's scoreboard concerning the implementation of internal market directives.
- The third source is data on infringement procedures initiated by the European Commission against the member states.

Three stages of the infringement process can be distinguished. The first stage is a formal notice on possible problems of non-transposition or implementation. The majority of these official notifications concern a state government's failure to notify the EU of the transposition in due

time(6), and most are discontinued when satisfactory responses from governments are received. The second stage is a reasoned opinion, and the third is initiation of a case in the European Court of Justice or the Court of First Instance. Reasoned opinions and cases pending in the Courts are indicators of the extent of seriousness of problems of transposition and implementation. The ratio of reasoned opinions to formal notices is a good indicator of the ability of an administrative system to deal with problems detected by the European Commission and expressed in formal notices. Lithuania was clearly ahead of all other new member states(7) with respect to the ability of its administrative system to effectively deal with the transposition of EU directives.

Table 2 about here

So far, however, there are a limited number of solved cases involving new member states(8). Official notifications and reasoned opinions were very few in the first years of membership due to the European Commission's lack of knowledge of a member state – in this case Lithuania(9). This is an important fact to consider, which might indicate a systemic bias in the utilized data.

Table 3 about here

There is an additional source of information on compliance with EU law in Lithuania, which is contained in annual reports on the activities of the Government related to the European Union (LRVK 2004-2007). These reports contain a separate section devoted to the process of transposition and enforcement of EU law in Lithuania.

1.2. Problems and the research framework

The research framework is provided in the introductory chapter of this collection. There are two important dimensions of a theoretical context relevant to this topic. The first dimension relates to the current general state of affairs and conclusions of research on compliance with the EU *acquis*. The second relates to the specific circumstances of new member states and their particular process of Europeanization. The latter is related to the successful use of conditionality which, combined with the powerful enticement of EU membership, brought about quick changes in Central and Eastern Europe (Schimmelfennig and Sedelmeier 2005). The main question of this article specifically and this collection in general is if the degree of compliance changes once this powerful pre-accession conditionality no longer has an effect. Further specifying the general question of this volume, this contribution explores the main reasons for non-implementation in terms of administrative capacities and voluntary non-implementation.

These terms are related to a distinction between management and enforcement approaches to compliance (Tallberg 2002). The Enforcement approach emphasizes the political will to comply as a major cause of a good compliance record. The Management approach places a stronger emphasis on administrative capacities, which essentially determine the outcome.

Finally, there were attempts to address the issue of pre- and post-accession compliance directly (Zubek 2005; Falkner and Treib 2008; Sedelmeier 2008). The main issue addressed in this literature was the presence of a relatively good track record on transposition after accession despite the disappearance of accession conditionalities. This problem became more visible when placed in the context of a prevailing suspicion that quickly transposed EU laws were just “dead letters”.

Administrative capacity is understood here as a government's ability to enforce and implement its decisions. It is closely associated with the capacity of the civil service as defined during the pre-accession stage (Sigma 1998). Developments of this capacity together with the process of EU accession were assessed by the World Bank (World Bank 2006). We will also assume that a special system of coordination of transposition and enforcement is an important factor in

matters of compliance(10). As for voluntary non-compliance, we assume that this might be determined by the relative autonomy of a state with regard to interest groups. This autonomy should have diminished after EU accession, as the role of interest groups was no longer kept in check by strict pre-accession conditionality.

The assumption concerning the growing role of interest groups in new EU members states from Central and Eastern Europe (CEE) in the post-accession phase is in line with recent research (World Bank 2006; Pridham, 2008; Sigma 2009; Dimitrova 2010). It suggests that re-politization of the public policy has taken place after accession in these countries. Several new tendencies have been observed. First, as the pressure of conditionality eased, there has been a return to normal politics characteristic of these countries before the pre-accession stage. Second, interest groups generally did not oppose the transposition of new regulations based on the EU *acquis* and EU conditionality, expecting them to remain “dead letters”. And, third, there was a tendency toward fragmentation of politics in the CEE demonstrated by higher political instability and weaker coalition governments (Grabbe 2007), which increased the role of interest groups.

It might be provisionally assumed that the high standing of Lithuania with respect to transposition of EU law is related to two factors. The first is common to all new member states and relates to the deliberate choice of these countries to focus their efforts on transposition in the pre-accession phase. As this factor is easier to measure, it remains a point of reference in various implementation studies including implementation reports of the European Commission. It is more difficult to track real implementation; i.e. enforcement after the adoption of a law.

The second factor relates to the pre-accession institutional infrastructure. Lithuania kept an institutional mechanism for planning and monitoring implementation of the EU *acquis* largely untouched after accession, which might explain positive transposition results in the post-accession phase(11) and its good record of reasoned opinions. This thesis is similar to the one offered by Sedelmeier (2009 this issue) and Dimitrova and Toshkov (2009 this issue) who argue that a special legislative and coordination capacity could explain a new member state’s good track record.

Our preliminary hypothesis therefore is that administrative capacities created during the accession period determine a generally positive track record in the post-accession phase. However, this administrative capacity is being weakened in the absence of strong EU conditionalities. Moreover, in the absence of a strong EU pressure, the role of interest groups is growing, which leads to cases of voluntary non-compliance. Using the approaches of management and enforcement, we claim that the pre-accession phase could be better explained through the management approach, while an enforcement approach becomes more relevant in the post-accession phase. This means that administrative capacities largely determined the compliance record in the pre-accession phase. EU conditionality helped deter the political will to interfere in matters concerning the implementation of EU law. In the post-accession phase, this political will is less restrained by the EU and can influence the compliance record through voluntary non-compliance or through weakening the administrative structures created to ensure compliance during the pre-accession period. In Lithuanian’s case, this leads to the hypotheses that, due to a strong administrative capacity inherited from the pre-accession phase, all major cases of non-compliance are the result of voluntary non-compliance.

Finally, we assume that implementation is the result of a simple fear of sanctions implied by EU law. Yet another factor is sensitivity to “naming and shaming”, which is seemingly high in new member states (Sedelemeier 2008). In addition there could be an administrative inertia driving compliance despite the negative cost/benefit ratio for a specific country concerning a specific part of the *acquis*.

2. Pre-accession EU conditionality and post-accession environment

2.1. The development of pre-accession conditionality and its outcomes

The development of accession conditionality and its impact on new member states is a well-researched topic. There were also particular studies conducted on Lithuania in this area (Maniokas 2003; Maniokas, Vilpišauskas and Žeruolis 2005). The pressure to reform due to pre-accession conditionalities was strong. It was particularly important in Lithuania and the so-called “second group” of candidate countries, which were not able to begin accession negotiations with the first group. The influence was broad in scope because of additional membership conditions, such as the Copenhagen criteria and accession partnerships. This time period was condensed because, in only a few years, the former candidate countries had to transpose and implement the whole *acquis*. The candidate states were considerably receptive to EU influence. This receptivity could be attributed to two factors: One was a weak, or in some cases virtually non-existent, institutional structure. This is particularly true for the Baltic States and Lithuania in particular, which were completing state-building process at that time. And, second, the candidate countries had eagerly taken the *acquis* and other membership conditions as a blueprint for their comprehensive transformation and modernization of their economy and public sphere. Finally, the acceding countries had no possibility to influence the outcomes of European policy-making.

The result of this enormous impact on the Lithuanian institutional system could be summarized by a concept of a regulatory state (Maniokas 2003), which was created through EU-stimulated development of regulatory policies and non-majoritarian institutions. The latter could be characterized by the institutions’ relative autonomy from political interference and by reliance on technical expertise. The EU pressured Lithuania to consolidate the autonomy of judiciary and public administration through the use of the political criterion of membership. In the area of economic regulation the EU promoted the establishment of an entire set of supervisory institutions, which could be labelled non-majoritarian agencies. Their competence was safeguarded by relevant laws. These institutions were modelled according to those of other EU members, but in many cases were made more autonomous than their counterparts in other states.

Post-accession environment in Lithuania could be characterized by several considerations. First, the post-accession EU policy of Lithuania is not ambitious and lacks targeted policy goals, explicit agreement on the priorities of the country after accession, or even on major EU-related issues. Although the Parliament and Government use a system of prioritization differentiating particular EU norms to indicate their degree of importance for Lithuania, this system is mostly formal and driven by public servants. It is not linked to substantial domestic political priorities. This lack of ambition and strategic approach to the EU after accession is mainly caused by the lack of political interest in and vision of EU matters. The country’s political system remains fragmented and is dominated by coalition governments, which tend to focus on domestic concerns. The European neighbourhood policy and energy issues – particularly the security of energy supply and price increases after the closure of the Ignalina nuclear power plant – are two exceptions of issues that receive substantial attention from coalition governments(12).

Following accession, there were attempts to reverse institutional reforms, initially to limit the autonomy of regulatory agencies established for the implementation of the EU *acquis*(13). This is especially evident in the case of the State Energy Pricing Commission and the Competition Council. The State Energy Pricing Commission had experienced periods of heightened pressure from the central and municipal governments with regard to the regulation of heating prices. The selection of Commission members was reported to be influenced by interest groups. Polarization of appointments and activities of the regulatory agencies were also observed in other policy areas.

There was recently a similar pressure to streamline governance and increase responsiveness of the administrative system to political decisions. In an effort to reduce the number of holders of budgetary appropriations, a number of regulatory agencies were scheduled for integration into the programs of line ministries. The new Government in Lithuania is planning further measures in this regard(14).

The role of interest groups and other social partners in the management of EU affairs was limited during the pre-accession phase (Maniokas, Vilpišauskas and Žeruolis 2005). It remains limited in the process of coordinating EU policy in the post-accession phase (Maniokas and Vilpišauskas forthcoming). Specific lobbies, such as the lobby for manufacturers competing with cheaper imports from third countries, are the most active and effective. However, the role of interest groups in domestic policy-making is becoming more important. Weak coalition governments of the post-accession era have depended on powerful interest groups. Domestic policy, especially economic policy, which was largely isolated from political interference in the pre-accession phase, has been in the gradual process of re-politization(15).

2.2. Institutional infrastructure for coordinating the implementation of EU law

Institutional infrastructure for tracking transposition and, to a certain extent, implementation, is well developed in Lithuania, and has remained rather stable throughout the pre- and post-accession phases. It could be characterized by

1. highly developed rules, procedures and a well-functioning exchange of information;
2. a clear division of competences;
3. a clear and uncontested leadership of the Department of Co-ordination and Monitoring of European Law Implementation in the Office of the Government; and
4. a functioning mechanism for resolving inter-agency disputes over competences.

The final example is typically a major cause of non-transposition. If these disputes are resolved at an early stage, there is a chance of achieving a positive record in transposition. Points 3 and 4 are related, as clear institutional leadership contributes heavily to the ability of the system to solve disputes over competences. It should also be added that a formal leadership (assignment of the coordinating function by a legal act) is well supported by the institutional arrangement of the department and civil servants working within it. Most the civil servants continue their work from the pre-accession period, and a sense of trust and confidence has developed between them and line institutions. A specific factor contributing to the first point is the special information management system LINESIS, initially developed during the pre-accession stage and then adjusted for the post-accession period. It is considered one of the best systems of its kind functioning in EU member states (World Bank 2006, assessment of interviewed experts). The system has a specific sub-component developed to plan the transposition and enforcement of the newly adopted *acquis*, as well as to monitor it.

Transposition or implementation of every newly adopted EU legal act is assigned to a responsible Lithuanian institution, which further engages in the planning, preparation, adoption and implementation of necessary measures. Within three weeks of the assignment, responsible institutions have to submit concrete plans for the transposition and implementation of the act to the Office of the Government. Following the submission, a single national program for transposition and implementation of EU law is prepared and constantly updated. The program specifies the dates for preparation and adoption of relevant Lithuanian laws. This plan and briefings on its implementation are presented and discussed monthly in the meetings of the Ministries' State Secretaries. Arising problems are addressed in special meetings organized by the Office of the Government, while the most difficult questions are included into the agenda of the Government's Strategic Planning Committee or the Government's meetings. Questions related to drafting and adoption of laws that implement the provisions of EU law are discussed every month in the meetings of the Committee on European Affairs of the Parliament.

On average, Lithuanian institutions transpose over 100 directives into national law every year,

and implement over 2000 regulations and decisions. For this purpose, approximately 50 laws, 30 Government regulations and 200 legal acts on the level of Ministerial orders are adopted annually. These tasks are accomplished by using the LINESIS information management system.

Figure 1 about here

3. Implementation of EU law after accession

Several cases were selected to test if implementation of the EU *acquis* in Lithuania is as good as transposition, and to look for possible explanations. First, we will look into the cases of infringement that attempt to establish if these cases are linked to a lack of administrative capacities or if they are cases of voluntary non-compliance. Then we will examine two cases of attempted voluntary non-implementation. The first case is the case of closure of the Ignalina Nuclear Power Plant (Ignalina NPP). It was a major, though unsuccessful, attempt of voluntary non-implementation following accession. It may therefore help to look into the new mechanisms replacing pre-accession conditionality. The second case is a seemingly successful attempt of voluntary non-implementation related to the second Gas Directive 2003/55/EC.

3.1. Cases of possible infringement

There were only three such cases initiated against Lithuania in 2004-2007. In the field of telecommunications, on June 7, 2007, the European Commission initiated a case against Lithuania for the possible breach of obligations under Directive 2002/22/EC on universal services (Article 26.3). It was related to a failure to set-up a fully functioning service to be provided through the emergency number 112. This issue was not specific to Lithuania; The EC initiated action against 13 member states regarding this particular directive (6 of them were new member states). The reason for non-implementation was the considerable budgetary and organizational resources needed for the infrastructure of this service. This case can hardly be related to voluntary non-implementation. The second case was related to Directive 2001/83/EC as amended by the Directive 2003/63/EC on the marketing of pharmaceuticals within the EU internal market. The EC accused Lithuania of authorizing the marketing of a product that did not satisfy the requirements of this directive. The case has not been closed yet, and it is also not an obvious case of non-implementation. However, in this instance there was an obvious presence of an interest-based line of action, as this product is produced by a Lithuanian company that exercised a considerable pressure on the Government to authorize marketing of the product. Furthermore, a counter-balancing pressure was exerted by a US pharmaceutical company that wished to protect its own product. Even if the final outcome of the case is disregarded, the case indicates an increasingly important role of interest groups in the process of implementation of EU law. Administrative capacities hardly played a role in this case.

The third case concerned citizenship requirement for the exercising of professional activities of notaries, which the European Commission considered in breach of provisions of the Directive 89/48/EEC regarding the recognition of diplomas. In this case, Lithuania was brought to the Court along with other member states, including Germany, France, Austria, Belgium and Luxembourg. This case is hardly a straightforward case of non-implementation as it relates to a genuine difference of interpretation of the provisions of EU law.

To conclude, while the number of cases in which Lithuania was referred to the Court by the European Commission has been very limited and their resolutions still uncertain, only one of the three cases is related to the presence of interest groups. Due to a limited number of cases of infringements, there is a need to look into the cases of attempted infringements and cases of de facto non-implementation, which were not registered formally. The first case study was chosen by its significance. It deals with a major attempt of infringement publicly undertaken by the Government of Lithuania. The second case was selected by looking into the areas where the stakes for voluntary non-compliance could be high due to the economic importance and

presence of strong interest groups. Moreover, this area must be regulated by the EU law.

This definite choice for the second case is the sector of energy. It is significant economically, and powerful economic interest groups are present, such as owners of vertically integrated companies targeted by EU law to be functionally or legally separated. We will look into the main issues of compliance in this area and will analyse the implementation of one important piece of the EU *acquis*. The second case will concern de facto non-implementation.

3.2. Closure of the Ignalina Nuclear Power Plant

This is an effective case to test the rationale behind compliance before and after accession. The Ignalina NPP was likely the most important issue during Lithuania's accession negotiations (Maniokas and Stanionis, 2005). Closure of the plant was an informal condition of Lithuanian membership in the EU. Negotiations concerned closing two Chernobyl type reactors of Lithuania's only nuclear power plant, which generated approximately 80% of the energy in Lithuania, in exchange for EU assistance.

Negotiations with the EU on the decommissioning of the Ignalina NPP began in 1999, well before the official start of EU membership negotiations. To a great extent, this issue determined public opinion regarding the outcome of accession negotiations. Lithuania had to agree to the EU's principal position to close the plant, but managed to attain considerable compensation, which the EU initially did not intend to grant. At Lithuania's insistence, the EU accepted that decommissioning of Ignalina NPP was a matter that concerned the entire EU and therefore had to be solved in solidarity. It also admitted that the decommissioning costs were related not only to a direct decommissioning of the NPP, but also to the modernization of the entire energy sector of Lithuania. As a consequence, a special EU financial facility was deployed to address both closure and modernization of the conventional energy sector. The EU also admitted that assistance to decommission the INPP would be a long process and had to be fixed by legal rather than political measures. A special protocol on the subject was annexed to the Accession Treaty.

The first reactor of the Ignalina NPP was closed, as foreseen, in 2004. The closure of the second is due at the end of 2009. The post-accession years, and especially the years 2007-2008, were marked by an attempt of the Lithuanian Government to postpone the closure of the Ignalina NPP and could be interpreted as an attempt of voluntary non-compliance in the new post-accession context.

The first serious attempt to postpone the closure of the Ignalina NPP and to renegotiate the Accession Treaty was undertaken by the newly-elected president of Lithuania immediately after accession in 2004. He made postponement explicit in his election campaign and kept his promise by raising the issue with leaders of EU member states.

The second attempt to open the issue was undertaken in 2007-2008. The debates took place within the framework of the adoption of the new national energy strategy confirming the final closure of Ignalina NPP at the end of 2009. The Lithuanian Parliament adopted the strategy only conditionally by asking the Government to undertake an analysis of the consequences of the closure, to consult with the European Commission and to inform the Lithuanian Parliament accordingly, as well as EU member states⁽¹⁶⁾. This was an indirect mandate for the Government to start the renegotiation of closure dates. A number of studies were undertaken in 2007 to prove tremendous difficulties associated with the final closure of the NPP. Informal consultations with the European Commission and Member States intensified throughout 2007.

The response from the EU, however, was a very cool and unequivocal "no". Nobody wanted to open Pandora's box, particularly given Bulgaria's failed attempts to renegotiate the closure dates of their own nuclear power station.

A third attempt was made in the second half of 2007 after a change of Government in

Lithuania in 2007. A new prime minister took the issue of prolongation of the life of the Ignalina NPP as one of the priorities of his Government. A special task force was created by the Government at the beginning of 2008, headed by a former prime minister of Lithuania(17). It was officially mandated by the Government to investigate problems related to the security of the supply of energy to Lithuania after 2009. It was presented to the public as a team of negotiators tasked to re-negotiate the closure of Ignalina NPP and to extend the date of its operation by at least three years(18).

The team undertook several studies, which were discussed with the European Commission and presented to member states, and was also discussed in a number of official fora including the EU Councils of Energy, Environment and European Council(19). It mobilized all responsible ministries and agencies. This issue was included in the agendas of all major meetings between the Lithuanian government officials and their EU counterparts at the highest level. Even a special referendum was held on the issue on October 12, 2008.

The attempt to postpone closure of the NPP failed after the European Commission and EU member states did not accept Lithuania's position and threatened to use all possible sanctions to deter Lithuania. As the head of the special task force has put it, the EU had clearly indicated that any attempt to breach the terms of the Accession Treaty would be "a disaster". Apparently, it worked. The conclusion was that the political and possible financial costs of a unilateral breach of EU law would be too high. A new government formed after the October 2008 elections, and while it was aggressive on the issue before elections, it dropped the case in a low-key manner and accepted a bigger CO2 quota as an additional compensation in the December 2008 European Council.

It seems that this case demonstrates that a mix of credible threats of sanctions and potential political damage(20) replaced the role of pre-accession conditionality.

3.3. Implementation of the Second Gas Directive 2003/55/EC and other measures on the liberalization of an energy market

Implementation of EU norms in the energy industry is a good case for a compliance study as there are strong economic interests in this industry and, accordingly, strong motives for voluntary non-compliance with problematic provisions of the *acquis*.

The Lithuanian public policy context of the past three years was largely dominated by energy issues and, in particular, by an attempt to create a national vertically-integrated energy company in Lithuania. It was finally created in 2008, allegedly for the purpose of building a new nuclear power station as well as electric interconnectors with Poland and Sweden. Creation of this company could be regarded as a reversal of previous reforms undertaken to separate electricity transmission and distribution companies as a response to the EU electricity directive. One distribution company was even privatized. It was not by accident that the new owners of this distribution company strongly lobbied for the recreation of a vertically-integrated company as a private-public partnership (PPP) initiative. This case can hardly be formally attributed to a case of non-compliance, but the move was clearly against the aims and spirit of a directive. Strong economic interests were obviously at work.

A case related to the liberalization of the gas industry is also quite complex. The issue of compliance with EU law in this industry has re-emerged in the context of a third energy liberalization package, where the issue of splitting vertically-integrated monopolies in the gas sector of the EU was central. The European Commission proposals issued in 2007 were built on the previous two gas directives of 1998 and 2003 respectively. The European Commission considered the previous measures inadequate, as vertically-integrated monopolies blocked the creation of infrastructure necessary for EU-wide trade in gas.

The aim of the second gas directive was to promote faster liberalization of the gas market by introducing, among other things, measures similar to those in the electricity industry, such as

legal or functional separation of production, transmission and distribution within vertically-integrated gas companies and separation of accounts related to these activities.

Lithuania did not transpose this directive until 2005 and, accordingly, did not notify the transposition to the European Commission. The first warning letter from the European Commission followed. Amendments to the Law on Natural Gas were debated for a considerable amount of time in the Parliament and caused major disagreements among the ruling coalition between the Social Democrats and the Labour party. The founder and leader of the Labour party had special interests in the natural gas industry. It seems that the Social Democratic party was also influenced by opposing interest groups. The major point of disagreement was the regulation of gas prices.

Then, in 2005, Lithuania notified the European Commission of its intention to use the exemption clause of the 2003 amended gas directive because of the physical isolation of Lithuania. It was a valid argument indeed, as Lithuania was connected to the only source of gas. Thus competition between suppliers was possible only nominally. There were three companies supplying gas to Lithuania at the time, but they were all directly or indirectly controlled by the Russian gas company Gazprom.

However, the Labour party was forced to withdraw from the coalition, and the amendments were subsequently adopted and the European Commission was notified of transposition. The willingness to use the exemption was therefore forgotten, and the relevant provisions of the directive, including those on separation, were fully transposed. It created a complex legal situation in the context of transposition.

While Lithuania transposed the provisions of the two previous gas directives, their main provisions remained unimplemented. While there could be different views with regard to the qualification of the fact of infringement, it was clear that the essential provisions of the law were not implemented. The functional separation of transmission and distribution prescribed by the Second Gas Directive was not undertaken.

Functional separation was not the main issue at stake, because the debate revolved around the regulation of prices and the establishment of a cap on profits. However, functional unbundling created a possibility to split *AB Lietuvos dujos* (the Lithuanian Gas Company).

Lietuvos dujos admitted to the fact of non-implementation openly and argued that this separation was useless. Whenever the issue was raised, the company threatened the Government it would demand higher tariffs on the transportation of gas if forced to implement the directive. The threat was based on the false argument of high costs of functional separation, but the real issue was Gazprom's threat to raise the price of Russian gas sold to Lithuania.

The Government and the Ministry of the Economy, which was responsible for implementation, silently agreed with the gas company. The European Commission initiated an investigation into the matter and sent questionnaires regarding implementation of the directive. However, the Commission did not start an infringement procedure, most likely due to the highly complex legal situation and the need to have Lithuania support the third liberalization package.

4. Conclusions

This was a single country case study on compliance with EU law following accession. However, hypotheses formulated in this case can also be tested in a comparative context. Lithuania was chosen because it was the best performer with respect to compliance with EU law among member states who joined in 2004. Using the approaches of management and enforcement, we claimed that the pre-accession phase could be better explained through the management approach, and an enforcement approach was more relevant in the post-accession phase. In the Lithuanian case, this amounted to an argument that, due to a strong administrative capacity inherited from the pre-accession phase, all major cases of non-

compliance were the result of voluntary non-compliance. Finally, we looked into the mechanisms that replaced conditionality as the main driver of compliance. This article was based on several case studies, which remain rare among compliance literature.

The cases analyzed do not indicate an existence of an under-world of “dead letters”. Lithuania indeed appears to be a good performer concerning compliance with EU law. The laws transposed are subsequently applied and enforced. This is mainly due to a well-functioning administrative system designed for this purpose during the pre-accession phase, despite the fact that it focuses on the transposition of EU law. We found several cases of non-compliance due to administrative reasons after accession, such as the case of the creation of the emergency 112 service, but they remain very limited.

However, the picture is far from rosy. Public policy after accession in Lithuania became more politicized as coalition governments became weaker and interest groups grew stronger. In this context, cases of voluntary non-compliance emerged as a problem. De facto non-enforcement of an importance piece of the *acquis* in the energy industry, namely the Second Gas Directive, demonstrated that special institutional structures for the coordination of implementation of EU law could not cope with it.

It is also quite likely that further politization of the administration will take place in Lithuania and other new member states. The current EU affairs coordination infrastructure, including an infrastructure dealing with compliance with, EU law, is being dismantled in Lithuania. The role of the administration and regulatory agencies might be weakened further, thus creating a problem of administrative capacities and corresponding problems of compliance. If the trend of weak coalition governments continues, the number of cases of voluntary non-compliance is likely to grow. New member states might indeed become part of a separate world where EU law exists and functions only on paper.

However, it seems that this problem can be controlled, as the fear of sanctions and the reputational damage remain a powerful deterrence against non-compliance. The EU has not lost its grip on new member states; the case of closure of the Ignalina NPP demonstrated that the fear of sanctions and resulting reputational damage has replaced pre-accession conditionality as the main driver of compliance.

Further comparative case studies are needed to complement European Commission reports on compliance. As the number of cases initiated against new member states in European courts is likely to grow, they will also provide a new pool of data concerning the actual enforcement of EU law. Only then can we better observe the application and enforcement of EU law. These new data can also help test if the fear of sanctions can actually stop this slow but sure trend of weakening the administrative capacity of new member states.

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Endnotes

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(1) Lithuania was consistently either top performer or among the top three performers with respect to both transposition and infringements. See European Commission Reports and Annual Reports of the Office of the Government of Lithuania (European Commission, various years and LRVK, various years).

(2) Data provided by the European Commission in its databases of transposition and infringements concern only member states. Data on transposition and enforcement of EU law for candidate countries can be found in the European Commission progress reports, but they are difficult to compare.

(3) Comparison by sector is especially difficult as different accidental factors, such as activism of a European Commission service, might play a disproportionate role.

(4) Implementation is difficult to define, and it is difficult to establish clear confirmation of non-implementation. Case studies must be used for this purpose.

(5) Application of EU law in courts is difficult to establish for methodological reasons. Special research into the decisions of courts and reference to EU law in their decisions and deliberations could be helpful, but difficult to undertake due to limited accessibility and high costs. According to the opinion of lawyers practicing civil law in Lithuania, Lithuanian courts are still quite reluctant to apply EU law in relevant cases. However, this situation is slowly changing. Much also depends on the ability and willingness of economic agents to use the opportunities offered by EU law. Both ability and willingness still appear limited in Lithuania.

(6) Two-thirds of infringement procedures initiated against Lithuania in 2007 were related to the failure to notify EU officials of problems encountered in the transposition of directives on time (LRVK 2007: 61).

(7) We take only 10 new member states, as we disregard Romania and Bulgaria in order to use more data.

(8) In the list of recent infringement cases solved by the European Court of Justice provided by the European Commission, there are only five cases against new member states: four against the Czech Republic (all concerning pharmaceuticals) and one against Malta.

(9) This can also be explained by the fact that information on possible infringements is better supplied to the European Commission if there is a sufficient number of former civil servants and other citizens of a particular member state working in the Commission. This is important bearing in mind language issues and an understanding of a particular administrative tradition. A limited number of citizens from new member states employed by the European Commission in the early years of accession might also explain a limited number of infringement cases.

(10) This argument has been developed in a comparative context in another contribution to the special issue by Dimitrova and Toshkov (2009).

(11) This argument must be supported by comparative studies. While it is not a subject of this single country case study, a comparison between Lithuania and Latvia could be quite illustrating. The dismantling of the European Integration Bureau in Latvia could be a reason why the transposition record of Latvia deteriorated after accession and Lithuania remained at the top of the best performing countries (World Bank 2006).

(12) See Maniokas and Vilpišauskas (2007) for a more extensive review of post-accession Lithuania.

(13) There is a recent case of an infringement procedure regarding the telecommunications regulatory agency. The key requirement in this and many other areas relates to the separation of a regulatory function from those relating to the disposal and management of property rights. The European Commission believed that this requirement was not observed.

(14) See the activities of the so-call Sunset Commission established for governance reform <http://www.lrv.lt/lt/veikla/komisijos/saulelydzio-komisija/komisijos-veikla/> (accessed on 11 December 2009). The main proposal of this Commission during the first half of 2009 was to integrate the majority of institutions under the Government into line ministries. However, only a limited number of these proposals have been passed by the Parliament.

(15) See World Bank (2006) for a similar conclusion with respect to all new member states.

(16) Decision No. X-1047 of the Lithuanian Parliament of 18 January /2007 On Implementation of the National Energy Strategy.

(17) It was formed on February, 26 2008, by the Lithuanian Government decree No. 187.

(18) In fact, fully aware of the difficulties of formal re-negotiations of the Accession Treaty, the Task Force

tried to persuade the EU to re-interpret the terms of the Accession Treaty only.

(19) The Head of the Task Force alone performed 33 visits during 9 months of the work of the Task Force.

(20) This can confirm the statement of Sedelmeier (2008) about vulnerability of the new member states to shaming by the EU institutions.

List of Tables and Figures

Table 1: Infringement proceedings initiated against new EU member states (10)

2005 - 2007

New EU member state	2005	2006	2007	Total
CZ	72	54	84	210
EE	59	64	61	184
CY	83	47	63	193
LV	57	54	59	170
PL	58	75	103	236
LT	26	33	41	100
MT	55	77	97	229
SK	51	37	54	142
SI	55	47	65	167
HU	52	50	71	173

European Commission, 25th Annual Report on the Application of Community Law (2008), Annex II, Infringement procedures – break down per stage reached, legal basis, Member State and sector, p. 10 and author's own calculations.

Table 2: Reasoned opinions per new EU member states (10)

2005 - 2007

New EU member state	2005	2006	2007	Total
CZ	40	18	13	71
EE	18	12	9	39
CY	14	20	7	41
LV	18	12	4	34
PL	18	21	24	63
LT	1	10	5	16
MT	19	18	16	53
SK	21	17	3	41
SI	17	14	5	36
HU	10	18	6	34

European Commission, 25th Annual Report on the Application of Community Law (2008), Annex II, Infringement procedures – break down per stage reached, legal basis, Member State and sector.

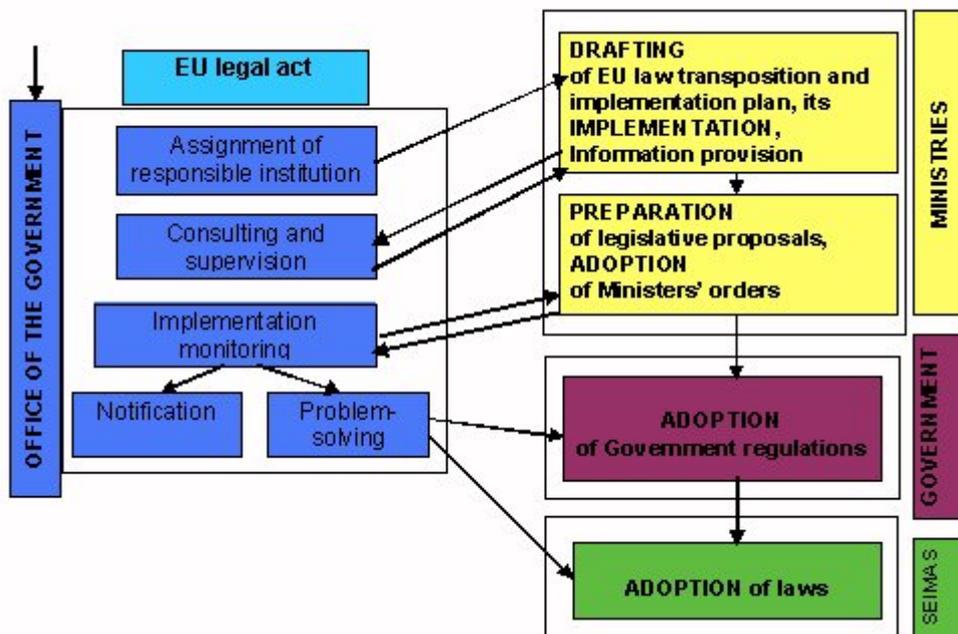
Table 3: Referral to the Court per new EU member state (10)

2004 - 2007

New EU member state	2004	2005	2006	2007	Total
CZ	-	0	4	5	9
EE	-	1	2	0	3
CY	-	0	0	1	1
LV	-	0	0	0	0
PL	-	0	3	7	10
LT	-	0	0	1	1
MT	-	0	3	3	6
SK	-	0	2	1	3
SI	-	0	0	1	1
HU	-	0	0	2	2

European Commission, 25th Annual Report on the Application of Community Law (2008), Annex II, Infringement procedures – break down per stage reached, legal basis, Member State and sector.

Figure 1: Administrative system coordinating transposition and implementation of EU Law in Lithuania



Source: Office of the Government of the Republic of Lithuania, http://www.euro.lt/img/koordinavimas/Teises%20perkelimo%20schema_EN.bmp (accessed on 13 December 2009)