

Law-making in Poland: Rules and Patterns of Legislation

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Abstract

Polish statutory legislation is widely criticized for being too voluminous, unstable and excessively specific. The key to explaining the level and composition of the legislative output lies in the rules that govern the process of law-making in both the executive and parliament. The four main types of rules - boundary, content, temporal and informational rules – are configured in a way that makes for pronounced decentralization in the initiation, amendment and finalization stages of the legislative process. Within the executive, decentralization encourages ministers to pursue individual, sectoral law-making strategies, with few effective constraints imposed by the Council of Ministers or the prime minister. In parliament, decentralization is principally associated with weak government control over the legislative agenda. To the extent that the executive does shape the passage of government bills in parliament, it is, again, individual ministries rather than the centre of government that are in the driving seat. Moreover, in initiating and amending legislation, parliament, too, follows a decidedly sectoral approach. Decentralized legislative constellations in the executive and parliament have two major effects on the patterns of statutory legislation. First, as regards the quality of law, they encourage legislation that maximises concentrated benefits to relatively narrow sectoral constituencies at the expense of general-benefits legislation. Second, the absence of effective constraints on the capacity of ministries and deputies to initiate legislation, combined with low coordination requirements, promotes legislative inflation.

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I. The Quality of Polish Statutory Law: A Critical Assessment

There are widespread concerns over the quality of Polish statutory law, as reflected in media comment (Pilczynski 2000; Siedlecka 2003; Lukaszewicz 2004c), research reports (Paczocha 2004; Rymaszewski et al. 2004; Ipsos 2004), expert legal opinion (Frackowiak 1997; Wronkowska 2002a; Graniecki 2002a), and evaluations by addressees of legislation, in particular business associations (IP-HIZ 2001; PKPP 2005). Criticism of the regulatory environment has intensified in recent years. This heightened interest in the quality of legislation has been triggered, in particular, by several judgments of the Constitutional Tribunal that invalidated significant pieces of statutory law. Judicial censure coincided with more general unease about the state of public governance, which gripped Poland fifteen years after the collapse of communism. The concerns over legislative quality also derive from a growing public realization that stable, well-designed legislation is a key precondition for sustained development. This new mood emerged when the sharp economic slow-down and sluggish recovery in 2001-2002 put regulatory reform on the agenda as an effective tool for supporting entrepreneurship and employment. Accession to the EU further stimulated interest in legislative quality, since it required compliance with EU law and meant that competitiveness within the single European market had to be secured.

Debate over the quality of statutory legislation is by no means specific to Poland; similar discussions take place in other European countries (cf. Eng 2002; Schuppert 2003; Fliedner 2001; Schneider 2004; Hansard Society 1993; Brazier 2004). Beyond the national level, regulatory quality is a major preoccupation of the EU Commission, which has undertaken major initiatives to simplify and improve Community legislation (Mandelkern Report 2001; European Commission 2002, 2003). The EU has also encouraged its member states to address domestic regulatory problems so as to enhance the European economy's ability to generate growth and innovation. Perhaps most significantly, the problem of regulatory quality features high on the agendas of the OECD and the World Bank (OECD 1995, 2001, 2002; Brunetti et al. 1998). Both have identified reform of legal institutions as one of their main policy objectives. What is underlying such domestic and international initiatives is a common recognition that high legislative quality is a necessary condition for effective democratic governance and long-term economic prosperity (cf. Kaufmann and Zoido-Lobotani 1999; Scarpetta and Tressel 2002; Nicoletti and Scarpetta 2003).

If one tries to systematize Polish concerns over the state of statutory law, three main problems stand out. First, the parliament and the executive are accused of overproducing legislation, both in terms of nominal figures and in the extent of regulatory detail. Excessive legislative growth is perceived as a problem because unnecessary laws add to regulatory burden and overstretch the capacity of citizens and corporations to absorb and comply with new rules. The second criticism focuses on the instability of the legal framework due to frequent amendments to existing statutory legislation. This is seen as problematic because unstable legal rules

increase the cost of compliance and may ultimately undermine the legitimacy of the law. The final complaint is that statutory legislation comprises a large number of specific laws that derogate from general rules and, thus, contribute to the complexity, intransparency and inconsistency of the legal system as a whole. Whilst these concerns are widely discussed, systematic empirical attempts to document them are in short supply (but see Frackowiak 1997; Wronkowska 2002a for notable exceptions). This section, therefore, examines the nature and the extent of these problems in the 3rd and 4th terms of parliament.

Legislative Output

Overproduction of legislation is the most common complaint (see Pilczynski 2000; 2003; Siedlecka 2003; Winczorek 2003; Walencik 2003, 2005). It has been succinctly summarized by a deputy speaker of the Sejm who argued,

‘In Poland, a new parliamentary act is passed every day, a new executive regulation is adopted every hour, and a new page of the Official Journal is printed every seven minutes. This is a true legislative deluge’. (Wojciechowski quoted in Semprich 2003a)

The most frequently used indicators of overproduction are changes in the number of statutory and secondary laws, the word count of these laws, and the number of pages in the Official Journal. As Table 1 demonstrates, there is indeed steady growth in legislative output. Between 1998 and 2004, the number of statutory and secondary laws adopted every year more than doubled, while the number of pages in the Journal of Laws and the total word count of adopted laws tripled.

Table 1. Most Common Indicators of Legislative Output

Year	Number of Statutory Laws	Total Word Count of Statutory Laws	Number of Secondary Laws	Number of Pages in Official Journal
2004	242	1211289	2073	21 034
2003	227	1025916	1822	16 456
2002	213	662414	1733	16 020
2001	241*	988431	1437	13 132
2000	174	710708	1071	7 454
1999	126	194744	1043	7 292
1998	98	420521	1005	7 492

Source: own compilation based on data available at www.sejm.gov.pl (* 205 before elections, 36 after elections).

Legislative growth is not necessarily indicative of overproduction (cf. Eng 2002). More legislation may, for example, be necessary to address new socio-economic problems or bring existing legislation in line with technological progress. Yet, there is an emerging consensus among domestic commentators that legislative interventions are being undertaken even though they are not necessary or, on balance, entail more costs than benefits to society as a whole (see for example RPO 2002). Wronkowska writes,

‘The regulatory inflation which we observe in Poland consists in the excessive quantity of legislation relative to both the need for regulation and the capacity of the society to ensure its effective operation and to absorb, apply and enforce such legislation’. (Wronkowska 2002a, p. 16)

Indeed, if one compares the Polish output of statutory legislation with that of other Central and Eastern European countries, it seems remarkably high. As Table 2 shows, between 1999 and 2004, Poland recorded the highest annual output in nominal terms among the four Visegrad states. Moreover, it had the highest rate of consistent legislative growth. A comparison with Hungary is illustrative. Both countries had a similar level of legislative output in 1999, but followed different growth trajectories over the next five years. While the Polish output doubled, the annual level of Hungarian legislation increased by only 10 per cent. Slovakia followed a similar growth pattern to that of Poland, though along a slightly flatter curve, while the Czech Republic had a distinct non-consistent rate of legislative expansion. These data suggest that among states facing comparable domestic and international challenges Poland recorded the highest nominal output of legislation as well as the highest rate of constant legislative growth.¹

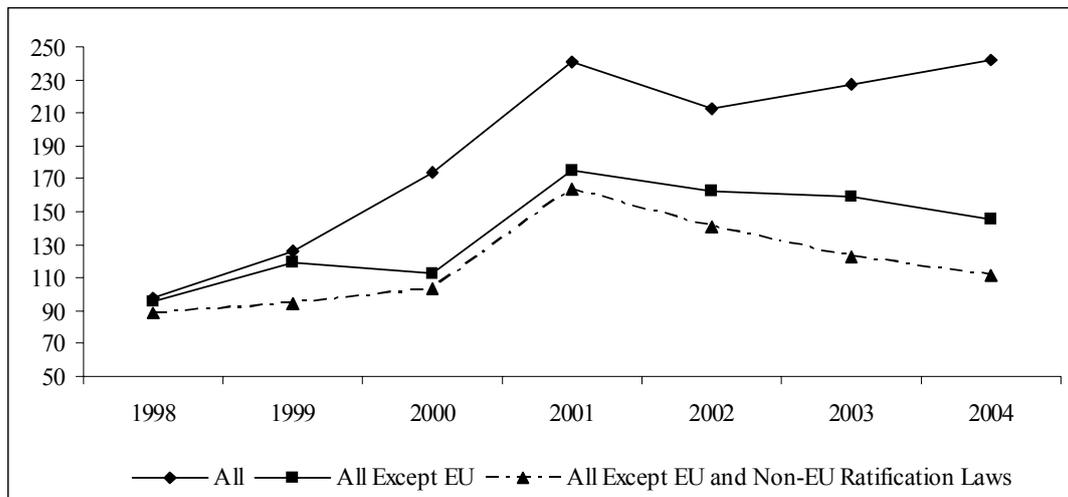
Table 2. Output of Statutory Legislation in Poland, Czech Republic, Hungary and Slovakia

Year	Poland	Czech Republic	Hungary	Slovakia
2004	242	159	140	182
2003	227	85	134	154
2002	213	148	70	178
2001	241	96	122	130
2000	174	146	147	124
1999	126	71	126	101

Source: own compilation on the basis of data from National Council of the Slovak Republic, the Parliament of the Czech Republic, the Hungarian National Assembly and data available at www.sejm.gov.pl

Legislative growth remains considerable even if one takes into account the impact of adaptation to EU legislation, which is commonly considered as a key driver behind expansion in recent years. Figure 1 demonstrates that if one controls for EU-related legal alignment, the average annual output in 2001-2004 was still much higher than in 1998-2000. This finding indicates that EU adaptation did not crowd out domestically driven legislation; rather, it was undertaken in addition to national legislative priorities. Interestingly, if one further controls for ratification laws (i.e. laws that ratify non-EU related international agreements), annual legislative output markedly declines in recent years, though it still remains at a higher level than in 1998. This effect may be due to changes in the legislative output over the electoral cycle and may also suggest that after a peak in 2001 the output of domestic legislation may be returning to a previous lower level.

Figure 1. Legislative Growth Controlled for EU-related Alignment and Ratification Laws



Source: own compilation based on data available on www.sejm.gov.pl, EU-related legislation was coded on the basis of a detailed analysis of explanatory notes attached to bills, ratification laws are laws that ratify non-EU related international agreements.

Legislative Instability

Another major concern has been the instability of Polish legislation (cf. Kroner 2003; Lukaszewicz 2004a; Lukaszewicz 2004b; Bierc 2004). The most commonly used indicator of legislative instability is the proportion of amendment laws in the total legislative output. As Table 3 shows, in the 3rd and 4th terms of parliament amendment laws accounted for 59 and 58 per cent of the annual output respectively. If one compares the Polish record with that of other Visegrad countries, the proportion of amendment laws does, indeed, seem high. Only Slovakia has a higher score with 60 and 59 per cent in the last completed term and the current term respectively. In contrast, in both the Czech Republic and Hungary, the proportion of amendment laws in the legislative output is much smaller.

Table 3. Amendment Laws in Poland, Czech Republic, Slovakia and Hungary 1997 - 2004

Country	Last Completed Term**			Current Term***		
	All laws	Amendments	%	All laws	Amendments	%
Slovakia	529	318	60	372	218	59
Poland	624	367	59	718	418	58
Czech Republic*	750	421	56	530	256	48
Hungary	493	202	41	336	178	53

Source: own compilation on the basis of data from National Council of the Slovak Republic, the Parliament of the Czech Republic, the Hungarian National Assembly and data available at www.sejm.gov.pl *bills submitted to parliament ** last completed term is 1998-2002 for Hungary, Czech Republic and Slovakia, 1997-2001 for Poland; the data for current term is current at March 2005 for Slovakia, Czech Republic and Hungary, and at December 2004 for Poland.

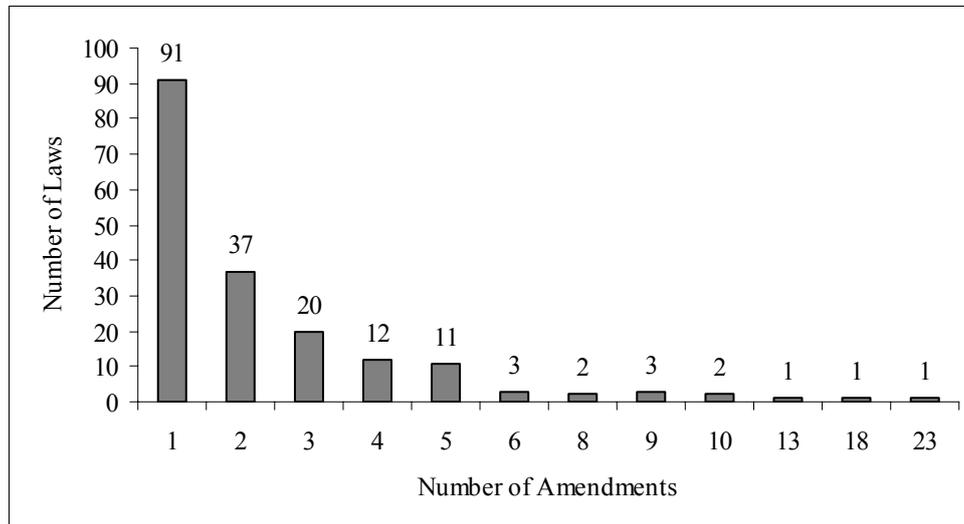
Another indicator of legislative instability is the rate of amendment. It is often claimed that existing laws are amended very frequently (cf. Wronkowska 2002a,

2002b). In his study of amendment patterns in commercial law, Frackowiak concludes,

‘In the 1990s, amendments to existing legislation were undertaken frequently and in great numbers. If one analyzes amendment legislation *ex post*, one must conclude that much of it was perhaps unnecessary or could have been prepared more competently’. (Frackowiak 1997, p. 139)

Indeed, in the 4th term of parliament, one in four laws that were adopted by parliament were subject to subsequent amendment. If one analyzes the frequency of such amendments, it is clear that many of these laws were amended more than once, as is shown in Figure 2. Out of 184 statutory laws that were adopted and amended between 2001 and 2004, 91 laws (50%) were amended once, 37 laws (20%) were changed twice, and 56 laws (30%) were subject to change three or more times. Significantly, there were laws that were amended twenty-three, eighteen and thirteen times over a period of only three years.

Figure 2. Amendment Frequency in the 4th Term of Parliament*



Source: own compilation based on data available at www.sejm.gov.pl *only laws that were adopted in the 4th term of parliament are counted

Legislative Sectoralization

A final major concern is that Polish statutory legislation comprises a large number of specific laws, which regulate particular cases in great detail, often in an *ad hoc* manner (cf. Kochanowski 2003; Siedlecka 2004; Krolak 2004; Brynska and Michalski 2004). Such sectoral legislation frequently derogates from general rules. This problem has been well-captured by Wronkowska:

‘Rather than creating stable regulations we employ law to resolve concrete immediate concerns. We implement parliamentary legislation that derogates from all general principles accepted in a given area of law under the pretext of creating yet another specialized regulation. But the number of such specialized regulations places a question mark over the application of the general

principles. Instead of transparent solutions undertaken through standard legal measures, we tend to resort to covert taxes or levies, new specialized procedures or new improvised forms of legal action'. (Wronkowska 2002b, p. 23-4)

Growth of case-specific legislation is hard to demonstrate in quantitative terms and, unsurprisingly, few quantitative indicators have been used to date. Following Huber and Shipan, the present study resorts to the use of word count as a measure of the specificity of legislation (cf. Huber and Shipan 2002). The expectation here is that laws become more specific, the more words they contain. This indicator is admittedly a rough approximation, but it provides a convenient way of checking whether Polish legislation is indeed becoming more specific. As indicated by Table 4, in the 3rd and 4th terms of parliament laws do, on average, tend to become longer. If one controls for ratification laws and EU-related legislation (which arguably may distort the specificity of legislation), the average word count has grown by 40 per cent from the 3rd to the 4th term of parliament. This effect does not disappear even if one divides legislation into amendment and non-amendment laws.

Table 4. Average Word Count of Statutory Laws*

Year**	Non Amendments			Amendments			All		
	3 rd Term	4 th Term	Growth %	3 rd Term	4 th Term	Growth %	3 rd Term	4 th Term	Growth %
1st year	4342	376	-91	342	1526	346	1395	1394	-0,04
2nd year	8429	6518	-23	2844	2159	-24	4350	3179	-27
3rd year	2887	6414	122	1204	3597	199	1669	4490	169
4th year	3570	8400	135	2393	3513	47	2679	4878	82
Total	4854	6796	40	2036	2850	40	2775	3880	40

Source: own compilation based on data available at www.sejm.gov.pl, *excluding ratification and EU related laws, **the first year for the 3rd term is 1997, and 2001 for the 4th term.

II. Incentives, Rules and Legislative Effects

Explanatory Hypotheses

In explaining legislative growth and the instability and sectoralization of parliamentary legislation, previous domestic research has focused on three principal factors. First, it has been argued that all three effects may be explained with reference to the impact of lobbying. Special interests prefer parliamentary legislation because it offers them better opportunities for influencing the law-making process and is more difficult to change once adopted. Moreover, lobbies tend to demand laws that are case-specific and targeted at their individual concerns (Darewicz and Jendroszczyk 2002). Second, it is claimed that the problems with legislative quality may be due to a narrow literal interpretation of law by the courts and administrative authorities. Hence, if a given case is not literally legislated for (which happens frequently), the knee-jerk reaction of executive and parliamentary legislators is to call for the adoption of new legislation or amendment to existing law to cover the case in question rather than rely on a functional and purposeful reading of the law (cf. Siedlecka 2004). The third most commonly identified factor is political

volatility. Since Polish cabinets are short-lived and parliamentary incumbency rates low, political actors tend to maximize the legislative output in the short-term, and have a strong preference for laws that address specific and immediate concerns. A high turnover among junior ministers and high-level officials provides further incentives for overturning policies of the predecessors (Semprich 2003b; Nikolenyi 2004).

Without rejecting such explanations, this study argues that the level and composition of the legislative output are principally shaped by the rules that govern the behaviour of individual ministers and members of parliament during different stages of the legislative process. This argument connects with that variant of Polish research on legal quality which has examined the effect of institutional configurations within the executive and parliament (see for example Rada Legislacyjna 1995; Wronkowska 2000; Bierc 2002; Rymaszewski et al. 2004; Dobrowolski and Gorywoda 2004). It contributes to such work by drawing on theoretical insights from rational choice institutionalist literature (cf. North 1990; Scharpf 1997; Weingast 1998). Defining institutions as constraints on opportunistic behaviour, this tradition has spawned a rich literature exploring the role of formal and informal rules in leading individual actors to optimal political, economic and social outcomes. Much of this research has focused on the effects of parliamentary rules on patterns of legislation, covering a broad range of issues and settings, such as the impact of parliamentary committees (Mattson and Strom 2004), the role of time constraints and rules restricting the amending powers of legislatures (Döring 1995; Döring and Hallerberg 2004; Heller 2001). More recently, attempts have been made to explore the impact of executive configurations in areas such as the organization of the legislative agenda (Thies 2001; Martin 2004), policy volatility (Evans and Evans 2001; Blondel and Maaning 2002; Zubek 2005a, 2005b) and budgetary law-making (Brusis and Dimitrov 2001; von Hagen 2003; Hallerberg 2004; Dimitrov et al. 2005 forthcoming).

Drawing on theoretical insights from the above literature, we hypothesize that

- (I) the greater the degree of decentralization of the legislative process inside the executive, the higher the legislative output and the higher the proportion of special-benefits legislation.

In a *decentralized constellation* the rules governing the legislative process are configured in such a way as to promote a bottom-up approach to law-making that minimizes substantive coordination requirements. This means that ministers and their departments may 'go it alone', i.e. pursue individual law-making strategies. In particular, they will exercise an agenda-setting monopoly within their policy jurisdictions and will be able to limit the scope for modification to their legislative proposals. This configuration of the legislative rules will entail two types of effects for legislative outcomes. First, it will make it possible for ministers to allocate resources to the production of legislation that maximizes concentrated immediate benefits to their individual sectoral or other departmental constituencies. By channelling positive regulatory benefits directly to groups that shape the public perception of their performance in office, ministers will be able to increase their

individual prospects of re-election or career development. In operational terms, this implies that legislative output will be dominated by special narrowly-targeted legislation. Second, the decentralized constellation encourages high legislative output because the limited coordination requirement lowers the costs of cooperation and the uncertainty as to the final outcome. Ministers and departments have thus additional resources that may be allocated to producing new legislation.

By contrast, in a *centralized constellation*, legislative rules promote a top-down approach to law-making characterized by stringent coordination requirements. Accordingly, ministers and departments are tightly constrained in their ability to pursue independent legislative initiatives. Such constraints typically take the form of legislative programming, rigorous and strictly enforced substantive inter-ministerial coordination, and strong gate-keeping powers enjoyed by the cabinet, and more commonly, by the prime minister. This configuration of the legislative rules entails effects for legislative outcomes that are converse to those described above. First, since the interests of the cabinet as a whole are linked to the interests of the electoral majority rather than narrow voter constituencies, the cabinet or the prime minister will prioritize the production of legislation that brings benefits to widest sections of the society. In operational terms, ministers will be required to allocate resources to the joint production of significant cross-cutting legislation. Second, since legislative initiatives that bring benefits to the government as a whole will require intensive cooperation (and thus will be more costly to produce) the government will produce at a lower level of legislative output.

Turning to the constellations of legislative rules in parliament, we hypothesize that

- (II) the greater the degree of decentralization of the legislative process inside the parliament, as measured by the extent of government agenda control, the higher the legislative output and the higher the proportion of special-benefits legislation.

Agenda control is defined here as the ability of the government to decide the agenda of plenary and committee meetings (timetable control) and to shield legislation from oppositional or other amendment (amendment control) (cf. Döring 2004, p. 148). A *decentralized constellation* is associated with rules that tightly constrain the powers of the government as a collective actor during the parliamentary passage of governmental bills. The government has a limited formal ability to control the legislative timetable, which is primarily decided by the speaker and committee chairmen. There are low thresholds to substantive change to government bills, and deputies are able to pursue individual strategies in the process of reshaping legislative outcomes by amending government bills. Members of parliament also benefit from extensive powers to initiate legislation and from the relative absence of restrictive rules governing when and what non-executive bills may be proposed. This configuration of rules has the following effects for the legislative output. If the government has weak agenda control and no alternative strong agenda-setter is present, then unorganized members of parliament will be able to pursue particularistic law-making strategies (cf. Cox and McCubbins 1993). In operational

terms, deputies will overproduce specific-benefit legislation through the amendment of government bills or the initiation of private member bills. The key driving mechanism will be a desire to enhance their individual or group chances of re-election. Moreover, if deputies frequently resort to private-member legislation, this will result in high legislative output as laws initiated in parliament will add to those sponsored by the government.

A *centralized constellation* is associated with rules that grant the government a privileged position during parliamentary law-making. Under this arrangement, the government has extensive powers to control the legislative timetable. In particular, the government is able to restrict individual deputies' opportunities for proposing private member bills. It is also able to minimize the likelihood of major changes to its own bills. Strong agenda control by the government has the effect of preventing individual interests from shaping legislation. The configuration of legislative rules makes it more difficult for the parliament to adopt specific-interest legislation and will create incentives to allocate resources to the production of collective-benefit legislation. However, it must be noted that, if the constellation of the legislative process within the executive is highly decentralized, strong agenda control by the government is likely to reinforce the sectoral bias in law production, since it is ministers rather than the cabinet as a whole that will exercise control over agenda in parliament. Finally, a centralized constellation of the parliamentary process will – *ceteris paribus* – result in a relatively low legislative output since the government will be able to prevent deputies from undertaking independent legislative initiatives.

Leadership Styles and Party Configurations

While legislative rules are central to understanding the level and composition of legislative output the relationship must not be understood as deterministic. The substantive effects of legislative constellations are sensitive to two mediating influences, in particular: the strong association between office and office holder, which is characteristic of executives and, albeit to a lesser extent, legislatures; and, second, the decisive role that political parties play in structuring the workings of the executive and parliament. Both factors deserve some elaboration. As has been noted in comparative executive studies (Goetz 2003a; 2003b), political institutions are distinguished by the very close identification between office and office holder. Analyses of the political executive, especially of heads of government and ministers, regularly note the importance of the personal qualities, dispositions and motives of incumbents and the extent to which individuals shape the office they occupy. In parliament, too, key office holders, such as the speaker or the chairpersons of committees, can seek to remould their offices, although the parameters within which they may do so are typically more narrowly circumscribed by formal regulations, and the political resources they can employ are less developed. In the context of the present discussion, the opportunities for overcoming the sectoral bias through centralization in government are of special relevance. As the ample literature on political leadership highlights (Elgie 1995), the leadership styles of chief executives can vary considerably from incumbent to incumbent within largely unchanged

organizational and formal procedural settings. A recent major comparative study of executive institutions and policy-making in Bulgaria, the Czech Republic, Hungary and Poland between the late 1980s and the early 2000s (Dimitrov et al. 2005 forthcoming) shows that in the Czech Republic and Poland, in particular, the willingness and ability of prime ministers to control the government agenda and to enforce the discipline of collective decision-making has fluctuated significantly over time, even though their formal powers remained unchanged (in the case of Poland, since the adoption of the 1997 Constitution).

Besides the individual qualities of political leaders, the opportunities for pursuing individual law-making strategies by ministers and members of parliament crucially depend on the internal party organization and the dynamics of coalition politics. Party leaders have strong individual incentives to maximize the electoral chances of the party as a whole and, hence, make sure that individual political actors pursue group rather than individual interests (Cox and McCubbins 1993). For collective law-making strategies to dominate, party leaders must have at their disposal institutional levers with which to mobilize party members towards collective goals and to monitor their behaviour. The significance of political parties is most evident in two-party systems, in which parties appeal to the broad electorate and tend to form single-party governments. The situation is more complex in multi-party systems in which parties represent narrower socio-economic interests and are likely to form coalition governments. In that latter case, collective law-making is more problematic if a coalition constructs its policies as 'a logroll of party ideal points across issues' (Thies 2001). Yet, all is not lost. As shown by Muller & Strom (2000) and Thies (2001), under certain conditions, coalition parties cooperate and develop inter-party institutions that enable them to implement compromise policies that maximize electoral support across many voter groups. These party-based institutions may take the form of coalition summits, overlapping jurisdictions between ministries or the shadowing role of junior ministers (Thies 2001). The emergence and operation of such institutional mechanisms is, however, determined by the internal cohesiveness of coalition parties, the ideological distance between them, and the expectation of whether they will run together or against each other in the next elections (cf. Dimitrov, et al. 2005 forthcoming).

Stages, Actors and Rules

In analyzing institutional constellations, this study focuses on the key stages of the legislative process during the executive and parliamentary phases; the key actors – individual and collective – that participate in the process; and the key rules to be considered when examining their legislative actions. Unlike most previous work in the field of legislative studies, the scheme captures both the executive and the parliamentary phases of law-making: both proceed through similar stages, are characterized by comparable actor constellations, and are structured by the same types of rules (although, of course, the content of the rules varies). The scheme does not, however, seek to capture the entirety of the law-making process, as our analysis stops with the final adoption of bills by the parliament. In particular, we do not deal

with the President’s powers to veto bills submitted to him by the Marshal of the Sejm. There is no shortage of attempts to break down the legislative process into different stages for analytical purposes, although, for the main part, such schemes focus on the parliamentary phase of law-making, whilst neglecting the executive phase. The term ‘stages’ does suggest a logical sequence and, indeed, the stages used in our analysis – initiation, amendment, and finalization – do follow a temporal order. However, as a major inquiry into British law-making observed, ‘the legislative process must be seen as a whole. Although it is convenient to list separate stages, these are interrelated and interactive’ (Hansard Society 1993, p. 9). Thus, in the practice of law-making, stages may be skipped, run in parallel, or, under certain conditions, even follow a reverse order. Table 5 sets out the three main stages we examine within the executive and parliamentary setting; notes major legislative tasks that are typically performed during these stages; and indicates key empirical issues for consideration in subsequent analysis.

Table 5. Key Stages of the Legislative Process

Key Stages	Major Tasks	Executive Phase	Parliamentary Phase
Initiation	Programming and time-tabling	determination of the cabinet’s legislative programme and the timetable for its implementation.	The determination of the parliament’s legislative agenda and the timetabling of parliamentary business.
	Preparation and drafting	preparation of the details of the policy and its translation into a legal text.	The initiation of non-executive legislation in parliament and the drafting of such bills.
Amendment	Consultation	consultation of non-executive actors during the preparation of a draft bill.	The consultation of non-parliamentary actors during the consideration of a bill.
	Co-ordination	coordination of draft bills between ministries and between ministries and the centre of government.	The coordination of bills between committees and between committees and subcommittees.
	Legal review	review of amendments for compliance with existing law and drafting technique.	The review of amendments for compliance with existing law and drafting technique.
Finalization	Moving to decision	presentation of draft bills to the cabinet for a final decision.	The presentation of the bill for a final decision to parliament.
	Adoption or rejection	adoption or rejection of the draft bill by the cabinet.	The adoption or rejection of the bill by the parliament.

Source: own compilation

At each of these stages there are individual and collective actors whose decisions shape the final legislative outcomes. Table 6 identifies the key actors that will be considered in the subsequent analysis.

Table 6. Key Actors in the Legislative Process

Executive Phase	Parliamentary Phase
Ministerial Officials	Members of Parliament
Ministers	Parliamentary Clubs
Ministries	Committees, sub-committees and chairpersons
Prime Minister's Chancellery	Legislative Committee
Prime Minister	Marshall
Committee(s) of the Council of Ministers	Presidium
Council of Ministers	Plenary
	Senate
	Council of Ministers, Ministers

Source: own compilation

The three main stages of the legislative process – initiation, amendment and finalization – and the powers of the key legislative actors are governed by complex sets of legislative rules. Such rules may be less or more formal depending on the carrier or repository in which they are embedded. The formal rules will include laws, protocols, routines or standard operating procedures that have been formalized in legal texts. Informal rules will include such behavioural characteristics of a group as norms, conventions and social capital. For present purposes, we focus on rules that are of special relevance in directing the legislative process either in the direction of decentralization and special-benefits legislation or, conversely, centralization and more aggregated collective-benefit bills. Drawing, in part, on recent research on generic rules (Scharpf 2000; Ostrom 2003), our analysis focuses on four types of rules, which it maps for both the executive and the parliamentary legislative setting.

- boundary rules – establish who is authorized to take part in the legislative process; in the present context, these rules mandate, for example, the eligibility for membership in cabinet committees and parliamentary subcommittees;
- content rules – establish the permissible scope and substance of legislative decisions in specific situations; in the present context, these rules specify, for example, the type of changes that a cabinet committee or parliamentary committee may propose to draft legislation;
- temporal rules – establish the timing, speed and sequence of the legislative process; in the present context, these rules specify, for example, how long a cabinet committee or parliamentary subcommittee may spend on scrutinizing a bill;
- information rules – establish the distribution of information amongst participants in the legislative process; in the present context, these rules specify, for example, what kind of written information must be made available to cabinet members or members of a parliamentary committee in advance of a decision to pass a bill.

Standards of Plausibility

The analysis of legislative constellations and their effects that we present in Sections III and IV is exploratory rather than definitive. Its exploratory character is owed to several reasons. First, we have had to be selective in mapping the different rules within the executive and parliament and our information is more detailed and more reliable as regards some rules as compared to others. Second, concerning legislative outputs, our indicators, as they stand, are quite basic. Given the large volume of legislation passed during the 3rd and 4th terms of the Polish legislature, any analysis of the composition of legislation does necessarily have to rely on quantitative indicators, which, in turn, limits what we can say about the substantive shape of the legislation adopted. Third, linking qualitative information about rules to quantitative information about effects does, of course, raise a host of methodological problems that have been extensively debated in the social sciences. What our analysis can offer, at this stage, is not a robust ‘proof’ of causal connections through a controlled comparison. Rather, in developing our arguments about legislative constellations and their consequences we rely on a combination of the congruence method and process-tracing.

The congruence method is normally employed as an alternative to controlled comparison in situations where the research objective is to analyze a single case or a few cases that are insufficiently comparable to achieve a satisfactory level of control (George and Bennett 2004). The method is thus well-suited for a single-country examination of legislative rules and their effects. The congruence method consists in employing theory to predict the value of the dependent variable for a given value of the independent variable and in verifying such expectations against empirical material (see George and Bennett 2004). If the actual outcome of the dependent variable is congruent with the prediction generated by the theory, then there is a possibility of a causal relationship between the two variables. In the case at hand, the key theoretical expectation is that decentralized legislative constellations (both inside the executive and parliament) lead to pronounced legislative instability and sectoralization which, in turn, results in a high output of legislation. This theoretical expectation will be checked against the data on the configuration of the legislative rules at three key stages of the law-making process. If the empirical material confirms the prediction, such consistency will provide some support for the theory outlined in the preceding section.

The result will however be still open to challenge. The evidence of mere consistency is not a strong proof of a causal relationship and must be subject to further investigation (George and Bennett 2004). This is to safeguard against a possibility that there is a hidden variable that is responsible for the observed effect and/or to ensure that the value of the dependent variable continues to be congruent with the theory even if the impact of such other variable is taken into consideration. To this end, the present study employs the process-tracing method, which consists in identifying causal mechanisms (or causal chains) that link the independent variable with the observed effect. In the present context, the existence or absence of causal

mechanisms will be determined based on a quantitative analysis of the law-making strategies at the initiation, amendment and finalization stages.

III. Legislative Constellations I: Executive Law-Making

This section examines the legislative rules governing the executive phase of law-making and finds that the legislative constellation is characterized by a pronounced decentralization during the initiation and amendment stages. Ministerial departments are firmly in the driving seat, whereas the centre of government has a marginal role. The collective and hierarchical constraints on individual law-making strategies are present at the finalization stage but it is rather doubtful if these can make a real difference so late in the process. The decentralized constellation is likely to contribute to high output as well as legislative instability and sectoralization. The analysis uses quantitative indicators to examine – where possible – causal chains that link legislative rules and the anticipated effects for the number and composition of draft government bills.

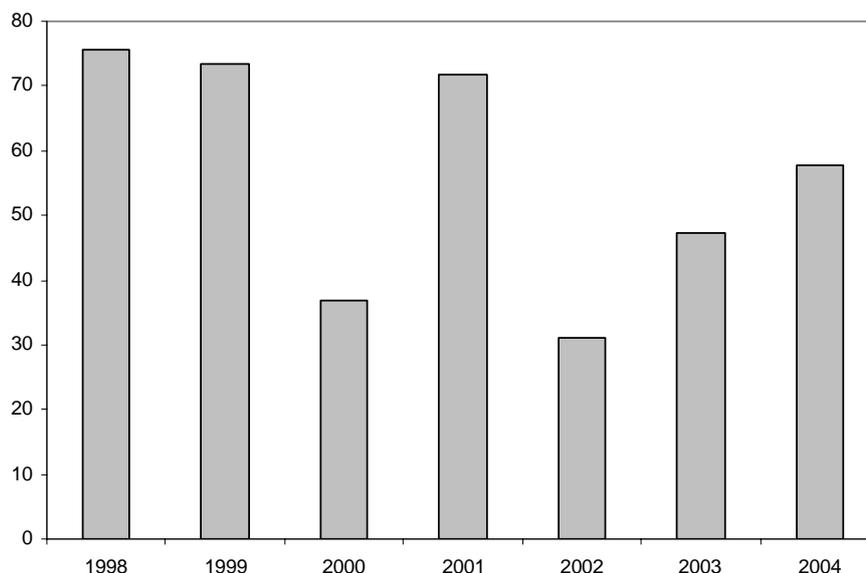
Initiation

The rules that govern the initiation of legislation inside the executive provide ample room for ministers and departments to pursue individual law-making strategies. This is most evident in legislative planning. Although under the cabinet internal bylaws (article 5.1), it is the prime minister who determines the work plan of the government, in practice ministers enjoy a large degree of control over the content of the legislative agenda. This is due to a specific configuration of boundary, content and information rules. At the start of each year (or half yearly periods), the head of the Prime Minister's Chancellery writes to ministers asking them to submit proposed items to the cabinet work plan. The letter from the head of the Chancellery is often accompanied by a programmatic document from the prime minister's chief advisor or political *cabinet* setting out the key policy objectives of the government. Ministerial inputs are subsequently collated at the Cabinet Agenda Division and circulated among all ministerial departments for comments. At this stage, the head of the Chancellery, the prime minister's political *cabinet* or deputy prime ministers may write to a minister if they think that some elements of the government programme have not been addressed. Yet, the scope for central steering is limited by information asymmetries. Neither the Cabinet Agenda Division nor the prime minister's political *cabinet* have sufficient resources to analyze the content of ministerial proposals. More significantly, when submitting legislative proposals, ministers are not required by the cabinet bylaws to provide detailed information about the need for legislation, its substance or cost-benefit assessments. In effect, the prime minister has little practical control over the extent to which ministers pursue collective or individual objectives through proposed legislation.

Even if ministers integrate collective policy objectives of the government into their legislative proposals, they can still allocate resources to sectoral law-making. A key opportunity is provided by the configuration of content rules, which establish limited control over the number of legislative initiatives that a minister may propose within

the framework of the cabinet work plan. The legislative plan is designed in a bottom-up fashion, driven mainly by demands from ministries, and the ultimate number of its items is chiefly determined by the number of ministerial submissions. Quantity control is exercised sporadically in *ad hoc* meetings at the Prime Minister's Chancellery or plenary cabinet meetings at which ministers may be asked to identify proposals that they think could be merged or postponed. In each case, however, such decisions are subject to an effective veto by individual ministers. Another significant avenue for pursuing individual law-making strategies is provided by the content, temporal and informational rules governing the opportunities for tabling initiatives outside the cabinet work plan. Work on such initiatives may be undertaken at any time subject to a notification to the prime minister comprising the statement of the need for legislation, preliminary impact analysis and an EU compatibility assessment (article 7 of the cabinet bylaws). The prime minister does not have a veto over the initiative, though he may require that terms of reference should be submitted to the full cabinet or an opinion be sought from the Government Centre for Strategic Studies or the Legislative Council (article 8 of the cabinet bylaws). The prime minister may also keep a proposal from cabinet consideration by refusing to allocate a slot on the cabinet agenda. In practice, however, neither the detailed information requirements nor the prime minister's delaying powers are strictly applied (Rydlewski 2002). For example, in 2003-2004, the cabinet considered the terms of reference only for seven pieces of legislation. Such weak central constraints hardly discourage ministers from undertaking legislative initiatives outside the work plan and non-planned ministerial initiatives proliferate, accounting for between 30 to 70 per cent of the cabinet's annual legislative output. See Figure 3.

Figure 3. Percentage of Non-planned Parliamentary Bills Adopted by Cabinet



Source: own compilation based on data provided by the Prime Minister's Chancellery

This is not to say, of course, that individual ministers face no procedural constraints in legislative planning. Besides the content and information rules relating to non-planned initiatives, once a legislative initiative has been introduced into the cabinet work plan, ministerial compliance is subject to scrutiny from the Prime Minister's Chancellery. Information rules empower the Cabinet Agenda Division and the Socio-Economic Affairs Division to monitor the implementation of the cabinet work plan and to report regularly to the head of the Chancellery. More recently, prime ministers have started using cabinet meetings to review progress in the preparation of planned legislation. There are also temporal rules that impose constraints with regard to the timing of legislation. The cabinet work plan sets monthly or quarterly deadlines for submission to cabinet and ministries must seek the consent of the head of the Prime Minister's Chancellery for any departure from the schedule. But, although these rules ensure higher regularity of planned legislative activity, they have little constraining effect on ministerial law-making discretion in substantive terms.

Ministerial autonomy at the initiation stage is further reinforced by the boundary rule that grants departments the right to draft legislation (article 10.8 of the cabinet bylaws). This means that the department is not only an agenda-setter in substantive terms but has primary control over the design of legal provisions. Its discretion in shaping the structure of legislation is constrained by instructions contained in the prime minister's regulation on legislative technique. But although the correct application of the guidance is ensured by the department's legal division, it is a standard operating procedure for line divisions to act as agenda-setters with regard to both the substance and the structure of legislation. The input from legal divisions is often limited to signing off the text that has already been formulated elsewhere, which, given the time pressures and scarcity of resources, constitutes a perfunctory form of supervision. The position of the legal divisions is further weakened by the fact that legislators/drafters do not form a cohesive *corps* across the governmental administration.

The opportunities for pursuing departmental interests at the initiation stage are likely to have significant implications for the level and composition of the legislative output. The existing configuration of the legislative rules will have three principal effects:

- the cabinet's legislative output is dominated by initiatives that address policy concerns in a narrow sectoral perspective;
- even where initiatives address similar issues, they are likely to be initiated as separate pieces of legislation within the government;
- the sectoral bias increases the overall legislative output and the probability of inconsistencies in the legal system as a whole.

These effects are most evident if one analyzes the pattern of legislative amendments. As indicated in Section I, amending legislation accounts for two thirds of all bills that the government submits to parliament (if one controls for ratification bills) and,

hence, its characteristics have a significant impact on legislative output. For present purposes, the authors have examined how amendment proposals were made to 228 laws for which change was sought by the government two or more times in the 4th term of parliament (2001-2004)². Table 7 demonstrates that only in the case of 53 such laws (23%) amendments were proposed by one and the same minister, regardless of the number of amendment proposals. In the case of 96 laws (42%), amendments originated independently from two ministries, while the remaining 79 laws (35%) were to be amended separately by three or more ministers. This data distribution shows that legislative proposals are driven by sectoral concerns of individual ministers, who are largely unconstrained in pursuing their individual amendment preferences.

Furthermore, it is interesting to note that, on balance, the higher the number of amendment proposals, the more sponsoring ministries become involved. Thus, the probability of the amending legislation being proposed by an additional minister increases with each new amendment, though admittedly this effect is less clear-cut with large numbers of amendments. The association shows that even where amendment proposals concerned one and the same law, ministerial departments were prone to initiating their own legislation rather than coordinating with other ministers. This was certain to increase both the costs of coordination at later stages and the probability of substantive inconsistencies in the legal system as a whole. Finally, unconstrained agenda-setting powers allow individual ministers to avoid costs of cooperation with other ministers and departments. In pursuing such cost-minimizing strategies, they gain additional resources that may be spent on initiating even more legislation. This, in turn, leads to higher legislative output.

Table 7. Ministry Distribution of Amendments to Existing Laws Proposed in 2001-2004

Number of Amendments	Number of Ministries Sponsoring Amendments to a Single Law					Total
	1	2	3	4	5 and over	
2	42	46	-	-	-	88
3	5	27	16	-	-	48
4	4	8	10	6	-	28
5 and over	2	15	16	16	15	64
Total	53	96	42	22	15	228
Percentage	23	42	18	10	7	100

Source: own compilation on the basis of the data available at www.sejm.gov.pl and data provided by the Prime Minister's Chancellery

The sectoral bias is further apparent if one considers how amending legislation is fashioned in structural terms. Table 8 demonstrates that out of 389 amendment bills submitted by the cabinet to parliament in the 4th term of parliament (2001-2004), 213 amended one existing law (55%), 140 amended between two and six laws (37%), and 36 amended more than seven laws (9%). Thus, although the prime ministerial guidance on legislative technique clearly stipulates that 'omnibus bills' that amend more than one law are to be avoided (article 92.1), in practice this form of amendment is commonly used. This usage may, of course, be due to issue linkages that require more horizontal treatment, but it may just as well be indicative of a cost-minimizing strategy of individual ministers. Benefiting from limited costs

of cooperation with other ministries during the initiation stage, ministers are able to resort to wide-ranging amendments instrumentally so as to realize their sectoral objectives. If this is so, unconstrained ministerial law-making is responsible for higher amendment rates.

Table 8. Amendment Bills by the Number of Laws Amended

Number of Laws Amended by an Amendment Bill	Count	Percentage %
One	213	55
Two	53	14
Three	34	9
Four	26	7
Five	13	3
Six	14	4
Seven	5	1
Eight	8	2
Nine	3	1
Ten and over	20	5
Total	389	100

Source: own compilation on the basis of the data available at www.sejm.gov.pl

Amendment

The amendment stage reinforces opportunities for pursuing individual law-making strategies. Ministers are relatively unconstrained when consulting with non-state organizations on draft legislation. Under the boundary rules specified in the cabinet bylaws (article 12.4 and 12.5), the sponsoring department is obliged to consult with the institutions whose opinion on some issue is required under a specific statutory provision. If there is no statutory obligation, the decision which non-state actors should be consulted is taken by the ministerial department. The only constraining boundary/content rule is the requirement that the department seek the *ex post* opinion of the Government Centre for Legislation (RCL) on the extent of the public consultations (article 11.1). If the RCL challenges the department, the latter does not have to conform but must record and attach its position to the draft. The absence of time rules governing external consultations allows the department to determine when – if at all – external views are sought on draft legislation and how much time is allocated for responses. Under the information rules specified in the cabinet bylaws (article 10.6), the department must describe the results of its outside consultations as part of the regulatory impact assessment (RIA), but has freedom of choice as to what information it supplies. All in all, the legislative rules grant line departments a large degree of discretion in gate-keeping external access to the amendment stage of the law-making process.

The principal constraints on ministerial discretion at the amendment stage originate from inter-ministerial consultations. The chief constraint is the boundary rule that requires a sponsoring department to submit its draft legislation for comments to all members of the cabinet and the head of the Chancellery. The ministry is also obliged to send its draft to the units of state administration whose opinion is required by a specific statutory provision (article 12). If numerous comments and reservations are

tabled, the sponsoring department is obliged to organize a conciliation conference for all parties concerned. The conference is chaired by the sponsoring department. Interestingly, there are no content rules regarding what type of amendments may be proposed by other departments, though the assumption is that the proposed changes would relate to the impact of the initiative on their policy jurisdictions. The temporal rules confer on departments some degree of control over how much time is allowed for consultation (article 13). The sponsoring department determines the deadline for comments, though time allowed should not be longer than 30 days and shorter than 7 days (14 days for parliamentary bills). Failure to comment within the deadline is tantamount to agreement, but legislative rules governing the operation of the cabinet committee and the cabinet make it possible to reopen any issue at a later stage. Once comments and reservations are received in writing or discussed during a conciliation conference, the sponsoring department has a choice between amending its draft or – where it disagrees with comments – drawing up a list of differences (article 14.4).

Although the legislative rules governing inter-ministerial consultations constrain the agenda-setting power of the sponsoring ministry, they do not – on the whole – limit the opportunities for particularistic law-making strategies. This is because the amendment proposals tabled by other ministries may be expected to be driven less by collective interests of the cabinet and more by sectoral concerns. Meanwhile, the legislative rules that govern the interaction between departments and the prime minister/the centre of government provide for a collegial relationship. Although the boundary rules include the head of the Prime Minister's Chancellery as a permanent recipient of draft legislation for comments, the content rules do not equip the latter with any special powers to shape legislative outcomes in line with collective interests of the cabinet. The input provided by the Socio-Economic Affairs Division and signed by the head of Chancellery has the status of one ministry's comments on another's draft. The Chancellery may chair a conciliation conference only if the sponsoring department explicitly asks for such intervention. In practice, this opportunity is rarely used. The prime minister and the Chancellery have no formal control over the time and information that are made available during inter-ministerial consultations (cf. Zubek 2001, 2005 forthcoming)

The Chancellery's weak coordination role is hardly compensated for by other central agencies directly responsible to the prime minister. Under the boundary rules in the cabinet bylaws (article 11), the Government Centre for Legislation (RCL), a central agency answerable to the prime minister and employing around 60 lawyers, has the formal power to review the extent of regulatory impact analyses (RIA) performed in ministries. Yet, even in this case, the RCL intervenes only with regard to the RIA's scope rather than content, and the department does not have to comply. Also, given the substantial number of RIA opinions, the RCL seems to have inadequate human resources. In 2003, a team of six provided opinions on RIAs for 1,839 drafts. The RCL has perhaps the most pronounced role in legal review which is undertaken in two dimensions: (i) compatibility with the Constitution and existing laws, and (ii) legal drafting techniques (cf. Proksa 2003). Under the boundary rule in the cabinet bylaws (article 12), the RCL must be consulted on all initiatives during inter-

ministerial consultations. Its assessment is, however, non-binding and departments do not have to comply, though in practice the RCL's opinions are heeded. Even weaker constraints are provided by the Government Centre for Strategic Studies (RCSS), a central agency subordinate to the prime minister. Although under the content rule in the cabinet bylaws (article 11) the RCSS performs regulatory impact analysis on draft legislation prepared by ministries, its analysis is in addition, rather than in competition, to the departmental RIAs. If the RCSS prepares a RIA, the department must only take and record its position on the RCSS's analysis.

Finally, departments are least constrained by the Legislative Council, an advisory body to the prime minister, which comprises up to twenty eminent law specialists. The boundary rules in the cabinet bylaws (article 12.2) make it incumbent on the line departments to seek the Council's opinion during inter-ministerial consultations only if draft legislation has significant social, economic or legal implications. But the decision whether this condition is met rests with the sponsoring department. Under the content rules, if the Legislative Council is consulted, its opinion does not bind the department, which must only take and record its position on the Council's assessment. The configuration of the temporal rules entails that if the Council's opinion is sought before consultations, it may become irrelevant when the draft legislation is later subject to serious modifications (cf. Gebethner 2003). The Legislative Council may, however, be consulted by the cabinet committee and the cabinet if a collective decision is taken to that effect.

The opportunities for individual law-making strategies at the amendment stage are likely to hold important implications for the level and composition of the legislative output. Ministerial discretion in consultations beyond the executive and the limited substantive control of ministerial initiatives by the centre of government lead to the maximization of sectoral benefits through legislation and a relative disregard for its impact on society as a whole. This effect is most apparent if one analyzes the information contained in the explanatory notes attached to the bills that the cabinet submits to parliament. The analysis of the explanatory notes makes it possible to evaluate the understanding that departments have of the costs and benefits that legislation entails. The expectation is that the more limited such information, the higher the probability that legislation disregards such effects. The authors have reviewed 163 explanatory notes attached to bills prepared by ministries between April 2002 and December 2004. The sample selection was made by four independent legal experts according to the degree of socio-economic significance of legislation and was based on the following criteria: (i) legislation is a major amendment or a new systemic regulation, (ii) legislation has direct impact on business, (iii) parties affected have high market significance. The substantive quality of the government's impact assessment is taken as given. Instead, the study focuses on comprehensiveness and precision of information contained in the explanatory notes.

The analysis shows that the information about the costs and benefits of legislation that ministries have at their disposal during law-making is at best limited. According

to Table 9, only 73 out of 163 explanatory notes (45%) give information on parties affected by the bill, and only 26 (16%) discuss their significance. Explanatory notes rarely present costs and benefits for parties affected: 18 per cent and 21 per cent, respectively. If present, such cost and benefit assessments are rarely precise. Only 10 per cent and 4 per cent express the costs and, respectively, benefits in numerical terms.

Table 9. Information About the Impact on Parties Affected

	Number of Bills	%
Indicate Parties Affected	73	45
Indicate Significance of Actors	26	16
Indicate Costs	30	18
Quantify Costs	16	10
Indicate Benefits	34	21
Quantify Benefits	7	4

Source: own compilation

Moreover, the explanatory notes contain limited information about regulatory impact on cross-cutting policy objectives. See Table 10. First, the explanatory notes tend to focus on benefits rather than costs. Except for the section on central budget, costs are identified by only a marginal proportion of explanatory notes - labour market (4%), internal (1%) and external competitiveness (3%), regional development (0%). This stands in marked contrast to a high percentage of those that identify benefits of legislation (25%-42%). Second, the explanatory notes rarely use quantified or monetized data. Except for the section on public finances, costs and benefits are almost exclusively discussed in qualitative terms. Third, a high proportion of the explanatory notes conclude that a regulation is likely to have no impact on cross-cutting policy objectives. This result is most common for regional development (59%). These results indicate that the configuration of the legislative rules at the amendment stage allow departments to make legislative choices on the basis of incomplete information about the precise distribution of regulatory costs and benefits. This, in turn, means that ministries do not internalize the full cost of legislation and, in effect, produce legislation that maximizes narrow benefits to their sectoral clientele but disregards horizontal costs to other voter constituencies.

Table 10. Information About Impact on Cross-Cutting Policy Objectives (%)

Type of impact	Identifies Costs	Quantifies Costs	Identifies Benefits	Quantifies Benefits	Concludes 'No Impact'
Central Budget	40	37	29	17	45
Local Budget	6	6	6	3	26
Labour Market	4	0	39	8	50
Internal Competitiveness	1	0	37	0	35
External Competitiveness	3	1	42	0	33
Regional Development	0	0	25	1	59

Source: own calculation

Finalization

The rules that govern the consideration of legislation by the cabinet committee and the cabinet impose constraints on ministerial discretion in law-making but these are designed mainly to facilitate the resolution of the remaining interministerial disputes rather than to impart a strategic orientation to legislative outcomes. Under the boundary rules in the cabinet bylaws (article 19), all draft legislation must be subject to scrutiny within the permanent cabinet committee (KRM) at the secretary of state level before it is submitted to the cabinet, except where the prime minister decides otherwise due to exceptional circumstances. Under the content rules, the committee and its chairman have authority to prevent draft legislation from consideration at the KRM on formal grounds. For one thing, this is done when the KRM's agenda is determined by the committee secretary who is authorized to do so by the KRM chair. Where a draft is submitted with many unresolved differences, the secretary of the committee invites departments to conduct further consultations. At this stage, the Socio-Economic Affairs Division, which acts as the KRM's permanent secretariat, becomes closely involved in facilitating the resolution of differences, but the ultimate responsibility for working out a compromise lies with the sponsoring department. The secretary may delay the consideration of proposed draft legislation by asking the department to remedy formal defects such as the absence of the list of differences, its position on other departments' comments, EU compatibility assessment, the RCL's opinion on the RIA and public consultations. If these problems are not addressed within 14 days, the secretary has the authority to stop the document from being considered at the KRM, though the chairman of the KRM has the right to decide otherwise in justified circumstances. It is only when the secretary – in consultation with the KRM's chairman – considers further consultations redundant, that he places draft legislation on the agenda of the committee and sends out drafts to the KRM members seven days before the meeting. The KRM's gate keeping function is not absolute. Ministers may secure the prime minister's consent to take draft legislation directly to the cabinet, though in recent years this rarely happened (article 19.2).

The KRM committee may require a department to amend or rewrite the draft legislation. The key constraint on ministerial discretion is imposed by the role of the deputy prime minister who sits in the KRM chair. He receives substantive support from the Chancellery's Socio-Economic Affairs Division, which prepares technical assessments of draft legislation proposing amendments and solutions to disputes. The chair uses such information to shape the debate during the committee, though decisions are ultimately taken by consensus. The chair's gate keeping role increases, if differences persist despite consideration at the KRM. The KRM chair then has the right to decide whether to submit a draft law to the cabinet. If the chair decides to submit to cabinet, he prepares a detailed assessment of the problem and a proposal for its resolution at the cabinet level. It must also be noted that the prime minister is permanently represented at the KRM through an undersecretary of state (mostly) or the head of the Chancellery (less frequently). Yet, formally speaking, the prime minister's representative is not a member of the KRM and his role is of advisory

character serving more to keep the head of the government informed rather than imparting an independent direction to the debate within the committee.

The final legal review is the responsibility of the RCL. Its head participates in the meetings of the KRM committee and his office is consulted on a day-to-day basis by the Socio-Economic Affairs Division. But, under the boundary rules in the cabinet bylaws, issues of legal compatibility and drafting technique are not subject to decision-making within the KRM, but are resolved within legal commissions which are set up by the RCL after the meeting of the cabinet committee (article 20.1) or after the meeting of the cabinet if there are numerous unresolved disputes after the KRM. Although, under the content rules, the RCL plays a key role in legal review at the finalization stage, it is formally the legal commission that decides on the final wording and structure of legislation that is submitted to the cabinet and later parliament. The legal commission is attended by the representatives of departmental legal divisions identified by the RCL. Its decisions are taken by consensus but votes may be taken if disagreements persist (article 21.3 of the cabinet bylaws). The legal commission may be seen as a monitoring mechanism that enables ministers to control the final shape of legislation, despite the RCL's primary responsibility in this area.

The rules that govern the consideration of legislation by the cabinet are similar to those relating to the KRM committee. Under the boundary rules, the prime minister decides on the cabinet agenda, though in practice the cabinet secretary is authorized to gate keep legislative proposals. The content rules empower the secretary to return a submission on formal grounds if the department does not provide the list of unresolved differences, its position on other departments' comments, a conciliation conference report or the EU compatibility assessment (article 24.2 of the cabinet bylaws). When considering legislation, the cabinet approves it with or without revisions, or asks the sponsoring department to prepare a new text. The key constraint on ministerial agenda-setting is the authority of the prime minister to introduce an issue and shape the discussion during the cabinet. However, unlike the chairman of the KRM, the prime minister lacks independent professional support in his role as competitive agenda-setter. The Cabinet Agenda Division prepares an opinion for the prime minister but it contains mainly technical information on what happened at different stages of the legislative process. The prime minister receives an opinion from the Socio-Economic Division that has a more substantive focus, but it is shaped largely by discussions within the KRM. He may also rely on his political *cabinet* or advisors but these are small units and focus only on selected issues.

The configuration of legislative rules at the finalization stage makes it difficult for the cabinet committee or the cabinet to effectively challenge the sectoral bias that is ingrained in proposed legislation at earlier stages of the process. Neither the KRM chair nor the prime minister have at their disposal sufficient resources to reshape legislation significantly and, hence, limit themselves to addressing unresolved disputes between ministries and intervening *ad hoc* to pursue specific concerns. This means that the legislative rules enable ministers to decisively shape the legislative

output of the cabinet both in size and composition. This causal mechanism is most evident if one examines the decision-making record of the cabinet committee and the cabinet, and in particular the proportion of bills rejected by the cabinet and the number of bills approved in a single cabinet session. This analysis makes it possible to evaluate the extent to which these institutions exercise influence over ministerial law-making. The expectation is that the fewer drafts the cabinet or the cabinet committee rejects and the more bills are adopted during a single meeting, the more limited the control of these institutions. The authors have reviewed all draft parliamentary legislation submitted to the cabinet committee and the cabinet for approval between 1998 and 2004. As shown in Table 11, the cabinet committee rejects on average only around 4-5 per cent of draft parliamentary legislation. The highest proportion of rejected bills was recorded in 2000 and 2001, when it stood at 8 per cent, while the lowest occurred in 2002, when the KRM rejected only 3 per cent of all bills.

Table 11. The Decision-Making Record of the Cabinet Committee

	Bills	Rejected	Adopted (Merged)	% Rejected
2002	201	6	195	3
2001	89	7	82(4)	8
2000	72	6	66	8
1999	50	2	48	4
1998	53	4	49(2)	7

Source: own compilation based on information obtained from the Prime Minister's Chancellery

A similar pattern emerges from the decision-making record of the cabinet. As shown in Table 12, between 1998 and 2004 the cabinet rejected on average 5-6 per cent of the bills tabled by ministries. The highest scores were recorded between 1998-2001, while the lowest occurred in 2002-2004. It is also interesting to note that almost 80 per cent of all bills that are adopted by the cabinet are approved during only a single cabinet session. The data also indicates that, although some positive coordination is possible at both the cabinet committee and cabinet level, as evidenced by the merger of bills, this is undertaken only on an *ad hoc* basis.

Table 12. Consideration of Bills by the Cabinet

	Bills	Adopted (Merged)	Rejected n	Rejected %	Adopted at single session
2004	208	204(2)	4	2	n/a
2003	219	215 (2)	4	2	n/a
2002	254	252 (4)	2	1	209
2001	180	168(3)	12	7	133
2000	179	162(4)	17	9	124
1999	175	157(1)	18	10	129
1998	125	115 (4)	10	8	79

Source: own compilation based on information obtained from the Prime Minister's Chancellery

These results demonstrate that the control over law-making that is exercised by the cabinet committee and the cabinet is at best highly selective. Given the time

constraints under which these institutions operate and the sheer bulk of issues that need to be considered at each committee or cabinet meeting, ministers and departments are able to extend their control of the legislative agenda from the initiation and amendment stages to the finalization stage. The input from the KRM and the council of ministers is thus likely to be limited to resolving outstanding disputes between ministers and approving a compromise that has been shaped by a resultant sum of narrow sectoral interests with little strategic intervention.

IV. Legislative Constellations II: Parliamentary Law-Making³

As we turn from the executive to the parliamentary setting of law-making, the most striking observation is that the parliamentary legislative constellation is marked by an equally pronounced decentralization during the initiation, amendment and finalization stages of the legislative process. Whereas, in the executive, decentralization encourages individual ministerial law-making strategies that are not effectively checked by mechanisms that can protect the interests of the government as a whole, in parliament, decentralization is principally associated with weak government control over the legislative agenda. This is not to argue that the executive as such has no influence over the parliamentary passage of legislation, (although its ability to steer the process is reliant on voluntary co-operation rather than sanction). Rather, to the extent that the executive does set the legislative agenda and control its realization, it is, again, individual ministries and their sectoral interests that are in the driving seat, whereas the centre of government is largely sidelined. Moreover, whilst the executive plays a key role in setting the legislative agenda in terms of the volume of legislation that it submits, the capacity of either the Government or individual ministers to defend government bills against substantive amendments is weak, as parliamentarians may easily initiate rival bills and enjoy wide amending powers over bills submitted by the government. In initiating and amending legislation, parliament follows the sectoral pattern familiar from the executive setting: thus, it is relatively narrow sectoral or, at times, single-issue committees and, in particular, subcommittees that drive the amendment process. The legislative effects of this decentralized parliamentary constellation are twofold. First, as regards bills submitted by the government, the parliamentary process tends to reinforce their sectoral and special-benefits character. Second, as regards bills that originate in parliament rather than the executive, they, too, are unlikely to be of a collective-benefits kind but rather advantage fairly narrowly defined constituencies.

Initiation

As one of the most knowledgeable observers of the Polish law-making process has noted, 'Polish legislation continues to be a product of a legislation process characterized by a specific "dispersion" of the legislative initiative' (Graniecki 2000b, p. 67). This 'dispersion' is grounded in the rules that govern the initiation process in parliament. The boundary rules provide for weak government control of the initiation stage, as a broad range of actors are entitled to initiate legislation. They include groups of at least 15 deputies; Sejm committees; groups of at least 10 senators; the president; the council of ministers; and groups of at least 100,000

citizens who are eligible to vote. There are no limits on the number of bills that can be introduced by any of these actors. Not only do non-governmental actors enjoy extensive powers to initiate legislation but, once submitted, such legislation is processed according to the same rules as the government-initiated legislation. Although the government can ask the parliament to apply accelerated procedure, this is very rarely done for the fear of party political backlash (see Lipski 2004).

The boundary rules imperil government agenda control and encourage legislative growth. As Table 13 shows, all constitutionally available avenues for the initiation of legislation have been used during the 3rd and 4th terms of parliament. The data demonstrates that, although the government is an important agenda-setter, members of parliament control between 30 to 60 per cent of the domestic parliamentary agenda (if one excludes EU-related and ratification bills). The highest scores were recorded in 1998 and 2004 when the deputies were responsible for proposing 60 and 51 per cent of all bills submitted to parliament. Moreover, on average the proportion of the domestic agenda controlled by the deputies increases as one moves towards the end of the parliamentary term. This is most evident in the fourth term of parliament when the share of deputy-sponsored bills increased from 31 at the start of the term to 51 per cent in 2004. As Polish governing coalitions tend to split towards the end of the parliamentary term, this effect indicates that as the effectiveness of party-based constraints on non-executive initiation subsides, the absence of formal agenda-control by the government makes it possible for small groups of deputies to shape the legislative debate. Table 13 does not of course show the success rate of the initiated legislation. If one considers such data, it becomes evident that ultimately the government-sponsored legislation enjoys a higher chance of becoming law than that initiated by non-executive actors. Even so, legislation initiated by members of parliament still influences substantially the legislative agenda and has a 30 per cent chance of getting onto the statute book.

Table 13. Number of Domestic Parliamentary Bills Submitted Annually by Initiator*

	Legislative Initiative	Year of Submission								Total
		1997	1998	1999	2000	2001	2002	2003	2004	
3 rd Term	Citizen			1(0)	1(1)	3(2)				5
	Committee	1(2)	17(7)	23(9)	22(13)	19(12)				82
	Deputy	24(40)	154(60)	125(48)	83(49)	81(49)				467
	Government	29(48)	79(31)	99(38)	61(36)	50(30)				318
	President	6(10)	3(1)	2(1)	1(1)	6(4)				18
	Senate		5(2)	13(5)	3(2)	6(4)				27
	3rd Total	60	258	263	171	165				917
4 th Term	Citizen					2(3)	2(1)	3(2)	3(1)	10
	Committee					1(1)	7(3)	13(7)	6(3)	27
	Deputy					23(31)	82(33)	85(43)	108(51)	298
	Government					36(49)	148(60)	92(46)	85(40)	361
	President					12(16)	3(1)		4(2)	19
	Senate						6(2)	6(3)	7(3)	19
	4th Total					74	248	199	213	734

Source: own compilation based on data available at www.sejm.gov.pl *excluding ratification and EU-related bills (percentages in parentheses)

Bills initiated by deputies are not necessarily beyond the influence of government. Both during the 3rd and the 4th term, a considerable proportion of deputy-sponsored bills were, in fact, proposed by members of the governing parties, and it is reasonable to assume that at least some of these bills did enjoy the support of the government, if they were not actually instigated by the executive. Nonetheless, the frequent recourse to private-members bills is striking, and makes the government into a joint rather than primary agenda-setter as far as domestic, non-EU legislation is concerned.

The legislative rules impose limited content restrictions on non-governmental bills. The executive has a monopoly of initiative only with regard to budget, public debt and state guarantee bills. All other bills, including ‘money’ bills (tax and spending legislation) may be submitted by non-executive actors. Significantly, a legislative initiative by the government does not prevent non-executive actors from presenting their own counter-proposals in the same area. If that happens, the government’s bill does not benefit from a privileged position and is usually processed together with the non-executive (mostly deputy-sponsored) proposal. Turning to temporal rules, one must note that there are virtually no restrictions on when non-executive initiatives may be submitted. There is also a standard operating procedure that when members of parliament are preparing an initiative corresponding to that tabled by the government, the parliamentary procedure on the latter is delayed until the former is formally submitted. This informal rule applies, in particular, if the government bill is not urgent and the non-executive sponsors of a parallel bill are members of the governing coalition.

Some constraint on non-executive initiation is provided by the information rules that establish the detailed requirements as to the materials that must accompany a bill. At first glance, the explanatory notes that must accompany both executive and non-executive bills appear to impose a considerable ‘burden of proof’ as to the objectives and consequences of legislation (see standing orders of the Sejm, article 34; similarly, article 77 of the rules and regulations of the Senate). Thus, in the Sejm, the materials must, *inter alia*, explain the need for, and purpose of, the bill; present the actual situation within the area to be regulated; indicate differences between the presently existing and the proposed legal position; present an estimate of the social, economic, financial and legal effects thereof; identify sources of finance, in the event that the bill imposes a burden on the state budget or budgets of local government units; outline drafts of principal executive orders; and contain an EU compatibility assessment. Yet, these requirements, whilst not openly flouted, are often only met in a perfunctory manner. As section III has shown, systematic impact assessments are very rare in the explanatory notes produced for government-sponsored bills. Given that deputies have much less resources at their disposal than the government, non-executive bills are often initiated with even more limited information on costs and benefits of legislation. This said, if explanatory notes do not meet the requirements, the speaker may return a bill, but this information rule is evoked rarely, for the fear of political attacks from the opposition.

The decentralized rules governing the initiation of legislation in parliament are likely to facilitate the production of specific-benefit legislation and ultimately lead to high legislative output. As Table 14 shows, most of the legislation initiated by deputies introduces amendments to the existing law. Thus, in the 3rd and 4th terms of parliament, 70 and 73 per cent respectively of the legislation introduced by groups of deputies aimed at amending existing law respectively. The proportion was even higher for the bills initiated by the Sejm committees – 85 and 89 per cent respectively. By contrast, the proportion of amendment bills was much lower amongst government-sponsored bills and stood at 52 and 56 per cent respectively.

Table 14. Parliamentary Bills by Type

Third Term of Parliament 1997-2001					
Legislative Initiative	New Law	%	Amendment	%	Total
Citizen	3	60	2	40	5
Committee	12	15	70	85	82
Deputy	139	30	328	70	467
Government	267	48	286	52	553
President	11	61	7	39	18
Senate	9	33	18	67	27
Total	441	38	711	62	1152
Fourth Term of Parliament 2001-2004					
Legislative Initiative	New Law	%	Amendment	%	Total
Citizen	4	40	6	60	10
Committee	3	11	24	89	27
Deputy	81	27	217	73	298
Government	310	44	389	56	699
President	12	63	7	37	19
Senate	6	32	13	68	19
Total	416	39	656	61	1072

Source: own compilation based on data available at www.sejm.gov.pl

Overall then the rules governing the initiation of legislation in the Sejm establish a framework that strongly encourages legislative initiatives both on the part of the executive and on the part of parliamentarians. In particular, the low formal hurdles to initiating legislation, and the absence of numerical or temporal constraints:

- relieve the government of the need to ‘ration’ legislative slots. Without ‘rationing’ or interministerial competition for legislative slots in parliament, the trend towards sectoralism within the executive remains unchecked by parliamentary legislative planning. This, in turn, translates into a high legislative output of the government;
- minimize the costs of the preparation of legislation, as content requirements can be met fairly easily. The low costs of initial drafting encourage easy recourse to legislation in parliament and discourage any systematic means-end consideration right at the start of the legislative process. The low costs of initiation are a further factor contributing to high legislative output;
- enhance the maximization of narrow sectoral interests but increase the likelihood of high regulatory burdens to the society as a whole, as the formal requirements regarding legislative impacts, including financial implications, are not systematically enforced prior to admitting bills to parliamentary consideration;

- neglect the scarcity of parliamentary time required for consideration of bills, which overburdens parliamentary resources and, in many cases, makes the consideration of legislation by parliament perfunctory.

Amendment⁴

Of the three legislative stages considered here, the amending stage is the most complex. This complexity arises from three factors. First, legislation passes through three readings, involving the plenary and the committee level, each of which is governed by detailed provisions as regards amendments. Second, the number of actors entitled to table amendments is high. Depending on the stage, such actors include: the government (although in practice this authority is exercised by ministers rather than the government as a collective body), individual deputies during the first reading, groups of at least 15 deputies during second reading, the chairpersons of parliamentary clubs and the representatives of an alliance if it represents at least 15 deputies, and committees and subcommittees. Third, the scope of amending powers is wide – amendments primarily take the form of textual changes to government bills, but parliamentary procedure also allows the merger of government bills with other bills, including bills originating in the Sejm. Compared to most other European parliaments (see Strøm 1998), the powers of the Sejm to shape and reshape government legislation through the right of amendment are considerable.

The boundary rules governing this stage imply that while the executive sets a high proportion of the parliament's legislative agenda, it does not control the amendment of legislation. This is for two main reasons: first, the range of actors involved with the scrutiny of legislation and entitled to propose amendments is extensive; second, the government or individual ministers have no formal mechanisms at their disposal to defend government legislation against amendments, except the possibility to withdraw it. Both points deserve elaboration. The consideration of government bills in the Sejm seems intended to maximize the involvement of the largest number of deputies in the process of legislative scrutiny. Whilst in many European legislatures, bills are referred to one committee only or a 'lead' committee is identified, in the Sejm, there is a culture of multiple referral, i.e. referral to more than one committee, as Table 15 shows. This practice results in joint committee sessions and joint reports. Multiple referrals are sometimes inevitable, as the jurisdictions of parliamentary committees do not match the ministerial structure. But, for deputies and committee chairpersons, multiple referral also maximises the chances of reshaping of government legislation. It is not surprising, therefore, that decisions on which committees to involve in the scrutiny stage can be highly controversial, with chairpersons vying for influence. Viewed from the perspective of ministries, multiple referral constitutes a challenge to their capacity to shepherd bills through the Sejm, as the resources that need to be devoted to monitoring committee work and responding to queries tend to increase with the number of committees involved. Put differently, multiple referral stretches executive agenda control.

Table 15. Number of Parliamentary Bills by Committee and Minister Responsible* (4th term)

Minister responsible	Only Main Com.	%	Main +1	%	Main +2	%	1 Other	%	2 Others	%	No Com.	%	Total
Agriculture	19	31	5	8			38	61					62
Culture	10	77					3	23					13
Economy	30	36	11	13	2	2	37	45	1	1	2	2	83
Education	8	44	5	28			4	22			1	6	18
Environment	12	55	2	9			8	36					22
Finance	65	63	10	10	1	1	26	25			1	1	103
Health	23	49	6	13	1	2	17	36					47
Infrastructure	24	39	11	18	1	2	25	41					61
Interior	27	59	9	20	1	2	7	15	2	4			46
Justice	21	45	1	2			24	51			1	2	47
Labour	22	69					10	31					32
National def.	9	53	7	41			1	6					17

Source: own compilation based on data available at www.sejm.gov.pl, *excluding ratifications.

In the scrutiny and amendment process, boundary rules allocate a central role to subcommittees, which may be created to consider a bill in detail. It is here that the bulk of legislative work is done; it is also subcommittees that shape the results of committee decisions for it is subcommittees that produce the first report on a bill, which then forms the basis of deliberations by the full committee. Table 16, which documents the number of committee and subcommittee meetings during the 3rd and 4th terms, clearly illustrates the extent to which the daily work of the Sejm is driven by the activities of subcommittees.

Table 16. Number of Committee and Subcommittee Meetings

	Year	Standing Committees (28) Subcommittees			Special Committees (18) Subcommittees		
		Standing	Special	Total			
3rd Term	1997	139	-	2	2	13	-
	1998	1258	112	424	536	124	104
	1999	1460	158	663	821	91	80
	2000	1605	123	1023	1146	202	155
	2001	1342	53	550	603	145	189
Total	5804	446	2662	3108	575	528	
4th Term	2001	218	21	11	32	2	-
	2002	1349	163	501	664	86	106
	2003	1431	176	786	962	83 (169)	91
	2004	1581	-	-	-	163	-
Total	4579	360	1298	1658	420	197	

Source: www.sejm.gov.pl and Sejm Chancellery (2002,2004)

Comparative research on the role of such subcommittees in the legislative process has noted that ‘small subcommittees with relatively narrow jurisdiction can restrict the range of political interests represented in committee, particularly if subcommittee membership is based on self-selection (...) Subcommittee members may therefore deviate even more from the preferences of the full House than their parent committees. Legislation could consequently be biased more towards particularistic interests, leading to under-production of highly aggregated collective-benefit bills and over-production of petty special-benefits legislation.’ (Strom 1998: 37). We lack detailed data to demonstrate that the operation of subcommittees in Poland directly favours special-benefits amendments; but there is circumstantial evidence to suggest that Sejm subcommittees do, indeed, function in a manner that encourages special interest consideration. Thus, subcommittee membership is decided on by the full committee on an *ad hoc* basis, which increases the likelihood that deputies with a special interest in a particular piece of legislation become subcommittee members. Moreover, boundary rules concerning attendance at subcommittee meetings favour special-interest input. Any deputy, whether member of the parent committee or not may attend. Perhaps more importantly, meetings of subcommittees are routinely open to participation from interest group representatives, whose presence is not restricted to special hearings. Whilst interest representatives may not themselves propose amendments, they can help to shape the debate and encourage deputies to propose amendments. Subcommittees are not just associated with a trend towards adding special-interest considerations in the amendment process; they also tend to

weaken executive agenda control. The key reason is that partisan composition of subcommittees often deviates from that of the full committee, so that it is not usual for ministers at subcommittee level to face a majority of opposition deputies.

Turning to the question of protecting government bills, unlike governments in many other European democracies, the Polish government cannot rely on an arsenal of restrictive rules in seeking to shield government legislation from amendment. Thus, content rules allow deputies to table amendments to government bills without having to face the restrictions and sanctions that are commonplace in many other parliaments. In particular, parliamentary committees have the right to rewrite original bills, which means that, when they report to the full chamber, the committee text has precedence over the original copy. Moreover, the plenary may not bind a committee on the general principle of a bill. Although the first reading may take place in the full house, the vote at that stage is only binding as to whether a bill lapses or is referred to committees. Table 17 indicates that subcommittees and committees make extensive use of their authority to produce amendments. During 2001 to 2003, of 529 bills that had their first reading in committee, 444 (84%) were subject to proposed amendments, 77 (13%) passed the first reading unchanged, whilst in the case of 15 bills (3%) outright rejection was recommended. During the second reading, in 22 per cent of cases, all proposed changes were recommended for approval and, in 69 per cent of cases, at least some were supported. Thus, the success rate of amendments is high. Furthermore, the content rules regarding amendments impose few restrictions on deputies. In practice, substantive boundaries of amendments have been restricted by several judgements by the Constitutional Tribunal⁵. Yet, even under that case-law, parliament has a large degree of discretion with regard to the depth of amendments, in particular during the first reading at committee level.

Table 17. Committee and Plenary Amendment Record 2001-2003

Position After First Reading in Committee	Changes Proposed	No Changes Proposed	Rejection Proposed	All
	444	70	15	529
	84%	13%	3%	100
Position on Changes Proposed in Second Reading	Accept Some Proposed Changes	Accept All Proposed Changes	Reject All Changes	All
	227	72	28	327
	69%	22%	9%	100

Source: own compilation based on Osiecka-Chojnacka 2004, pp 17-18.

In addition to textual changes, one also needs to note the practice of merging two or, in some cases, several bills by different initiators during the parliamentary process, as documented in Table 18. During the 4th term, a total of 44 laws that were eventually adopted resulted from the merger of two bills; in 12 cases, these bills originated from the same initiator, but, in 32 cases, bills that had originated from different initiators were merged. The bulk of such multiple initiator bills results from

the merger of government-sponsored bills with deputy-initiated bills. This procedure tends to operate in two ways: sometimes, consideration of a government-bill is effectively delayed until one of the major opposition groups has formulated a rival bill; or, more commonly, the leadership of the Sejm decides to delay consideration of a bill sponsored by deputies if it is known that the Government intends to submit a corresponding bill within the near future.

Table 18. Bill Mergers and Initiator Distribution of Parliamentary Laws

Third Term of Parliament					
Laws Merged	Number of Legislators				Total
	1	2	3	4	
2	15	26	-	-	41
3	5	5	1	-	11
4	2	0	1	-	3
5 and over	1	1	1	1	4
Total	23	32	3	1	59
Percentage	39	54	5	2	100
Fourth Term of Parliament					
Laws Merged	Number of Legislators				Total
	1	2	3	4	
2	12	32	-	-	44
3	3	4	0	-	7
4 and over	0	2	0	0	1
Total	15	38	0	0	53
Percentage	28	72	0	0	100

Source: own compilation based on data available at www.sejm.gov.pl,

Given the centrality of regulations on amendments to the parliamentary legislative process overall, the temporal rules governing the passage of legislation through the Sejm are of some importance. These temporal rules come in different forms. The most important include:

- sequencing rules, such as article 36 (1) of the standing orders of the Sejm: ‘Bills shall be considered in three readings, and draft resolutions in two readings’.
- minimum time rules, such as article 44 (3) of the standing orders of the Sejm: ‘The second reading may be held no sooner than the seventh day following the delivery of a committee report to deputies, unless the Sejm indicates otherwise’.
- maximum times rules, such as article 68 in the Senate rules and regulations, concerning the Senate procedure in matters of statutes passed by the Sejm: ‘Committees, after considering the bill, shall propose within no longer than 18 days (...) a draft Senate resolution on the bill passed by the Sejm, in which they shall recommend to accept the bill without amendments, or enter amendments’;
- discretionary time rules, which allow deviations from normal rules, such as article 51 of the standing orders of the Sejm which stipulates: ‘The Sejm may, in clearly reasonable cases, shorten the proceedings in relation to bills (...) as follows: 1) by beginning the first reading immediately after the receipt of the bill (...) by the deputies; 2) by beginning the second reading immediately after the conclusion of the first reading without referring the bill (...) to committees; 3) by beginning the

second reading immediately after the receipt by the deputies of a copy of a committee report’;

- open time rules, such as article 40 (3) of the standing orders of the Sejm, which stipulates that ‘On the request of their presidiums, committees shall establish a schedule for work on a draft’; and
- in addition, temporal guidelines are also established by the leadership organs of the Sejm – the Marshal, the Presidium and the Council of Seniors – and the Senate, respectively, and the chairpersons of committees and subcommittees relating, in particular, to the speed with which committee scrutiny of bills must proceed.

The formal rules of parliamentary timetabling in Poland do not give precedence to government bills; and there has been no major change in the relevant rules between the 3rd and 4th terms. Nor are the government or ministers directly represented in the Council of Seniors and the Presidium of the Sejm. The course of legislative initiatives is decisively influenced by the Marshal of the Sejm, who is elected from amongst its members. The Marshal possesses considerable powers in controlling the legislative timetable (Koksanowicz 2002; Kudej 2002; Kubuj 2004), and may use these powers to expedite or delay bills. In particular, pressure may be brought on committee chairpersons to conduct their business swiftly. The Marshal of the Sejm may take recourse to informational requirements, in particular, if he intends to slow down legislative business. The Marshal of the Sejm decides on the plenary agenda after non-binding consultations with party caucuses and may unilaterally delay the introduction of an item for a vote for up to six months. The strong position of the Marshal – who is normally a senior member of the largest governing party – strengthens the agenda-control of the government only if the prime minister has a good working relationship with the Marshal. If party-based or personal communication lines break, the latter has a great deal of latitude in how he or she shapes the parliamentary agenda. For example, the cabinet provides the parliament with its legislative plans but these are supplied for information only and do not bind the Marshal or committee chairmen. Indeed, the cabinet’s legislative plans rarely find their way to the committee level. In contrast, ministers usually have more control over the legislative priorities of departmental committees, though this influence stems more from long-standing working relations between committee secretariats and departmental officials than from formal rules.

The powers of the Marshal have been strengthened in the 4th term of parliament and, combined with a higher cohesiveness of the governing coalition, this has contributed to the temporal privileging of government bills. As Table 19 indicates, the average time that government bills require to pass through parliament is significantly lower than in the case of bills sponsored by others. It is especially noteworthy that during the 4th parliament, government bills have passed much more expeditiously through parliament than during the 3rd term. Thus, government bills have spent an average of 76 working days in parliament, compared to 124 days during the 3rd term; this compares with 135 and 222 days, respectively, as far as bills initiated by deputies are concerned. This temporal privileging of government-sponsored legislation is not

a result of the high percentage of EU-related legislation amongst government bills. Even if one controls for the EU-related legislation, the government bills still pass more quickly through parliament.

Table 19. Average Time in Parliament by Initiator

Legislative Initiative	3rd Term	4th Term
Citizen	290	155
Committee	141	139
Deputy	222	135
Government*	124 (111)	76 (83)
President	105	194
Senate	239	118
Total	154	89

Source: own compilation based on data available at www.sejm.gov.pl, *the score for all government bills excluding ratification and EU related laws is given in parentheses.

Despite this higher practical capacity of the government to prioritize its legislation, the absence of strong formal levers is likely to undermine its agenda control if governing parties are internally fractured, coalitions divided and deputies unwilling to accept the disciplines of a party in government. Under such circumstances, much depends on the skills of ministers and deputy ministers in persuading and cajoling committees and subcommittees to expedite scrutiny. The task of securing smooth passage of government legislation is thus effectively decentralized to the ministerial level. Combined with a sectoral approach to committee scrutiny, this tends to reinforce sectoralism by giving ministers the chance to circumvent the Council of Ministers.

What are the overall effects of amending activity in the Sejm? We have already noted the high percentage of bills that get amended during the parliamentary process, but three points deserve highlighting. First, as a result of amendments, the average length of bills increases considerably, an indication of growing complexity and detail. As Table 20 shows, growth is significant, but modest, in the case of bills sponsored by the government, which, during the 4th term, increased, on average, by 11 per cent in length as they wound their way through committees and the plenary. Growth has been much more marked in the case of bills submitted by deputies; their average word count increased from 1,050 to 1,372. This finding would support the argument that bills prepared by deputies are initially much less developed than government bills, and, therefore, require more substantial amendments before they can be passed into law. At the same time, government bills are, of course, also more shielded from amendments through the informal agenda control mechanisms that we have discussed earlier. Second, the amendment stage of legislation is characterized by openness, on the one hand, and sectoralism, on the other. Low formal and substantive thresholds for the tabling of textual amendments; multiple committee referrals; and the accessibility of committees and subcommittees to interest representatives allow for easy recourse to amendments as a means of reshaping bills. Thus, individual law-making strategies can be pursued successfully, as, in effect, it is the subcommittee level at which the fate of most amendments is decided. Third,

whilst the government as the initiator of the bulk of legislation – both in terms of the number of bills and in terms of their length – sets the legislative agenda, governmental agenda control is weak. The right to propose amendments on behalf of the government during the amending stage is effectively delegated to the individual ministries, as is the right to accept amendments to government legislation tabled by deputies. This reinforces the ministerial nature of government legislation.

Table 20. Average Word Count of Adopted Bills by Initiator*

Legislative Initiative	3rd Term			4th Term		
	Submitted	Adopted	Growth	Submitted	Adopted	Growth
Citizen	567	650	15	-	-	-
Committee	1809	2042	13	2986	3357	12
Deputy	723	1014	40	1050	1372	31
Government	4519	4872	8	4581	5097	11
President	380	496	31	3540	4658	32
Senate	991	1935	95	1032	1134	10
Total	3456	3790	10	4115	4612	12

Source: own compilation based on data available at www.sejm.gov.pl, *Excluding ratification laws and laws that were merged during consideration in parliament

Finalization

When it comes to the rules that shape the process leading up to a final decision on bills, a first point to note is that, quite frequently, a formal decision to either adopt or reject a bill is never actually taken; in either words, the rules governing finalization are not invoked, but, rather, bills are left to linger as ‘unfinished business’. Thus, as set out in Table 21, of the 433 proposed bills that did not become law during the 3rd term, in 257 cases the formal finalization procedure was not completed. The figures for the 4th term indicate an even higher percentage, although, as the term is not yet completed, these figures must, of course, be read with caution.

Table 21. Non-Adopted Bills in the 3rd and 4th Terms of Parliament

Status	3rd Term		4th Term	
Unfinished Legislation Procedure	257	59%	217	73%
Rejected at the 1 st Reading	49	11%	16	6%
Rejected at the 2 nd Reading	1	0%	10	3%
Rejected at the 3 rd Reading	43	10%	9	3%
Presidential Veto	17	4%	4	1%
Accepted Senate Rejection	3	1%	2	1%
Constitutional Tribunal	4	1%	3	1%
Withdrawn	59	14%	29	10%
Total	433	100%	290	100%

Source: own compilation based on data available at www.sejm.gov.pl

Table 21 also indicates, that the 3rd reading is not the most serious hurdle for bills to come into law. Thus, during the 3rd term, only 10 per cent of all unsuccessful bills failed at this stage, and in the 4th term, this figure has fallen to 3 per cent. The 3rd reading is not, therefore, the main ‘make or break’ stage in the parliamentary process. This impression is further reinforced if we consider the manner in which

informational rules are handled in the finalization phase. Thus, during the third reading, the Marshal of the Sejm may, in principle, take recourse to a number of informational rules in order to minimise the likelihood of legislation being adopted that suffers from technical defects. The relevant provisions include article 50 (3) of the Sejm Standing Orders ‘The Marshal may refuse, on his own initiative, to put to a vote any amendment which has not previously been submitted to a committee in writing’; article 50 (4) ‘The Marshal of the Sejm may delay a vote on a bill as a whole for such time as may be necessary to establish whether there are any inconsistencies between particular provisions resulting from adopted amendments’; and article 50 (5) ‘The Marshal of the Sejm shall refer a bill referred to in para. 4 to the committees which considered it, or to the Legislative Committee, seeking an opinion on whether, in result of the adopted amendments, there is no contradiction between its individual provisions. Any such opinion shall also include the committee position in relation to the acceptance or rejection of the bill by the Sejm’. However, whilst these rules give the Marshal considerable gate-keeping power when it comes to admitting amended bills to a final vote, they are, in parliamentary practice, largely dead letter, as they have either not been invoked at all – as in the case of article 50 (5) or on only a handful of occasions, as in the case of article 50 (4). Combined with the fact that a simple majority is usually sufficient to ensure adoption of a bill during the 3rd reading, the initial finalization of bills in the Sejm largely ratifies decisions taken earlier in the legislative process.

By contrast, when it comes to the Sejm procedure for dealing with Senate resolutions concerning Sejm bills, which are regulated by article 121 of the Polish Constitution and articles 54 to 56 of the Sejm Standing Orders, their substantive impact is very considerable. As is shown in Table 22, in 1997-2001, the Senate proposed a total of 6,612 amendments of which 4,795 were subsequently accepted by the Sejm, 1,775 were rejected and 42 were never dealt with. Between 2001 and April 2005, the Senate proposed 5,951 amendments of which 4,946 were accepted, 950 rejected and 15 not dealt with. During the 4th Sejm term, the success rate of Senate amendments was, thus, over 80 per cent, providing strong incentives for senators to make extensive use of their amending powers. The high success rate of Senate amendments is principally due to article 121 (3) of the Polish Constitution, which clearly favours the adoption of Senate amendments. Thus, a ‘resolution of the Senate rejecting a bill, or an amendment proposed in the Senate’s resolution, shall be considered accepted unless the Sejm rejects it by an absolute majority vote in the presence of at least half of the statutory number of deputies’. The thresholds for rejecting a Senate amendment are, in other words, higher than for the adoption of a bill before it is passed to the Senate.

Table 22. Senate Amendment Record

Term	Bills in Senate	Adopted without Changes	Bills Amended						Bills Proposed to Reject	
			All	All Changes Adopted by Sejm	Some Changes Adopted by Sejm	All Changes Rejected by Sejm	Changes not Considered by Sejm	Legislative Deadlock	Accepted by Sejm	Rejected by Sejm
I	261	172*	84	18	49	11	0	5	3	3
II	102	49**	47**	13	24	6	3	0	3	4
III	482***	264	207	37	157	13	15	0	4	7
IV	656	277	372 (6612)	106 (4795)	238 (1775)	26	2 (42)	0	3	2
V	611	267	339 (5951)	153 (4946)	179 (950)	3	1 (15)	0	1	3
Total	2112	1029	1049	327	647	59	21	5	14	19

Source: Senate Chancellery (2004:10), *Senate withdrew changes to 1 bill; **Parliament decided that Senate did not provide changes to 1 bill within the constitutional time; ***Senate did not adopt changes to 2 bills within constitutional time ****number of changes to bills in parenthesis, the data provided by the Sejm Chancellery (26.04.2005)

V. Conclusion

Key Findings

As the two preceding sections have documented in some detail, law-making in the Polish executive and parliament is characterized by pronounced decentralization. Table 23 summarizes the main elements of decentralization during the initiation, amendment and finalization stages. Within the executive, the decentralized legislative setting is primarily grounded in ministerial rather than governmental legislative agenda setting; a process of interministerial consultation, coordination and review that is dominated by the ministries, with a largely reactive role for the Chancellery, the Government Centre for Legislation and the Legislative Council; and a finalization stage which, although it does provide for constraints on ministerial discretion, is not configured in a way that would allow the cabinet or the prime minister to correct sectoral bias in the bulk of proposed legislation. Within the parliamentary setting, decentralization is associated with joint legislative agenda setting, whereby, in the field of domestic, non-EU legislation, the government shares the power of legislative initiative with parliamentarians; an amendment process that provides extensive opportunities for reshaping government-sponsored bills, with few effective means for safeguarding the original legislative intent; and a finalization stage which, as in the case of the executive, is not designed to promote substantive filtering.

Table 23. Major Elements of Decentralized Law-Making in Poland

Stage	Executive setting	Parliamentary setting
<i>Initiation</i>	ministerial agenda setting; bottom-up legislative planning; ministers bypass the legislative plan	government shares legislative agenda-setting with parliament in the field of domestic, non-EU legislation; parliament as a competitor in agenda-setting
<i>Amendment</i>	ministries determine external consultations; reactive position of the Chancellery in interministerial coordination; weak substantive influence of Government Centre for Legislation and Legislative Council	extensive parliamentary amending powers in respect of government-sponsored bills; no formal government powers to protect initial legislative intent beyond withdrawal of a bill
<i>Finalization</i>	some hierarchical and collective constraints centred on cabinet committee (KRM), cabinet and prime minister, but very limited corrective capacity.	important formal gate-keeping powers for the Marshal of the Sejm, but not employed in parliamentary practice; thus, very limited corrective capacity.

Source: own compilation

Decentralized law-making, our study has argued, is a decisive force behind some of the key problems in Polish legislation, notably legislative growth; instability in the legal framework, as laws are subject to frequent revisions; and, in particular, sectoralization, excessive legislative detail and a propensity for laws that promote private goods at the expense of collective benefits. Our analysis has identified the

following causal linkages between rules and outcomes. Inside the executive, the decentralized constellation of rules encourages individual ministries to undertake independent, sectorally-driven legislative initiatives. The limited inter-ministerial coordination and cooperation lowers the costs of producing new legislation and thus allows ministries to allocate additional resources to producing even more legislation. Inside the parliament, the decentralized constellation of rules makes it possible for unorganized deputies to hijack legislative outcomes to serve particularistic interests through the amendment of government bills or the initiation of private member bills. Since the government has limited agenda control, the costs of parliament-driven law production are low which translates into a high overall legislative output.

Rules in Context

Whilst legislative rules are central to understanding legislative output – since they strongly favour some output patterns over others – the relationship must be contextualized by factors such as personalities of office-holders, party organization, coalition dynamic or external interests (see Goetz 2003a; 2003b; Zubek 2004; Zubek 2005b; Dimitrov et al. 2005 forthcoming). Such contextualizing variables shape the substantive effects of rule constellations in two principal ways: they privilege some legislative choices over others independently of how the rules are configured; and, second, they may facilitate or hinder the application of the existing rules. The need for such contextualization becomes apparent particularly if one considers variations over time in the patterns of legislation in Poland. For example, the average proportion of legislation that the cabinet adopted outside the legislative plan was much higher in 1998-2001 than in 2002-2004. At the same time, in 1998-2001 the cabinet was on average more likely to reject draft bills before they were sent to parliament than in 2002-2004. Similarly, between the 3rd and the 4th term of parliament, the proportion of deputies-sponsored legislation declined, while the average time spent by a government bill in parliament was almost halved.

Variations within the terms of government and parliament are also present. For example, one may note a sudden drop in the proportion of non-planned legislation adopted by the cabinet in 2000 and a steady year-to-year growth of such legislation between 2002 and 2004. Similar variations are evident in parliamentary law-making. In the 4th term of parliament, after a high point reached in 2001, the volume of legislation – disregarding EU-related legislation and non-EU ratification laws – has declined. It is also interesting to note the variation in the patterns of parliamentary agenda-setting. During the 4th term, in 2002, the first full legislative year, some 60 per cent of all domestic legislation – again, disregarding EU-related legislation and non-EU ratification laws – was proposed by the government and 33 per cent by deputies. But, by 2004, their agenda-setting roles had been reversed, with 51 per cent of all bills being proposed by deputies and a mere 40 per cent by the executive.

These and other figures point to the limits of the explanatory power of a rules-based approach to understanding law-making. As the formal boundary, content, temporal and information rules governing law-making changed little during the course of the 4th term, variations in patterns between 2002 and 2004 cannot primarily be explained

with reference to the formal rules themselves. Rather, what has changed over time has been the manner in which existing rules have been applied and the political conditions under which executive and parliamentary law-makers operate. Two factors seem to be crucial for the application and contextualization of the rules: the leadership capacity of key office holders, notably the prime minister within the government and, albeit to a lesser extent, the Marshal of the Sejm; and the internal cohesiveness of the governing parties and the governing coalition. Throughout the period under consideration, the scope for prime ministerial leadership and the cohesiveness of governing parties and successive coalitions tended to be weak; but both during the 3rd and 4th term, they were higher at the start of the legislative term than towards the end, when prime ministerial authority waned, governing parties disintegrated, and coalitions fell apart. As a consequence, decentralized law-making became more pronounced and the likelihood of legislation aimed at producing collective rather than private goods decreased.

Centralization versus Democratization?

The failure of successive governments to maintain cohesion throughout their term of office, let alone to secure re-election, also holds some important lessons when it comes to considering the relationship between law-making and the requirement of democratic governance. Our study unambiguously argues that higher degrees of centralization in law-making are more likely to lead to legislative outputs that favour the maximization of benefits for the largest number of citizens than a decentralized legislative setting, which encourages special-benefits legislation. It is important, however, not to misread this argument as a plea for legislative efficiency at the expense of democracy. In our analysis, there is no trade-off between centralization in legislative procedures and the democratic quality of policy-making. On the contrary, an appropriately organized legislative process can both enhance the procedural qualities of democracy – notably accountability and transparency – and its substantive qualities, especially the orientation towards the delivery of collective goods. To appreciate this point, one needs to pay attention to how centralization is understood in the present analysis; and to the decisive role of effective interest aggregation in democratic policy-making. Both require brief elaboration.

As should have emerged from our analysis, greater centralization in law-making means neither an all-powerful chief executive under whom ministers and the cabinet merely serve to execute the prime ministerial will; nor a parliament that faithfully carries out the wishes of the government. Centralization, as we understand it, does not mean the restriction of rights of participation. Rather, within the executive sphere, it means that the entirely legitimate sectoral interests represented by individual ministries are effectively counterbalanced by institutions and procedures that can promote the interests of the government as a whole by correcting for an inevitable ministerial bias towards comparatively narrow electoral constituencies. This can, of course, in principle be achieved either through a core of government that acts as the champion of the cabinet as a collective decision-maker; or through a centre that supports primarily the prime minister. The decisive point is, however,

that this interplay, as far as law-making is concerned, can only be achieved if the rules governing the legislative process allow for prime ministerial and cabinet authority to be effectively represented in the process leading up to the formal approval of government bills. Similarly, centralization within the parliamentary setting does not imply an emasculated legislature, content with rubber-stamping government bills. Rather, it means that whilst government acts as the prime legislative agenda setter, parliamentarians require ministers to defend the necessity of legislation and to account publicly for the substance of the proposals. In this manner, parliamentary scrutiny helps to ensure transparency and accountability, a function which is doubly important given that the executive legislative process is largely shielded from the public.

Such procedural devices are not an aim in themselves; rather, their purpose is to realise the potential of democratic institutions to produce high levels of public goods (cf. Mueller 2003, pp. 406-426; Pluemper and Martin 2003). In an autocratic system, the life of the government depends on the support of narrow socio-economic interests. Hence, to remain in power, political actors rationally choose to commit available resources to produce more private rents than public goods. By contrast, in a democracy, the political fate of the government becomes linked to the interests of the electoral majority and the provision of public goods becomes a more efficient instrument of winning political support (Pluemper 2003 and Martin, p. 29). To achieve electoral success, executive and parliamentary actors, therefore, need to produce policies that bring diffuse benefits to many voter constituencies. But, as we noted earlier, individually, all have strong incentives to maximize the interests of narrow geographical, sectoral or other voter constituencies, and, as we have documented, the rules governing the Polish legislative process to date do not effectively address this collective action dilemma in the production of public goods. It is not least for this reason that, since 1989, Polish governing parties have regularly failed to secure re-election: trapped in a legislative machinery that systematically encourages the gratification of clientelistic interests rather than the maximization of collective goods, they have been unable to satisfy the electorate at large. If future governments wish to avoid this fate, they are well-advised to re-examine the manner in which law-making is organized.

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Endnotes

¹ These conclusions are tentative and need, of course, to be verified by further analysis that controls for, among others, the impact of election cycles and non-significant legislation.

² only amendments proposed through amendment laws (*ustawy nowelizacyjne*) are counted

³ Note that the following analysis focuses on ‘ordinary’ statutes. It does not cover (i) the budget procedure (for a detailed analysis of the latter see Dimitrov et al. 2005); (ii) ‘urgent bills’ according to Article 123 of the Constitution; (iii) proceedings in relation to draft law codes; and (iv) proceedings in relation to bills implementing European Union law.

⁴ The following discussion is restricted to amendments submitted during the course of the Sejm’s deliberation to government-sponsored legislation.

⁵ See for example judgments of 19 June 2002 File No K 11/02; of 23 February 1999 File No K 25/98; of 12 December 2002 File No K 9/02; of 24 March 2004. File No K 37/03