

Old Rules, New Game

Decision-Making in the Council of Ministers after the 2004 Enlargement

Sara Hagemann and Julia De Clerck-Sachsse

Special Report

March 2007

This paper was prepared for presentation at the CEPS Annual Conference on 1 March 2007, at the Palais des Académies, Brussels. The views expressed are attributable only to the authors in a personal capacity and do not necessarily reflect those of CEPS or any other institution with which they are associated.

The data used for the analysis in this report have been collected by Sara Hagemann.
© Copyright of data 2007, Sara Hagemann

ISBN 978-92-9079-699-2

© Copyright 2007, CEPS

Contents

Executive Summary	i
1. Introduction	1
1.1 Structure of the report	2
1.2 Methodology	3
1.3 Implications of the findings	4
2. Decision-Making in the Council: How is it done?	5
2.1 The Council formations	5
2.2 Decision rules and procedures	6
2.3 Implications of the formal rules and procedures for decision-making in the Council..	7
3. General Changes	10
3.1 Changes in legislation	10
3.2 Formalisation of meetings.....	12
3.3 Changes in voting and recorded disagreement	13
3.4 Individual government's behaviour	14
4. Coalition Formations	20
4.1 Size of coalitions.....	20
4.2 Who votes with whom?	21
4.3 The role of the Presidency, the Council's General Secretariat and the Commission..	24
5. Changes across policy areas	27
5.1 Amount of legislation adopted per policy area	27
5.2 Voting and recorded disagreement per policy area.....	28
6. Conclusions	33
6.1 Summary of the findings.....	33
6.2 Is Council decision-making efficient?	35
6.3 What would the Constitutional Treaty change?.....	36
6.4 Remaining issues to be explored in future research.....	39
References	41
Appendix I. Research methods, data, interviews, etc.....	43
Appendix II. Additional results	45

List of Tables

Table 1. QMV thresholds and distribution of votes in the Council.....	6
Table 2. Legislation adopted September 2001-December 2006	10
Table 3. Oppositions, abstentions and formal statements per year	13
Table 4. Number of member states contesting legislation,	20
Table 5. Number of member states contesting legislation,	21
Table 6. Legislation passed at Council's 1 st , 2 nd and 3 rd reading.....	25
Table A1. Passed legislation per policy area, September 2001 to April 2004	45
Table A2. Passed legislation per policy area, May 2004 to December 2006.....	45

List of Figures

Figure 1. Oppositions per country before the enlargement	15
Figure 2. Oppositions for big, medium and small members	16
Figure 3. Oppositions for Northern, Central and Southern members, September 2001-April 2004.....	16
Figure 4. Opposition per country after the enlargement	17
Figure 5. Oppositions for big, medium and small members	18
Figure 6. Oppositions for Northern, Eastern, Central and Southern members, May 2004-December 2006.	19
Figure 7. Oppositions for new and old members	19
Figure 8. Coalitions in the Council, May 2004-December 2006	23
Figure 9. Passed legislation per policy area, September 2001 to December 2006.....	28
Figure 10. Oppositions, abstentions and formal statements per policy area, September 2001-April 2004.....	29
Figure 11. Oppositions, abstentions and formal statements per policy area, May 2004-December 2006	30
Figure 12. Oppositions per country, per policy area, May 2004-December 2006	31

Old Rules, New Game

Decision-making in the Council of Ministers after the 2004 Enlargement

Sara Hagemann and Julia De Clerck-Sachsse

Executive Summary

This report analyses decision-making in the Council of Ministers in the years leading up to and following the 2004 enlargement. It is based on an extensive data set compiled from voting records and Council minutes and from insights gleaned from interviews with EU officials, diplomats and other practitioners.

General changes

- The period immediately following the enlargement saw a general drop in the amount of legislation passed, but the annual adoption rate had almost ‘recovered’ by year-end 2006.
- The percentage of legislation passed under qualified majority voting is on the increase. Of all the years studied, 2006 had the highest percentage of legislation passed under co-decision.
- The level of disagreement recorded officially in voting has not increased since the enlargement.
- However, opposition is increasingly voiced in formal statements rather than via voting. These statements are used to signal to home governments that the representative has stressed his or her position on a piece of legislation, but was reluctant to take a more drastic step and prevent consensus.
- Prior to enlargement, the largest member states were most frequently recorded as disagreeing with a decision; following enlargement, this role has gradually shifted to a group of medium-sized members.
- Contrary to conventional assumptions, there is no difference in the frequency with which Northern and Southern member states have opposed legislation – either before or after the 2004 enlargement.

Coalition formations

- The size of opposing coalitions has increased since the enlargement.
- No distinct patterns in coalition formations among the member states can be detected in the voting behaviour in the period following the enlargement, although a few clusters of countries can be observed to vote together according to their geographical location.
- The Commission, the presidency and the Council’s General Secretariat play increasing important roles in brokering agreements in the EU of 25 (and now 27).

Changes across policy areas

- Much variation can be observed in both the yearly adoption rates and in the level of disagreement across the different policy areas.
- Enlargement has affected different policy areas to different degrees. Areas falling under unanimity appear to be more affected than areas falling under qualified majority voting.
- Individual governments oppose legislation within specific policy areas according to their core interests. They do not show a consistent level of opposition across all policy areas.
- The use of formal statements as a means to voice opposition varies across policy areas and those falling under unanimity experience a high incidence of opposition voiced in this manner.

Implications

- The proposed Constitutional Treaty would affect several of the issues addressed in this report. The most important results would follow from the change from the current triple-majority rule to a double-majority rule and the extension of qualified majority to cover more areas.
- The findings raise important, specific questions with regard to the transparency of the voting system.
- The efficiency of the Council has not been unaffected by enlargement. Therefore, plans for institutional reform should take into account the clear changes that have taken place since May 2004.

Old Rules, New Game

Decision-making in the Council of Ministers after the 2004 Enlargement

Sara Hagemann and Julia De Clerck-Sachsse*

1. Introduction

Each year the daily lives of European citizens are directly affected by several hundred pieces of legislation adopted at the level of the European Union (EU). Of the three EU legislative actors – the Council of Ministers, the European Commission and the European Parliament – it is the former¹ that acts as the main decision-making body and is often referred to as the ‘government of the EU’. Due to the complexity and secrecy surrounding the decision-making processes of this institution, however, they have until recently been largely neglected as an area of rigorous research within the field of EU politics. The last decade has seen an effort to create a more transparent EU political system, including the decision to make voting records and minutes from the Council meetings publicly available. It is therefore now possible for researchers to more deeply analyse Council decision-making and to account more accurately for both its general working processes and individual policy proposals.

This report analyses the impact of the 2004 enlargement on the functioning of the Council. There are two reasons for why such a study is now particularly timely. First, enough time has passed since the 1st of May 2004 to allow us to have collected a sufficient body of quantitative data on which to base evaluations, and thereby draw conclusions about not only individual occurrences, but also about the general consequences of the expansion of the EU from 15 to 25 (and now 27) member states. Drawing on an extensive data set and a large number of interviews with senior officials, diplomats and other practitioners, this report investigates the 32 months leading up to and following the enlargement, i.e. from September 2001 through December 2006. The material collected for the analysis covers each piece of legislation adopted in the Council over a period of more than 5 years. The aim is to provide a body of quantitative data that illustrates some of the key changes that have occurred, and describe and analyse these findings while also taking into account insights gleaned from interviews with the EU practitioners. Although some consequences of the enlargement may only become apparent once more time has passed, the data covering the elapsed time already allow for an in-depth analysis of many important aspects of Council decision-making. At the same time, they can provide useful indications of future developments.

Second, the evaluation undertaken in this report is relevant in the context of the revived debate on the need for institutional reform, most prominently expressed in relation to the proposed Constitutional Treaty.² A key argument in favour of the Constitutional Treaty in the conceptual phase as well during the ongoing ratification process was – and still is – that without

* Sara Hagemann and Julia De Clerck-Sachsse are Associate Research Fellows at CEPS. Ms. De Clerck-Sachsse also holds a research fellowship awarded by the Philippe Wiener-Maurice Anspach Foundation at the Université Libre de Bruxelles (ULB), in the framework of her doctoral studies at Oxford University.

¹ Hereinafter referred to as ‘the Council’.

² In her speech to the European Parliament on 17 January 2007, German Chancellor Angela Merkel presented a working programme for the next 18 months, under the German, Portuguese and Slovenian ‘presidency trio’. The programme expresses an intention to find an answer to the constitutional impasse in time for the summit on 21-22 June 2007.

institutional reforms, an EU of 25 (and now 27) would face great difficulty in carrying out its daily functions. However, contrary to these arguments, recent analyses by the European Commission and external experts³ have found that the much-feared policy deadlock has not occurred in the absence of extensive institutional reform. Legislation is still being adopted at a relatively impressive speed. But does this really mean that the Council is able to continue under its current institutional set-up? This report examines the functioning of the Council before and after the enlargement and suggests that certain issues need to be addressed. The results make it clear that closer scrutiny of the actual work process at large, and of individual policy areas, is necessary in order to provide an accurate and more nuanced account of the effects of the enlargement.

1.1 Structure of the report

The report is divided into five sections. Following this introduction, the decision-making processes in the Council are briefly outlined in section 2. Sections 3, 4 and 5 are more analytical in nature and present the findings from our extensive data set and interviews and draw conclusions. The sections are organised in the following manner: Having described the formal decision rules and procedures, section 2 provides a brief discussion of the main findings from the current literature regarding the implications of this formal setting for the actors involved. Section 3 offers a comprehensive analysis of the general changes that can be observed in Council decision-making in the years immediately leading up to and following the 2004 enlargement. Section 4 identifies and compares the behaviour of individual governments and apparent coalition formations from the period before the enlargement to the years after. Section 5 investigates how specific policy areas have been affected by the enlargement. Each of the sections consists of a number of sub-sections and the detailed outline for each of these is as follows:

From section 2 it becomes evident that there is a pressing need for further analysis of decision-making processes in the Council, and that further quantitative material in particular is required to advance the sparse knowledge about both the formal and informal internal processes. Although a few valuable contributions have started to emerge from the current literature, issues such as the implications of the institutional rules and procedures as well as major changes like the 2004 enlargement have not yet been rigorously analysed based on statistical information. This section summarises some of the existing findings and expectations found in the literature with regard to who dominates decision-making in the Council, and why.

In section 3, which investigates some of the most general changes in the Council since the enlargement, the results from both the quantitative analysis and the interviews with practitioners make it clear that decision-making in a Union of 25 (and now 27) is not just a question of new member states adapting. All member states have had to become accustomed to a new logic of negotiations as the working procedures have become more formalised and encompass a larger and more heterogeneous set of interests. Reaching a consensus has become more cumbersome since the enlargement and all governments have to come to terms with the fact that their preferences over policy issues may in most cases not be fully satisfied as legislation is now based on a different common denominator than was the case before enlargement. This part of the analysis also draws on a large set of statistical information showing the changes in terms of – amongst other issues – the amount of legislation adopted each year, the level of recorded disagreement and the use of formal rules in adopting legislation. The data is analysed and elaborated upon by extensive descriptions and explanations provided by the interviewees directly involved in Council decision-making.

³ See European Commission (2006) and Mattila (2006).

Section 4 reports on the level of disagreement recorded per individual member state and takes into consideration not only whether there is a difference in patterns of behaviour between old and new member states, but also whether the size of the population (big, medium and small member states), the geographical location (North versus South, East versus West), or the fact that member states are either contributors or recipients of funds from the EU budget have an impact on their behaviour in decision-making. In addition to identifying any such possible patterns, the intention is to establish whether any changes occurred with regard to these issues before or after the enlargement.

The fifth and final section of the report presents a range of descriptive statistics related to the adoption of legislation within each policy field and how individual governments have used voting, abstentions or formal statements to voice their disagreement with a policy proposal. This section reports that there is great variance in the adoption rates and amount of recorded disagreement across the policy areas, both in absolute and relative terms. It is also found that the frequency with which the governments oppose a policy proposal varies from one policy area to another. This latter point may seem rather obvious, but the findings make it clear that, for example, although Germany and the UK are often thought to oppose the majority in the Council on a relatively frequent basis, this tendency is only apparent in some policy areas and cannot be detected in others at all. Hence, the results hence stress the need to distinguish between policy areas when investigating both the general decision-making processes in the Council as well as an individual government's behaviour. Lastly, comparing the 32 months before and after the enlargement, it becomes apparent that the enlargement has affected the different policy areas to varying degrees. For example, those areas falling under QMV seem to be less affected with regard to the quantity of legislation passed than those that remain under unanimity. Such results clearly suggest that both normative/political and more 'objective' analyses of Council decision-making have to consider the differences in content and quantity between policy areas; those differences have important implications for both the pace of future integration as well as for the question of whether a reform of the decision procedures is needed.

1.2 Methodology

The research behind this report has, as mentioned above, been conducted by combining qualitative and quantitative analyses of the Council's procedures. The quantitative material consists of an extensive data set obtained from minutes from Council meetings and containing information on all legislation adopted. The collection, coding and descriptive statistics of the data set are discussed in detail in Appendix I. A range of advanced statistical methods and geometrical scaling techniques are used for analysing this data. Although the models behind these analytical tools have important implications for how the analysis is carried out, space constraints prevent us from providing detailed explanations of the methods used in this report. Short descriptions of the logic behind the models are provided where necessary, however, and clear references to full accounts of the models are cited for the interested reader.

As for the qualitative part of the analysis, we base our findings on 52 in-depth semi-structured interviews with key figures in the European institutions, the permanent representations of the member states (both old and new) as well as external policy experts. All of the interviews help to clarify the explanations for some of the statistical results and have provided useful insights into issues such as the differences in working methods and voting behaviour between the level of the various working groups and that of COREPER, and between COREPER and the ministerial level. Many issues related to 'atmospheric changes' since the enlargement – which cannot be measured statistically – have also been elucidated by these sources, all of whom were assured anonymity. No extensive conclusions are drawn exclusively on the basis of these

interviews, but they are used to explain and elaborate the statistical results, and they certainly provide valuable insights into the more detailed aspects of the Council's working processes.

1.3 Implications of the findings

The findings presented in this report raise several important questions, a few of which we address in the conclusions. However, whereas many of the issues that arise from a study of this character are either of a normative and/or political nature, we find it more beneficial to apply a (perhaps) more 'neutral' and observant perspective. The intention in the conclusion of the report is hence to discuss – and provide nuanced answers to – three specific questions:

- 1) Specifying two main criteria for efficiency – one related to the quantity and one related to the quality of legislation – can Council decision-making be considered efficient?
- 2) In light of the data and findings presented in this report, what would the adoption of the Constitutional Treaty have changed?
- 3) What other issues remain to be addressed by future research projects to inform further debate and decisions concerning the Council's future set-up?

It should be noted that the Dutch and French rejection of the proposed Constitutional Treaty has provoked one of the most difficult ideological crises experienced in the history of the EU. The general gloom surrounding the EU has created an increasingly difficult working environment for the European Commission in particular. Further integration – either in terms of 'widening' or 'deepening' – is becoming an increasingly sensitive issue for the member states, thereby constraining the governments' room for manoeuvre and hence may also affect their attitudes towards the European project. Our responses to the three questions posed above do not directly address this political dilemma, but rather seek to give a more factual weighting of the current state of affairs. There is no doubt, however, that these aspects will have to be taken into account by both officials and politicians behind any changes.

2. Decision-Making in the Council: How is it done?

Decision-making in the Council is a complicated matter. This section outlines the main features of the legislative processes in order to provide a general overview of the institutional framework within which the Council members act. Having described the institutional framework in this section, a presentation and analysis of the results from the quantitative and qualitative investigations not only become easier in the following sections, it also allows for a more rigorous discussion of the findings without having to provide basic descriptions of the formal set-up of the institution.

2.1 The Council formations

Following the Seville Conclusions in June 2002, the number of sectoral councils in the European Council was reduced from 21 to 9.⁴ The reduction in Council formations has not led to a similar reduction in policy areas or ministerial seats, and the Council meetings are still held according to policy specialisation such that, for example, the ministers of environment meet independently of ministers from other policy areas.⁵ The current Council formations are now divided according to the following subjects:

- General Affairs and External Relations
- Economic and Financial Affairs
- Justice and Home Affairs
- Employment, Social Policy, Health and Consumer Affairs
- Competitiveness
- Transport, Telecommunications and Energy
- Agriculture and Fisheries
- Environment
- Education, Youth and Culture

Each Council formation has to adopt legislation according to a set of rules depending on the legal basis of the policy proposal in question (see section 2.2 on Decision rules and procedures). The Commission settles which of the decision-making procedures apply to a proposal before presenting it to the Council for negotiations, based on the legal framework for the specific policy field as stipulated in the treaties. When a policy proposal has been initiated and presented to the Council, it is usually first discussed in specialised working groups where officials from the member states and the Commission meet. Gradually, proposals advance through the preparatory bodies closer to the Council. The most senior of the preparatory committees are the Committees of Permanent Representatives (COREPER I and II) which send proposals to the Council as either 'A' or 'B' agenda points. In descriptions of Council decision-making (e.g. Dinan, 1999; Hayes-Renshaw & Wallace, 2006; Sherrington, 2000; Van Schendelen, 1998) it has been explained that at this stage 'A' points have normally already been agreed upon and are

⁴ The Trumpf & Piris (1999) report from the Council's legal service formed the basis for what became the Helsinki Conclusions of December 1999 and the Seville Conclusions of 2002. The conclusions stipulated a number of ways to make the Council's organisational structures more efficient, including the reduction in the number of Council formations.

⁵ For a recent analysis of the division into sectoral councils and the changes made since 2004, please refer to Van Schaik et al. (2006).

therefore accepted without much discussion in the Council. The more controversial agenda items are categorised as ‘B’ points.⁶

2.2 Decision rules and procedures

When voting takes place, different rules apply depending on the policy area: unanimity is applied to certain matters affecting the members’ fundamental sovereignty whereas other decisions are taken by a weighted qualified majority (QMV) system. The key feature of the latter is that all members have a seat but their respective number of votes varies, reflecting the differences in population shares. Table 1 shows the distribution and thresholds for the QMV systems throughout the EU’s history.

Table 1. QMV thresholds and distribution of votes in the Council

Member state	1958-72	1973-80	1981-85	1986-94	1995-2001	Since 2001
Germany	4	10	10	10	10	29
France	-	10	10	10	10	29
UK	4	10	10	10	10	29
Italy	4	10	10	10	10	29
Spain	-	-	-	8	8	27
Poland	-	-	-	-	-	27
Netherlands	2	5	5	5	5	13
Greece	-	-	5	5	5	12
Belgium	2	5	5	5	5	12
Czech Republic	-	-	-	-	-	12
Portugal	-	-	-	-	5	12
Hungary	-	-	-	-	-	12
Sweden	-	-	-	-	4	10
Austria	-	-	-	-	4	10
Slovakia	-	-	-	-	-	7
Denmark	-	3	3	3	3	7
Finland	-	-	-	-	3	7
Ireland	-	3	3	3	3	7
Lithuania	-	-	-	-	-	7
Latvia	-	-	-	-	-	4
Slovenia	-	-	-	-	-	4
Estonia	-	-	-	-	-	4
Cyprus	-	-	-	-	-	4
Luxembourg	1	2	2	2	2	4
Malta	-	-	-	-	-	3
Total	17	58	63	76	87	321
QMV Threshold						
Voting weights	12	41	45	54	62	232
Population						62% (282.7 mil)
Member states						13

Source: http://europa.eu.int/institutions/council/index_en.htm (accessed 1 October 2006).

⁶ Van Schendelen (1998) finds that more than half of all decisions made by the Council are categorised as ‘A’ points. The figures for the 2001-06 time period are presented in the following section.

There are four different procedures under which legislation can be adopted in the EU. The main procedure, which is called ‘co-decision’, stipulates that both the European Parliament and the Council must agree on an identical text before a proposal can be adopted. Secondly, there is the ‘cooperation’ procedure, in which the European Parliament votes on proposed legislation and can propose amendments, although the Parliament can also be overruled if the Council votes unanimously to adopt a proposal. Thirdly, there is the ‘consultation’ procedure by which the European Parliament can express its position on proposed legislation, but the Council is not obliged to take its views into account. Finally, there is the ‘assent’ procedure, in which the EP can accept or reject a proposal, but cannot propose any amendments. The latter is reserved for issues concerning economic and social cohesion and Union membership.

Depending on which of these legislative procedures is followed, the Council may be presented with a proposal and its various amendments several times during the process that leads to its final adoption or rejection. For example, in the co-decision procedure, the Council may adopt a common position before the proposal goes to the European Parliament⁷ for a next reading after which it may return to the Council once again.⁸ The cooperation and consultation procedures may similarly include a few rounds of negotiations on the same proposal if an agreement is not reached immediately. However, the extensive work undertaken by the preparatory bodies makes this scenario rather rare.

Despite the complex voting system reflected in Table 1, the Council does not always vote in the formal sense of raising hands. A proposal can be adopted by the chairperson when she or he knows that there is a sufficient majority or unanimity in the Council. If the Council is not unanimous, the chairperson takes into account the member states’ positions and simply counts whether enough member states are on board to meet the threshold. In this way, it can be argued that although the votes are not explicitly cast, decisions are still made in ‘the shadow of the vote’ (Golub, 1999). One important difference between the unanimity and QMV systems must be pointed out, however. When the decision rule is unanimity, abstentions are not counted as ‘no’ votes. This means that decisions can be made with few countries actually voting for the proposal, if none of the countries actively opposes it. The opposite is true for QMV, where the high threshold makes abstentions have the same effect as ‘no’ votes in practice. Furthermore, if a proposal is accepted, members who wish to oppose, abstain or who have serious concerns about the decision can record their views officially by making formal statements. Formal statements are usually made immediately after a decision has been adopted, and are either included directly in the minutes from the meetings or posted separately on the Council website.⁹

2.3 Implications of the formal rules and procedures for decision-making in the Council

Almost every study of Council decision-making begins with the complaint that the large amount of legislation adopted by unanimity makes it difficult for outsiders to get a proper handle on the institution. When a decision is adopted by unanimity, it is rare for any differences in interests or positions in the Council to be recorded. Given that between 70 to 95% of all legislation adopted by the Council is done so by unanimity (see Hayes-Renshaw & Wallace, 2006; Mattila, 2004), the criticism is well grounded. However, as shown in the presentation of our results in the following sections, more detailed information is increasingly included in the Council minutes,

⁷ Hereafter referred to as the ‘Parliament’.

⁸ Please refer to http://www.consilium.europa.eu/uedocs/cmsUpload/code_EN.pdf for the formal description of the co-decision procedure and to e.g. Hix (2005) for an explanation of the implications of the co-decision procedure for the institutional balance in the EU.

⁹ http://europa.eu/documents/eu_council/index_en.htm (accessed January 2007).

and it is now possible to investigate several important aspects of the implications of the formal rules and procedures for decision-making.

Three basic schools of thought can be found in the literature regarding the consequences of these formal structures for adopting legislation. The first of these is the view that the formal rules lead to a dominant position by the big member states due to their greater voting power and, hence, their political weight in negotiations (see e.g. Felsenthal & Machover, 1998, 2001). The branch of researchers behind this argument often relies on voting power indices (Banzhaf, 1965; Penrose, 1946; Shapley & Shubik, 1954), which are used to consider and calculate the frequency with which each member state is in a pivotal position in voting outcomes across all logically possible combinations of votes. A classic example that illustrates the importance of applying considerations of voting power can be drawn from the first phase of the Council's history when Luxembourg with its one vote turns out to have had absolutely no formal influence on decision-making. Since the threshold required to reach a decision was 12 votes during this period, it was mathematically impossible for Luxembourg's one vote to be decisive, despite the disproportional representation of its population.¹⁰ No matter how the five other countries voted, their combined total would never be equal to 11 (cf. Brams & Affuso, 1985; Leech, 2002). Similar situations are still possible, although perhaps in more complex versions, and politicians and Council officials have paid much attention to the voting power indices when the distribution of votes has been up for debate. The current German Presidency has even launched a 'majority calculator', which can help to make quick estimations of various coalitions based on the voting distribution.¹¹ Still, little empirical evidence has been provided to test whether such calculations also hold true in the actual negotiations.

Second, another branch of analysis that focuses on Council politics acknowledges the formal rules and procedures as a constraining framework within which the Council members act. However, they ascribe greater importance to the individual member states' preferences and policy positions when a majority has to be found. The argument is, in short, that a legislator will only be willing to accept a policy change that moves the current policy to a point closer to her preference point; any change that will satisfy the legislator's preferences to a lesser degree than the current policy position will make her worse off, and is hence unacceptable. In terms of the decision process, this means that governments with similar preferences will join forces and seek to manipulate a policy outcome that is acceptable to all members of the 'coalition'. The construction of a majority is indifferent to whether the possible coalition members are small, medium or big member states, or share other characteristics. What is important is simply that the members have similar preferences and can meet the majority threshold.

Third, a last group of analysts have emphasised the phenomenon of 'corridor bargaining' and describe decision-making in the Council as an informal, yet still tough, negotiation process. Some empirical findings have been provided by this group of scholars, and their main conclusions have been that explicit voting on agreed decisions at ministerial level is rather rare and that when dissent is expressed, this is usually only by a single member state (Hayes-Renshaw & Wallace, 2006:284). Ministers generally endorse collective decisions by consensus, even in those cases where they could invoke qualified majority voting. Furthermore, when disagreement does arise, it occurs in nearly half the cases related to 'technical' decisions, rather than political issues. And to the extent that voting takes place, even this occurs implicitly rather than explicitly, operates mostly at the level of officials rather than ministers and the result is not recorded in any detailed or easily accessible form (Hayes-Renshaw & Wallace, 2006;

¹⁰ Luxembourg had one vote for all of its 310,000 citizens, whereas, for example, West Germany had one vote for every 13,572,500 people.

¹¹ See <http://www.bmwi.de/English/Navigation/EU-Council-Presidency/majority-calculator.html>.

Heisenberg, 2005). Therefore, it is argued, the Council can be understood only by analysing its informal as well as its formal operations, and the over-simplification by many theoretical accounts results in a neglect of the very reason why the complex Council system is even able to function: ‘corridor bargaining’, dynamics within working groups and committees as well as the importance of actors’ experience and personal negotiation skills must be qualitatively accounted for.

The reality in the Council is probably a combination of all of the points above. The findings presented in the next sections will address several of the issues, and we return to a discussion of these at various points in the report. However, based on this very simplified and brief description of the current debate, there is one underlying argument we wish to stress before turning to the actual reporting and analysis of our findings. In our opinion, no one single research approach can do justice to the extremely complex decision-making processes found in the Council. No matter how much experience a practitioner placed in the Council may draw upon in expressing his views and no matter how correctly collected and summarised a data set may be, neither of these sources can separately provide an adequate and exhaustive account of the institution. In our view, that can only be achieved by a combination of qualitative and quantitative methods. Inevitably, there are also limitations to studies that combine quantitative and qualitative material, and we are far from arguing that we can present – or have the ambition to present – a complete analysis of the Council’s current state of affairs. Rather, the intention is merely to present data on selected key aspects of Council decision-making, and to analyse these objective facts by also making comparisons with the explanations given in the interviews.

3. General Changes

3.1 Changes in legislation

We begin with the most general findings from our study. Table 2 presents the volume of legislation adopted per year in the period leading up to the enlargement as well as the years following the accession of the 10 new member states. The table furthermore shows the number of pieces and the percentage of legislation adopted under the co-decision procedure as well as the total amount of legislation adopted by either qualified majority voting (QMV) or unanimity. The reason for differentiating between legislation adopted under the co-decision procedure, which by definition entails the use of the qualified majority decision rule, and legislation adopted under QMV is that in some cases legislation may also be adopted by QMV even if it falls under either the consultation or the cooperation procedures. It therefore seems relevant to track both the number of pieces of legislation passed under different voting rules and the number passed under different procedures. As a last issue, Table 2 reports on the share of legislation adopted as either ‘A’ or ‘B’ agenda points.¹²

Table 2. Legislation adopted September 2001-December 2006

	Sept-Dec 2001	Jan-Dec 2002	Jan-Dec 2003	Jan-April 2004	May-Dec 2004	Jan-Dec 2005	Jan-Dec 2006
All	46	164	163	139	86	121	153
Co-decision	11	54	59	45	22	41	62
%	23.9	32.9	36.2	32.4	25.6	33.9	40.5
Not co-decision	35	110	104	94	64	80	91
%	76.1	67.1	63.8	67.6	74.4	66.1	59.5
Unanimity as Council voting rule	14	66	103	87	49	68	71
%	30.4	40.2	63.2	62.6	57.0	56.2	46.4
QMV as Council voting rule	32	98	60	52	37	53	82
%	69.6	59.8	36.8	37.4	43.0	43.8	53.6
A points	29	147	152	137	84	117	141
%	87.9	89.6	93.3	98.6	97.7	96.7	92.2
B points	4	17	11	2	2	4	12
%	12.1	10.4	6.7	1.4	2.3	3.3	7.8

The table shows that the total amount of legislation passed each year saw a considerable decrease in the (almost) two years immediately following the enlargement (May-December 2004 and January-December 2005). In 2006, however, the total adoption rate was almost ‘back to normal’ as it included 153 pieces of passed legislation, and hence reached nearly the same level as in 2002 and 2003. Still, of the total of 872 pieces of legislation passed from September 2001 to December 2006, the largest proportion of these (512 acts) was adopted in the period prior to the enlargement.

The year of the enlargement (2004) has been broken up in the table into two periods in order to distinguish between the months before and after enlargement. While it appears that there was a considerable amount of legislation passed just prior to May 2004, significantly less legislation was passed in the remainder of the year, despite it being longer by several months. There are a

¹² See section 2 for definitions. The distinction between the two is also discussed in more detail in this same section below.

number of possible explanations for this. First, it was argued in the interviews that logistical considerations made it attractive to pass as much uncontroversial legislation as possible before the enlargement in order to avoid the legal requirement of producing legislation in nine additional languages. Second, and conversely to the previous argument, it has been suggested that a certain degree of legislative ‘preparation’ had to be done before the new member states gained rights to exercise their legal influence. We return to this point in section 5 where we investigate the enlargement’s impact on specific policy areas. However, the data does suggest that the increased activity rate in the months leading up to the enlargement indeed falls within areas such as Agriculture & Fisheries and Internal Market, in which the old members may have had a particular interest in passing legislation due to the redistributive and economic nature of these areas. Similarly, it should be noted that of the total of 360 proposals adopted in the years after the enlargement, 43 of these entailed the reintroduction of existing legislation that needed to be re-adopted in order to accommodate the new member states. A reduction in the total adoption rate by 152 pieces (29.7%) can hence be observed between the 32 months before and the 32 months after May 2004.

With regard to the legislative procedures, Table 2 shows a variation across the years in the percentage of legislation passed under either the co-decision procedure or under other legislative procedures (labelled ‘Not co-decision’ in the table). Whereas the period before the enlargement has a relatively stable recorded percentage of between 32.4% and 36.2%, the years following the enlargement jumps from 25.6% to 33.9% and then even further to include 40.5% as co-decision legislation in 2006. Curiously, several interviewees voiced the assumption that co-decision legislation accounts for around 50% of the legislation adopted by the Council each year, although the figures in Table 2 do not fully correspond with these accounts. One explanation may be that the interviewees’ experience is related to the fact that co-decision legislation can at times require more work and more negotiation rounds. Still, what is interesting from the results in the table is that the decrease in co-decision legislation immediately following the enlargement has now developed into an increase that even exceeds the years prior to the enlargement. It will be interesting to see if this trend continues, and if it is related to the fact that the passing of legislation becomes considerably easier under QMV than under unanimity in the enlarged EU.

Closely related to the above point, Table 2 also reports on the application of either the unanimity decision rule or QMV in the 2001-06 period. Legislation passed under unanimity saw a considerable increase in the years 2003-05, and particularly so for 2003 and the first half of 2004. In 2006, however, the numbers decreased considerably compared to the preceding years, and even though still a little higher than for the years 2001 and 2002, it now seems to be approaching the former scale again. Evidently, an inverse development can be observed for legislation adopted under QMV. The use of QMV decreased considerably in the years 2003 and the first half of 2004, while gradually increasing to a level in 2006 that was only slightly lower than in the years 2001 and 2002. A number of interviewees have raised the point that decision-making in areas falling under unanimity has been more affected by enlargement than in areas where QMV is the rule. The observations from Table 2 regarding the use of the two decision rules may therefore indicate that unanimity has been applied in the Council in the period immediately following the enlargement due to the specific circumstances; the gradual increase to a more frequent use of QMV may be more indicative of the future level of legislation adopted by QMV.

There has been considerable debate in the current literature regarding the Council’s distinction between ‘A’ and ‘B’ agenda points (e.g. Dinan, 1999; Hayes-Renshaw & Wallace, 2006; Sherrington, 2000; Van Schendelen, 1998). As explained in section 2, ‘A’ agenda points are usually presented as the less controversial items which have been prepared and agreed upon in the preparatory bodies. They are therefore accepted without much discussion in the Council,

whereas the more controversial agenda items are categorised as ‘B’ points (Moberg, 2002). The current literature often points to this categorisation as evidence that Council decision-making is now institutionalised to such a high level that officials and other representatives have become agreement brokers, playing an equally important role as the ministers themselves. As a consequence, it is argued, this leads to a lack of transparency and the Council is often presented as a ‘Council of consensus’ rather than a ‘Council of conflict’ as the ministers always seem to come to agreements with a super majority of members on board. Furthermore, some researchers have interpreted the consistently low level of ‘B’ agenda points as a sign that there has been little controversy in the Council after enlargement.

We wish to point out, however, that the records of ‘A’ and ‘B’ points on the Council’s agenda do not in any way reflect the level of disagreement or bargaining at the ministerial level. Although it is true that the intention behind the ‘A’ and ‘B’ points is to ease the workload at the ministerial level and lower the need for bargaining and formal voting at the last stage of the legislative process, one important aspect is missing from most analysis of this issue: ‘B’ points are rarely adopted even when agreement has been achieved, and hence they are also not recorded in the Council’s decision records. Rather, they are sent back for ministerial negotiations after which they return to the table for adoption as ‘A’ points. Hence, the fact that the results in Table 2 show an extremely low level of adoption of ‘B’ points throughout the years (distinction between ‘A’ and ‘B’ accounting for 10% or less in most years) does not seem to correspond with the importance ascribed to the points in the literature. What is more surprising from the table is the fact that ‘B’ points have been adopted at all. Interestingly, a number of interviewees suggested that one explanation may be an increasing appearance of ‘false’ ‘A’ and ‘B’ points. ‘A’ points may at times be more controversial than ‘B’ points, but are still presented as ‘A’ points in order to avoid extensive discussions in the meetings (see section 4). As a result, the interviewees noted that the distinction in some cases becomes somewhat counter-productive, as confusion arises with regard to which topics require the closest scrutiny.

3.2 Formalisation of meetings

Our findings from the interviews also portray a number of interesting changes regarding the work processes of the Council which cannot be expressed by the statistical data. Of these findings, ‘atmospheric’ changes received the most emphasis by the interviewees. On several occasions it was explained that there is less of a ‘familiar’ tone both in COREPER and around the ministerial table and that representatives often feel they have less latitude to negotiate due to the formalisation of the meetings. In fact, many observed a decrease in the frequency of negotiations, and one observer from the Council administration actually described the situation as a “move towards an UN-style system”. A tendency towards reading out statements and keeping to the formal procedures of negotiations has prevailed. As shown in section 4, these changes to the procedural ‘codes’ are also reflected in the quantitative data on Council members’ voting behaviour and the recorded levels of disagreement.

In support of the interpretation of the data in Table 2, all interviewees agreed that there was no general crisis or breakdown of the Council’s decision-making processes. Legislation is still adopted at an acceptable speed even after the significant increase in the number of representatives around the table. This observation was voiced at the same time as it was noted that the presence of more states with an ‘Anglo-Saxon’ way of thinking meant a presumption in favour of less legislation and less regulation. As also explained above, together with the Commission’s decision to introduce less legislation in order to devote more attention to individual proposals, this could serve as a partial explanation to the decrease in legislation observed for the years following May 2004. However, what is interesting about the figures in Table 2 is that although the amount of legislation has in fact declined since May 2004, all of the

practitioners interviewed from the old member states agreed that the workload has in fact increased. It was stressed that this holds true for both the working group level of the decision-making process all the way to the ministerial negotiations. For example, it was explained by an official from a country that then held the presidency, that the construction of either a majority or a blocking minority has become harder simply because negotiations need to include more member states. Both the Council meetings and those of the preparatory bodies also tend to last considerably longer since the enlargement. This observation is confirmed in both the data and a large number of the interviewees. These latter explained, however, that the most difficult point in the process is usually not the working groups or the COREPER level, but rather the ministerial negotiation table itself. Whereas the administration has indeed seen an increase in the work load in many different respects, most of the interviewees found that the most difficult task was not in the administrative part but rather in finding agreement between the political representatives.

Additionally, several interviewees stated that finding a common position in a more heterogeneous Council has led to a lower common denominator in terms of the level of regulation. The details of legislation have been affected due to the fact that more interests have to be accommodated. Also, the larger number of people around the negotiation table means that there is now less time to spend on individual policies. Such assertions are of course quite controversial and difficult to support by quantitative material; still, it was explained that although the adoption rate has declined, not even the current levels shown in Table 2 would have been possible had there not been a general decrease in the degree of regulation in proposed policies.

3.3 Changes in voting and recorded disagreement

Although the Council is famously known for its ‘culture of consensus’, the obvious challenges with getting a 25-member Council to come to agreement could suggest that this may have changed since May 2004. Also, the results above showed a steady increase in the use of QMV after the enlargement. Since this enables a government to also voice its opposition in explicit voting, it may well be that the level of recorded disagreement has changed dramatically. Table 3 presents the figures for the level of discord in the years prior to and following May 2004.

Table 3. Oppositions, abstentions and formal statements per year

	Sept-Dec 2001	Jan-Dec 2002	Jan-Dec 2003	Jan-April 2004	May-Dec 2004	Jan-Dec 2005	Jan-Dec 2006
Total leg. passed	46	164	163	139	86	121	153
Contested 1 ^a	16	29	36	11	9	13	34
% ^b	34.8	17.7	22.1	7.9	10.5	10.7	22.2
Contested 2 ^c	14	53	69	46	19	52	69
% ^b	30.4	32.3	42.3	33.1	22.1	43.0	45.1

^a Disagreement voiced through voting.

^b Percentage of legislation per year.

^c Disagreement voiced either through voting or formal statements; formal statements are included in the minutes following the adoption of a proposal.

Interestingly, despite the major increase in the number of actors, Table 3 shows that the recorded level of opposing votes has not increased at all since the enlargement. In fact, the part of 2004 which included the 10 new member states (May-December 2004) and all of 2005 saw a considerably lower percentage of legislation passed with opposing votes than any of the years prior to enlargement (‘Contested 1’). In the 2004-05 period, the level was just below 11%,

whereas 2001 had a recorded percentage of 26.8%, 2002 had a level of 18% and 2003 22%. So although disagreement in the last year following the enlargement (2006) has increased to the same level as it was prior to May 2004, the total level of recorded oppositions for all the years since May 2004 is notably lower.

One important issue arising from the data, however, was also elaborated upon by some of the interviewees and involves the possibility for Council members to make a formal statement following the adoption of a proposal. These formal statements often consist of a country's explicit disagreement or reservation with regard to a policy. Formal statements are included in the minutes of the Council meetings and allow the member states to make clear to internal and external actors their opposition to either a small aspect or the full proposal. This may be done even in cases when the country decided not to oppose the act through voting. It obviously requires some explanation why governments would choose to record their position in this manner but do not exercise their legal rights to oppose a given policy through voting. Hence, the formal statements are taken into account in the row 'Contested 2'.

The figures in the 'Contested 2' category suggest that the low level of opposition in voting after the enlargement may be attributable to an increased reliance on recorded positions in the form of formal statements. The discrepancy between the level of disagreement voiced through voting ('Contested 1') and the level taking into account both these voting and formal statements ('Contested 2') has increased steadily since 2001, going from a difference of around 7 percentage points between the 'Contested 1' and 'Contested 2' categories to more than a doubling of the difference between the two in 2006. Or, to put it differently, Council members have used formal statements to the same extent as voting to express their disagreement since the enlargement. This finding, and the great importance we attribute to it, has been confirmed by many interviewees, who see the origins of these changes in the difficulties with reaching agreement in a 25-member Council. The formalised tone and structure that now characterise the meetings and work culture have led to an emphasis on the formal statements instead of merely voicing either concerns or opposition on a more casual basis. By relying on formal statements to register their opposition instead of voting 'no', governments are also able to affect a sense of the old culture of consensus without at the same time sending a political signal of having deviated from their initial policy preferences.

While such behaviour may be an effective way to avoid policy gridlock through contested voting, the use of formal statements in this manner also raises some important issues concerning the transparency of the decision-making process as it becomes harder to identify where an individual state stands on an issue. Nevertheless, it certainly appears from the data that important changes have occurred not only with regard to how the 'brokering' of agreements takes place, but also with how the member states choose to voice their position. The next section further investigates how each individual government has behaved in the 2001-06 period on this latter issue.

3.4 Individual government's behaviour

Two different views have emanated from the interviews regarding the individual governments' decisions to voice their position when a policy proposal is passed. One group of interviewees argued that everything has mainly continued as 'business as usual', and that the new member states are still adapting to the work in the institution. When this statement was further explored, several of the practitioners explained that they expected the newer members to eventually begin to act along the same lines as the 'old' 15. Conversely, another group of the interviewees stated that, because of the significant changes in both the number of representatives, the working environment and the general processes, all member states "have to learn a new game". It was

expressed that there is now “a strong feeling that we need more solidarity”, as well as that there is “an increasing emphasis on the need for compromise and negotiation”.

In order to compare these experiences with the actual data for individual government’s behaviour, and in this way establish whether there even is a distinction between the ‘old’ and ‘new’ members, we first need to determine whether any distinct patterns can be detected for the period prior to the enlargement. If decision-making in those years were indeed dominated by the large member states as suggested in the literature (see section 2), then we should also observe the behaviour of new large members to be different from new small members, granted that those same patterns simply continued after enlargement. On the other hand, if decision-making in the Council is now a new game altogether, it may be that, for example, new members generally find themselves outvoted more frequently than old member, or vice versa. Though, it may also be that completely new alliances have emerged which have nothing to do with either the duration of membership, the size of the countries or other commonly mentioned characteristics. In order to compare the results from the period before the enlargement to the period after, Figure 1 below shows the level of recorded opposition per country from September 2001 to April 2004, either in the form of voting or expressed in a formal statement, which we can then later compare to the period including the 10 new governments.

Figure 1. Oppositions per country before the enlargement

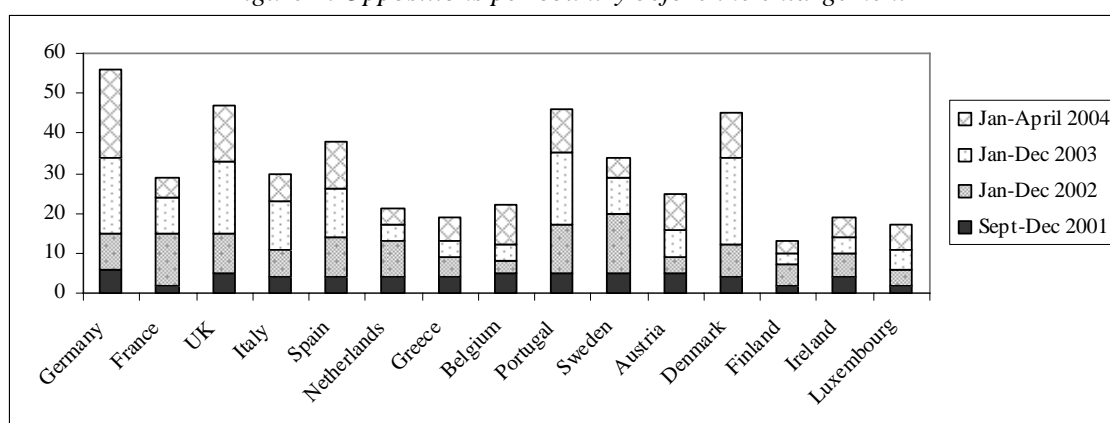


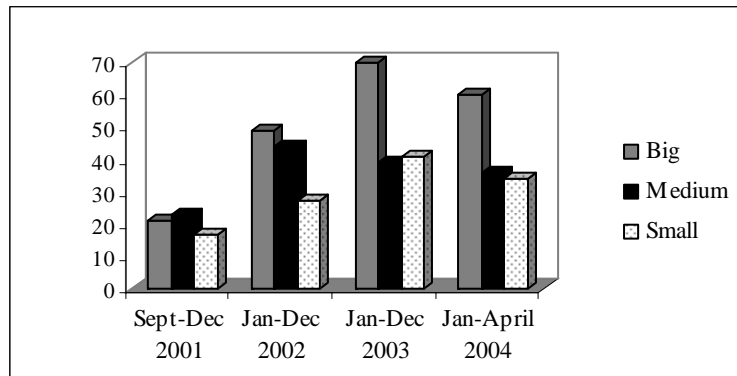
Figure 1 has been organised according to Council members’ size (and hence voting weights). It is immediately clear from the results that a country’s decision to oppose a proposal does not entirely correlate with only this characteristic prior to enlargement. The large countries positioned on the left-hand side of the figure have indeed opposed more in total than the smaller ones on the right-hand side, but some countries deviate considerably from this trend. For example, Denmark and Sweden have more frequently voiced opposition than several of the medium-sized members, and in terms of the total number of oppositions recorded from September 2001 to April 2004, they did so even more than France and Italy. Also Portugal, as a medium-sized member, seems to have registered opposition disproportionately more frequently than either Belgium, Greece or the Netherlands, who wield the same voting power as Portugal. Still, it can be concluded that some tendency is indicated in the table of more frequent recordings of oppositions by the larger countries than by the smaller members.

Besides the total number of oppositions recorded per country, Figure 1 also reflects the distribution of oppositions per year in the period leading up to the enlargement. This additional distinction in the table makes it possible to establish, for example, that Denmark and Sweden have not consistently opposed on the same occasions. A large proportion of Denmark’s oppositions were recorded in 2003, whereas Sweden was more frequently in opposition in 2002.

Similarly, it can be observed that Germany was in the opposition relatively few times in 2002, compared to the number of times it voted against a proposal in 2003 or 2004; the latter years show a stable rate of around 22 oppositions per year for this member. Lastly, it is interesting to observe that although the United Kingdom opposed less than Germany in 2004, these two countries seem to have stayed on a similar level of recorded oppositions throughout the other years. Hence, the figures could suggest that the label of either being a Euro-sceptic or pro-European government does not necessarily indicate how often a government finds itself opposing policy proposals in the Council.

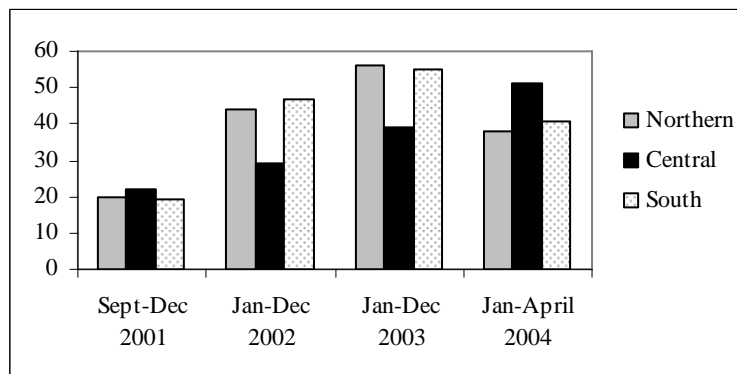
The following presentation of the same results, yet grouped into different categories, further elaborates on which distinctions can actually be made with regard to a Council member's decision to oppose a proposal.

Figure 2. Oppositions for big, medium and small members, September 2001-April 2004



Big: Germany, UK, France, Italy, Spain
 Medium: Netherlands, Greece, Belgium, Portugal, Sweden
 Small: Austria, Denmark, Finland, Ireland, Luxembourg

Figure 3. Oppositions for Northern, Central and Southern members, September 2001-April 2004



Northern: UK, Sweden, DK, Finland, Ireland
 Central: Germany, Netherlands, Belgium, Austria, Luxembourg
 South: France, Italy, Spain, Greece, Portugal

Elaborating on the above distinction between large and small countries' behaviour in voting situations, Figure 2 presents the findings for the September 2001-April 2004 period when grouping the data into a group of the five largest, medium-sized and smallest members, respectively. The results are that in the period leading up to the enlargement, larger members

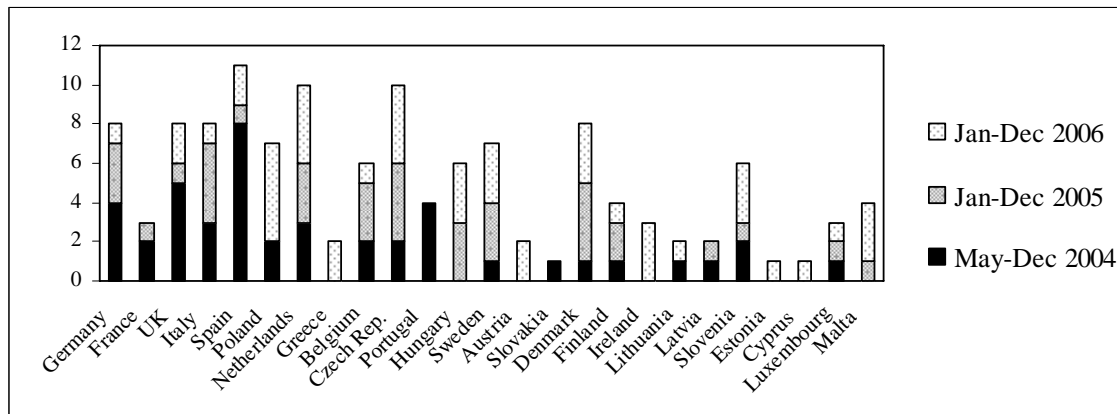
more frequently recorded their oppositions to a proposal than either smaller or medium-sized members did. Particularly the last years covered by the figure (2003 and 2004) show a significant difference in the behaviour between the five largest members and the rest of the Council. Interestingly, the medium-sized members and the smallest members showed almost no difference in their numbers of recorded oppositions in the time immediately prior to the enlargement (January-December 2003 and January-April 2004).

Turning to Figure 3, which presents the same data but grouped into oppositions according to geographical location, the results from the data appear to contradict an assumption frequently heard in the debates: The results do not show any consistent pattern of Northern members being more frequent opposers than Southern members. In fact, the Southern members opposed the most in 2002 and were in 2003 equally active on this account as the Northern members. The Central European members, on the other hand, opposed more than both the Northern and the Southern countries in the January-April 2004 period, but had a considerably lower number of recorded oppositions in the previous years. In sum, a geographical distinction of the data does not seem to substantiate the claim that either Northern or Southern members are more ‘difficult’ members and frequently vote against the majority.

Other groupings such as ‘receivers vs. contributors’ or ‘pro- vs. sceptic EU members’ have also been mentioned in both the political debates and in the literature, and the tables for these groupings can be found in Appendix II. However, neither of these additional suggestions show consistent trends, and will therefore not be further elaborated upon here. But it can be concluded that a consistent pattern can be observed in the distinction between large, medium and small members; the following will reveal whether this differentiation also holds after the enlargement.

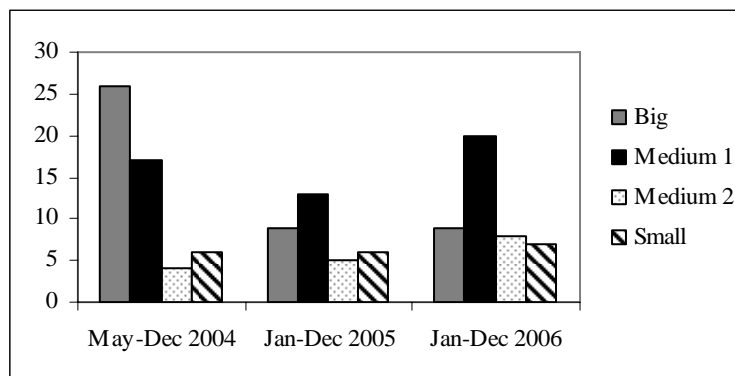
Turning to the post May-2004 period, Figure 4 provides the same information as in Figure 1, although here of course with the inclusion of the ten new member states. A first immediate reading of the table makes it clear that the larger countries placed towards the left-hand side of the table have in total opposed considerably more than the smaller countries placed towards the right. So this corresponds with the patterns from the pervious years. Yet, the figure also shows that the reason for the large discrepancy between the small and big members is mostly due to the larger countries’ high level of recorded oppositions in the May-December 2004 period (the black sections of the columns). Both the sections of the columns covering the oppositions in 2005 and 2006 seem to have less of a clear differentiation between the large and the smaller members, and it may therefore be that a distinction between small and large members from before the enlargement does not continue to also cover the entire period after the expansion.

Figure 4. Opposition per country after the enlargement



In order to establish whether this interpretation of the figure is indeed correct, Figures 5 and 6 group the findings into categories similarly as to what was presented above for the period before the enlargement. In other words, Figures 5 and 6 group the data presented in Figure 4 into categories according to the size of the Council members and according to their geographical location, respectively. Interestingly, the findings in both tables are rather contradictory to what was expressed by those interviewees arguing that Council decision-making has continued more or less like 'business as usual'. For example, Figure 5 shows completely different results for the difference between how small, medium and large members vote. Whereas the largest countries almost consistently opposed more than both the medium and small members during the years before enlargement, after the enlargement they only did so in the months of May-December 2004. 2005 and 2006 did not see any high level of opposition from the 6 largest countries. In fact, the category of Council members which has been recorded most frequently as opposers in these last years is the 'Medium 1' group, consisting of the Netherlands, Greece, Belgium, Czech Republic, Portugal and Hungary. The 'Medium 2' and 'Small' groups have also seen an increase in their number of oppositions in the last two years, but their increase has been more gradual than that of the 'Medium 1' group. Since the current representation has clearly strengthened the number of medium and smaller members, these figures may not be entirely surprising considering the new composition of the Council. Still, comments were made in several of the interviews that Poland would also actively voice its disapproval of proposals. So together with the dominant large members from prior to the enlargement, this group could still be expected to have had a higher record of oppositions.

Figure 5. Oppositions for big, medium and small members, May 2004-December 2006



Big: Germany, UK, France, Italy, Spain, Poland

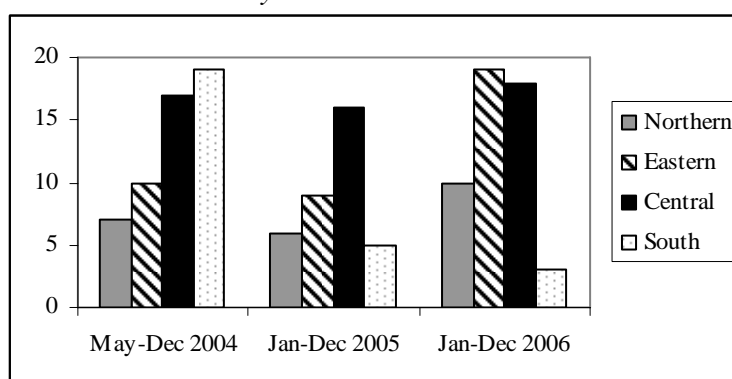
Medium 1: Netherlands, Greece, Belgium, Czech Rep., Portugal, Hungary

Medium 2: Sweden, Austria, Slovakia, Denmark, Finland, Ireland, Lithuania

Small: Latvia, Slovenia, Estonia, Cyprus, Luxembourg, Malta

Distinguishing between the Council members based on a geographical division, Figure 6 furthermore establishes that there is still no consistent pattern of either Northern or Southern members being the ones most in opposition, as is often heard in the political debates and the literature. Our figures suggest, however, that the Central and Eastern European countries are the most likely to record their oppositions, yet, the variation is still too large and the time period too short to make any firm conclusions on this point. But dominance by the Northern or Southern members is certainly not detectable with regard to this issue.

Figure 6. Oppositions for Northern, Eastern, Central and Southern members, May 2004-December 2006



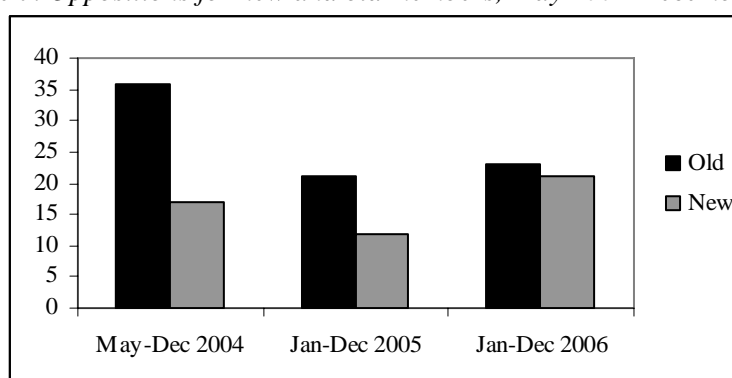
Northern: UK, Sweden, DK, Finland, Ireland

Eastern: Poland, Czech Rep., Slovakia, Lithuania, Latvia, Estonia

Central: Germany, Netherlands, Belgium, Hungary, Austria, Luxembourg

South: France, Italy, Spain, Greece, Portugal, Slovenia

Figure 7. Oppositions for new and old members, May 2004-December 2006



Lastly, yet perhaps most exciting in light of the current political debate, is the difference in recorded oppositions between ‘old’ and ‘new’ members. Figure 7 reports on this division and immediately makes it clear that an adaptation process for both the old and new members has certainly influenced Council decision-making since the enlargement. Whereas the old members had a much higher opposition rate in the period immediately following the expansion (May-December 2004), their dominance has in this respect declined considerably in the following years. At the same time, the new members have clearly adopted their behaviour as well, and, particularly when considering that this category obviously consists of 5 fewer countries than what is included in the group of ‘old’ members, it is interesting to see that in 2006 they were almost at an equal level of recorded oppositions as the old members.¹³ This supports the thesis voiced in the interviews that all countries have to learn a new ‘game’ rather than the new ones simply adapting. In fact, Figure 7 shows that the old members have had made more adaptations in their behaviour since the enlargement than have the new members. Contrary to expectations previous to enlargement, the result for 2006 shows that a distinction between old and new member states has all but become irrelevant.

¹³ As reported in section 3.4 concerning the oppositions registered in the period prior to enlargement, no further patterns can be detected when making distinctions either between ‘receivers and contributors to the EU budget’ or between ‘pro-EU or Eurosceptic’ members; please refer to Appendix II for a presentation of these results.

4. Coalition Formations

4.1 Size of coalitions

The previous section gave a clear picture of the absolute figures for the governments' behaviour based on the level of opposition according to different groupings of the countries. However, the data do not indicate whether some governments only oppose when certain other governments also oppose, or if the voting is strictly of an ad hoc nature. In this section we look into how many countries are actually recorded as opposing a proposal when legislation is contested and whether these countries form explicit coalitions.

Table 4. Number of member states contesting legislation, September 2001-April 2004

Number of member states	Number of cases
1	35
2	23
3	14
4	9
5	1
6	0
> 7	0

Table 4 shows that, in the period leading up to the 2004 enlargement, 71% of the cases where the majority was contested consisted of only one or two member states. Hence, the recorded disagreement does not appear to reflect 'majority vs. minority' dynamics in the Council in this period. In fact, from these figures it even appears unlikely that oppositions are voiced as real attempts to hinder policies from being passed; a single or small number of opposing governments are simply irrelevant for the adoption of legislation due to the high voting threshold.¹⁴

So why do governments oppose the majority in the first place? The obvious answer in most other democratic legislatures would be that a member records its opposition when its interests are not satisfactorily met by a proposal. Since most policy solutions are not of a 'Pareto-efficient' nature (i.e. not all members in the legislature will be better off from the adoption of the decision), a certain percentage of legislators can always be expected to lose from the decision being passed and hence will vote against. In the Council, however, according to one practitioner interviewed, opposition is recorded '... to signal to the home governments that efforts have been made to uphold a position although the legislation may be adopted regardless'. This means that opposing votes do indicate the government's dissent from the proposed legislation in question. However, in a case where a proposal is of less salience to the national government, a Council member may decide not to state its preferences even if these are clearly not met by the legislation on the table. It would chose not to do so because being in opposition means the government is excluded from the negotiations on the majority agreement which is constructed and as the home governments may simply not pay attention whether their position was upheld when the legislation is of little salience. Consequently, the numbers in Table 4 are most likely downwards biased and only reflect the 'tip of the iceberg' in terms of how much disagreement over proposals is actually present in the Council negotiations. Still, our data cover enough time and enough recorded positions to draw inferences about *who* decides to record their

¹⁴ Please refer to Table 1 for an overview of the distribution of votes and the QMV thresholds throughout the Council's history.

oppositions *when*. This is in itself of great relevance in an evaluation of the impact of the 2004 enlargement.

The extremely low number of countries found to record the oppositions when legislation was contested in the 2001-2004 period may have increased considerably with the inclusion of a large number of new countries. Hence, Table 5 below reports the size of the contesting ‘coalitions’ in the post-May 2004 Council. From these results it appears as if the vast majority of opposing formations also consisted of one to three Council members in this period. Yet, at the same time it should be noted that 20% of the coalitions consisted of four member states or more, demonstrating that larger opposing coalitions do form in the current Council compared with the time prior to May 2004. A real bargaining scenario with apparent blocs of divergent interests may therefore be more apparent in the current Council than was the case in the EU of 15.

Table 5. Number of member states contesting legislation, May 2004-December 2006

Number of member states	Number of cases
1	31
2	38
3	12
4	9
5	7
6	1
>7	3

4.2 Who votes with whom?

Voting behaviour and the formation of coalitions indicate something about both the transaction costs included in the bargaining and the ability of the national constituencies to hold their governments accountable. For example, if coalitions are not stable over time and across a number of policy areas, negotiations become more cumbersome and costly in terms of time, resources and perhaps also policy impact. Furthermore, it is commonly acknowledged that democratic legislative processes allow constituencies to hold legislators accountable for the day-to-day politics of passing laws. Such accountability is normally ensured (at least in principle) by having legislators who pass policies according to defined sets of policy platforms. Policy platforms are made explicit in, for example, party manifestos and they serve as the basis for legislators’ campaigns; the constituencies can then reward or punish their elected representatives for how they pursue those.

Voting behaviour related to the adoption of new legislation is one method by which the constituencies can ascertain whether politicians are behaving according to their stated political objectives. Such argumentation is also relevant in the EU context, as the passing of legislation – even in the enlarged EU – requires the member governments to take a stand on regulatory and distributional policy issues. The mere scope of cooperation in many of the policy areas is evidence that the EU member states are not just negotiating within an intergovernmental construction. Hence, voting behaviour and coalition formations are issues that must be adequately addressed and reported upon. Yet, these issues are not always politically innocent and the relatively sparse insights into the Council meetings pose a problem for outsiders attempting to investigate the topic. So far no final conclusion has therefore been drawn on the Council’s coalition-formation processes. Even the various accounts provided by practitioners over the last decade do not appear altogether aligned. It still remains to be concluded whether the governments form stable coalitions over time and across policy areas or if negotiations are

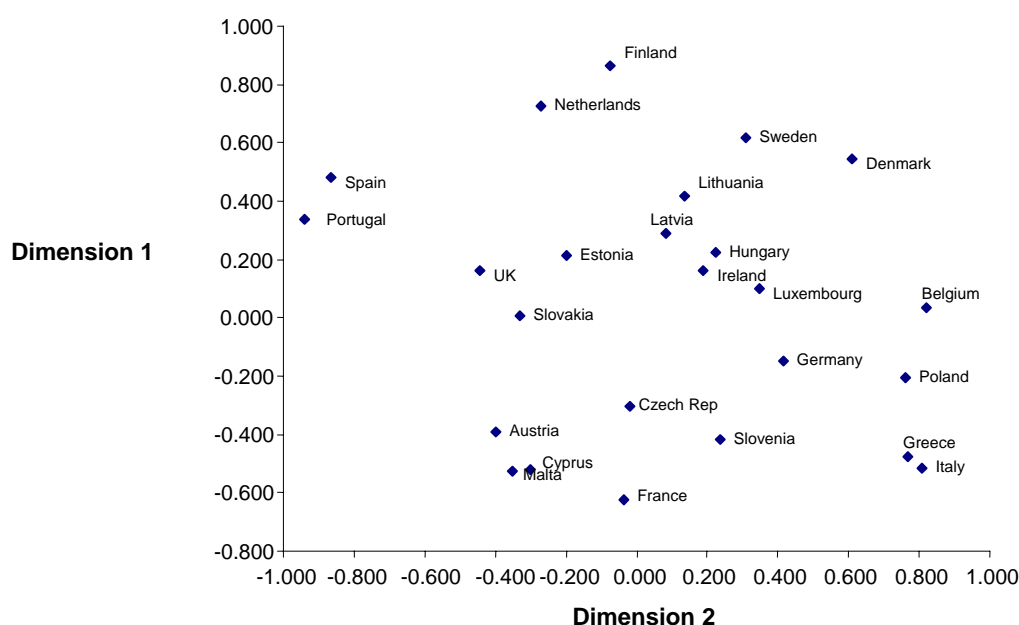
characterised by ad hoc groupings and more volatile preference configurations. Nevertheless, a few trends are still commonly acknowledged as revealing the basic characteristics of how some groups in the Council behave: as previously mentioned, large member states and northern countries have been thought to dominate both in the negotiation rounds and in the actual voting scenarios (Mattila, 2004; Hayes-Renshaw & Wallace, 2006). A redistributive cleavage and a grouping of free-market vs. regulatory members have also been identified in certain periods and particularly within specific policy areas (Zimmer et al., 2005; Thomson et al., 2004). Lately, and in the four-year period leading up to the 2004 enlargement, patterns of party political influence have also been detected, suggesting that the Council's composition of centre-left and centre-right governments may additionally play a role for the overall legislative output (Hagemann, 2007).

In order to investigate whether the opposing coalitions reported in Table 5 reflect a stable pattern in the voting behaviour, or if there is less certainty with regard to which member states vote together, Figure 8 presents a spatial picture of the coalitions in the current Council. The positioning of the countries in the figure are estimated based on the probabilistic, geometrical scaling method NOMINATE, which is a popular analytical tool for analyses of voting behaviour in parliaments (Poole, 2005).¹⁵ NOMINATE simply 'reads' the individual government's position on every single piece of legislation covered by the data and compares it to the full set of observations made about all the other governments' positions. Based hereon it produces a spatial 'map' of the governments' *observed* – rather than estimated – behaviour. The picture reflected in Figure 8 in this way indicates how often the governments vote together (or not) across the full range of policy proposals analysed. In other words, the distance between two Council members in the figure shows how similar their preferences are in terms of either supporting or opposing the majority on each of the adopted acts. To give an example, it can be deduced from Figure 8 that the Netherlands and Italy have not voted the same way on a number of occasions, whereas Greece and Italy must have voted similarly on most occasions.

It should be explained here that since Figure 8 shows the observed behaviour, 'Dimension 1' and 'Dimension 2' do not serve the same purpose as the usual x- and y-axes in most graphs, scatterplots or the like. Usually, these axes would be predefined categories with a set of values along which the governments could then be measured. Here the dimensions are instead scales of some sort of cleavages which must be interpreted according to how the actors are placed in the picture. Or, to put it differently, the NOMINATE method reverses the analysis of the governments' positions: it provides the results of how they have behaved and presents these estimations in a spatial picture like the one found above. It is then up to the reader of the picture to deduct what causes these results. In national parliaments the positioning of the actors is usually characterised by either socio-economic cleavages (i.e. the left/right dimension) or single issue politics such as environment or perhaps religion (though, this is most prominent in the US). In any case, the reason for the labels "Dimension 1" and "Dimension 2" is simply that NOMINATE does not provide the interpretation of the axes, but merely uses 'empty' scales ranging from -1 to 1 to position the governments along.

¹⁵ For similar analyses of behaviour in the European Parliament, see also Hix et al. (2007).

Figure 8. Coalitions in the Council, May 2004-December 2006



Note: The categorisations ‘Dimension 1’ and ‘Dimension 2’ are merely arbitrary indices ranging from -1 to 1 without any specific content. The NOMINATE scaling method that is used to produce the picture in Figure 4.1 represents the relative positions of the governments. Hence, the interpretation of the resulting picture could lead to specific categories, but these are not identified prior to the construction of the picture and thus the two dimensions cannot be named otherwise until this post-hoc interpretation has been carried out. Please see text below for more details.

So what does Figure 8 then show? Reading the dimensions one by one may help the interpretation: Starting with ‘Dimension 1’,¹⁶ it is clear that no ‘Northern versus Southern’ or ‘left versus right’ coalitions are apparent in the Council in this period. The Nordic countries are indeed found towards the upper extreme on this axis, however, since they are accompanied by the Netherlands and then immediately followed by Spain, Lithuania, Portugal and Latvia, no recognisable coalition patterns appear in that part of the figure. Moving towards the centre of the ‘Dimension 1’ axis, a group of the new members are found together with also the UK, Belgium, Ireland and Luxembourg. Hence, the new members have not formed a separate block on this dimension, such as was also concluded on the basis of the descriptive figures in section 3. Towards the lower part of the axis we see a combination of both old and new and central and Southern members placed closely together. However, an apparent lack of the Northern Europeans can be noticed. It therefore seems as if – very broadly speaking – the Central and Southern Europeans occupy the lower end of the figure whereas the Nordic countries (and the Netherlands) are placed in the most upper part. Still, most of the other countries’ positions present any suggestions of a distinct North-South divide with a high degree of irregularities. So the conclusion on this dimension must be that a few geographical clusters of countries can be detected, although this is not a strict North-South division as many of the accounts in the public debate and the literature would have us believe.

¹⁶ Dimension 1 has - for the information for the interested reader - a recorded classification rate (APRE) of 66% of the votes in the data set.

‘Dimension 2’ does not provide much information on its own,¹⁷ and no permanent coalitions can be detected along this dimension. Hence, turning instead to an overall reading of the picture with the combined results of the two dimensions, the reading of ‘Dimension 1’ above seems to gain slightly more support with regard to some countries’ geographical clustering. The distribution is certainly not complete, and the positions do not follow a North-South-East division as could have been the result from a combined reading of the two axes. However, the group of new member states grouped together in the middle – yet, accompanied by Ireland and Luxembourg – does add somewhat to the picture of tendencies towards geographical alliances. Still, Austria, Malta and Cyprus seem to form another small group just left of the centre in the bottom part of the figure, while most of the remaining countries are scattered around in the centre-right corner of the lower section.

In sum, it seems as if the inclusion of the 10 new member states has brought about interesting dynamics in the Council in terms of voting behaviour and coalition formation of both the old and new member states. Although there is some resemblance to a map of Europe in Figure 8 – and therefore the appearance that some governments form alliances somewhat related to a geographical pattern – the positioning of the countries is not as clearly defined as in the time prior to the 2004 enlargement by the accounts of any existing research (see section 2). On the other hand, it would have been surprising if the old member states had been left unaffected in their voting behaviour and if the new governments had simply taken up positions according to a North-South divide, a North-South-East cleavage or even a party political configuration as identified in the period preceding the enlargement. More time and a more established system may be needed in order for such patterns to emerge, if at all. Yet, together with the above findings regarding the individual governments’ level of recorded disagreement, it can be concluded that ‘old vs. new’ blocs are certainly not apparent in the current Council.

4.3 The role of the Presidency, the Council’s General Secretariat and the Commission

A very important finding related to the above analysis of coalitions in the Council is that the role of intermediary actors has increased considerably following the enlargement. This conclusion is drawn on the basis of all of the interviews conducted for this study, as well as the results presented in Table 6 below. The table shows the amount of legislation adopted at the 1st, 2nd and 3rd readings in the time prior to and following enlargement, and there is no doubt that the increasing figures for 1st reading adoptions also mean a greater reliance on the intermediary actors as brokers of agreements. These actors are commonly considered to be the country holding the Presidency, the Commission and the Council’s General Secretariat.

Particularly the Presidency is seen to have a much more important role now in preparing and co-ordinating the negotiations, given the increased number of parties. The emphasis on this role is especially apparent when taking into account the previously mentioned statements that a lot of the negotiating work is already done before parties even enter the meeting room (see section 2). It predominantly falls to the Presidency to find and co-ordinate policy positions prior to the actual negotiations. One observer explains this: “Negotiations now take place elsewhere, presidencies have bilateral contacts with people ... it all happens but it happens in a much more informal manner outside the meeting room, in bilateral or multilateral contacts... so the presidency has to go round and hear all the major member states and actually push them to see how far they will go and that helps to put together a compromise proposal... the bilaterals have, in a way, become more important than the plenary sessions.”

¹⁷ The amount of votes estimated by this dimension is only an additional 11% when the first dimension has been classified; see Appendix I for an explanation.

Similarly, the Council Secretariat has become more important in its role as a coordinator and in providing internal institutional support. Especially interviewees representing some of the smaller and new member states indicated that to them the Secretariat has become an important support in forming a policy position. A special section (referred to as the ‘dorsal’, or ‘backbone’) with responsibility for Co-decision legislation was created even before the enlargement and serves the purpose of coordinating and facilitating early agreements between the Council and the Parliament. Several interviewees from the Secretariat expressed that such facilities are now even more essential in order to ensure as smooth and efficient a legislative process as possible.

The role of the Commission is an issue which the interviewees proved to have very different views about. Some described the Commission as having gained considerably more influence now that a need for more guidance and brokering between a larger set of interests is required. Though, when investigating this argument, it appears as if such influence may not be apparent in the ministerial meetings, but rather takes place in between the meetings when policies have to be formulated and compromises have to be found. However, other practitioners have pointed out that this role has been attributed to the Commission for a considerable amount of time, particularly for areas falling under QMV. It has not been possible to explore or support either of these points in greater detail for the purpose of this report, however, there is certainly a need - and fortunately also available data - for a further study of the Commission. Still, it should here be noted that the policy output from the Council is obviously linked to both the administrative and political agenda of the Commission. One very apparent point which illustrates this dependency on the Commission is its recent strategy of introducing less legislation with the intention of dedicating more rigorous attention to the individual proposals. That the Commission has a mandate to make such a decision reflects the fact that this institution certainly plays a role for the decision-making and internal processes in the Council.

Table 6. Legislation passed at Council's 1st, 2nd and 3rd reading

	Jan 2001-April 2004	May 2004 - Dec 2006
Total co-decision	169	125
1 st reading	52	71
%	30.7	56.8
2 nd reading	92	50
%	54.4	40.0
3 rd reading	25	4
%	14.8	3.2

A last remark on the role of the intermediary actors is that both the figures reported in Table 6 and the statements made by the interviewees stress that the legislative process has not been prolonged after the enlargement with regard to the number of readings required. According to one inside observer this is the case especially due to an increasing tendency by the Presidency to push for adoption of legislation at the first reading. However, although more readings are not required before agreements can be made, it was at many occasions stressed that the meetings last longer, and that the legislative process may have been prolonged somewhat with regard to the time spend - rather than the number of readings - on each individual proposal. In fact, a concern has been voiced about a push from the presidency's side to speed up the legislative process and pass legislation at the Council's first reading. This might undermine the quality of the legislation adopted, it is argued. Such concerns were particularly expressed with regard to Co-decision legislation, where it was emphasised by officials that the logic of this procedure is, in fact, a two-reading process. While it made sense to introduce the possibility of a first reading

adoption for uncontroversial issues in order to speed up decision-making, a general trend towards such a process would in the long term be counter to the interest of the Council, it was explained. Member states can generally expect to have to concede on their positions if an effort is to consistently get a fast agreement. Rapporteurs and other representatives from the Parliament are quick to understand when a 1st reading agreement is pushed for from the presidency, and hence they can often successfully present a somewhat biased proposal which they know the presidency will have to present to the full Council as a final text. Therefore, while an emphasis on getting fast solutions may seem to advance the efficiency of the Council, such processes may not necessarily produce the most optimal policy compromise for the governments.

5. Changes across policy areas

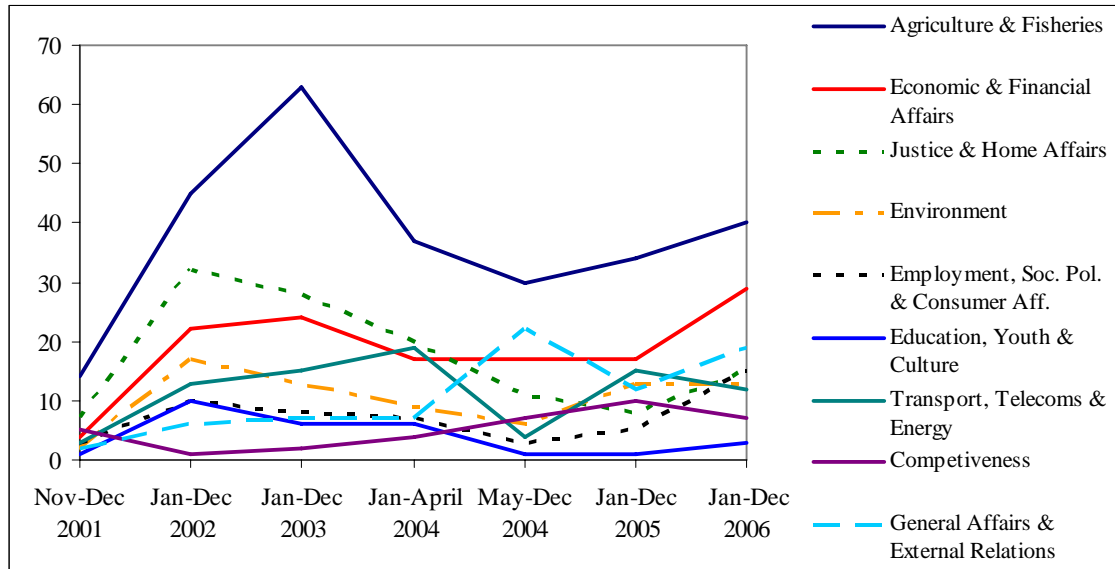
Having discussed the changes in decision-making in the Council overall, this section focuses on legislation passed within the respective policy areas. Due to the scope of the report, we only investigate the key findings related to general variances across the policy areas. In other words, although the data allow for further analyses of specific topics within the respective fields, this section establishes what implications the enlargement has had for more overall issues such as adoption rates, level of opposition and use of formal rules for passing legislation when looking across the different policy fields. Interestingly, a great degree of variation can be observed: while all areas have experienced an initial adaptation period since the enlargement, some have faced greater difficulties in ‘recovering’ to the same levels of legislation passed in years prior to the enlargement. The latter appear to be the ones with large proportions of legislation falling under the unanimity rule, whereas the ones traditionally falling under QMV seem to have returned to same adoption levels as prior to the expansion. The data also show a great variance in the level of opposition recorded from one policy field to another. Taking into account also the opposition voiced in the formal statements makes it clear that even policy areas that have unanimity as the dominant decision rule see legislation being adopted with a notable amount of recorded disagreement. The enlargement has further elevated these levels, and in sum, it can be concluded that the introduction of the 10 new member states have certainly had an impact on decision-making within the respective areas. It seems fair to say that the Commission’s conclusion (European Commission, 2006) that a policy gridlock has been avoided needs some clarification and elaboration when distinguishing between specific policy fields in the manner presented here.

5.1 Amount of legislation adopted per policy area

Figure 9 presents a first important indication of how enlargement has affected decision-making within the respective policy fields. It shows the amount of legislation adopted per policy area in the period before and after May 2004. The graph suggests that something clearly changed around the time of enlargement: out of the nine policy areas, all but two (Economic & Financial Affairs and General Affairs & External Relations) experienced a drop in the amount of legislation passed in the May-December 2004 period compared to the periods preceding enlargement. And for the areas of Agriculture & Fisheries, Justice & Home Affairs, Environment, and Transport, Telecommunications & Energy, these were rather significant decreases. Employment, Social Policy and Consumer Affairs also seems to have been affected in the period after May 2004, but this policy area has more than ‘recovered’ and actually shows an adoption rate for 2006 that exceeds all of the preceding figures. By contrast, the other areas have not yet reached the same levels as prior to the enlargement.

In a clear departure from the general pattern, the policy area of General Affairs and External Relations shows an impressive increase just after the enlargement. This result may be related to the fact that a large number of the 41 pieces of legislation that had to be re-adopted in order to accommodate the 10 new members were categorised to fall under this policy area. Also the observed increase in the graph for the area ‘Competitiveness’ may be related to the passing of proposals that were renegotiated in order to include the new members. However, the highest adoption rate for this area was not immediately following the enlargement, but rather in 2005 after the initial legislative ‘accommodation’ period can be thought to have passed. It may therefore be that together with the areas Economic & Financial Affairs and Employment, Social Policy & Consumer Affairs, these areas have actually experienced a general increase in the legislative activity due to enlargement. As soon as data become available for the first months – or the full year – of 2007, it will be interesting to see whether this trend continues.

Figure 9. Passed legislation per policy area, September 2001 to December 2006



Each of the observations from Figure 9 seems to suggest that although a policy gridlock may not exist in terms of the total volume of adopted legislation in the period after enlargement, some policy areas have experienced a drop in ‘productivity’. Both the data and the findings from the interviews relate this tendency to areas that predominantly fall under unanimity. It was observed by several of the interviewees that agreement in some policy areas, such as Justice and Home Affairs as well as in General Affairs & External Relations, has certainly become more difficult. These statements are also clearly supported by the data for Justice and Home Affairs presented in Figure 9. The contradicting results reported for General Affairs & External Relations in the figure can be clarified with the explanation that very little legislation had been recorded under the General & External Relations category prior to the enlargement, but may instead be found under other policy areas that an act may also relate to. Therefore, although the data present the correct figures for how much legislation was actually recorded under this policy area, the experience by the practitioners may still reflect a correct picture of the negotiations within the area. Please refer to Appendix I for an elaboration of how legislation is categorised into policy areas.

In addition to the wide variation found in adoption rates reported across the different policy fields, our material suggests that it may be reasonable to investigate whether a policy gridlock has in fact occurred within some policy fields in terms of policy *quality* and not only policy *quantity*. As shown above, areas that traditionally include a large amount of legislation falling under the unanimity rule are challenged by the need to accommodate the increased number of interests. Many of the interviewees observed that this phenomenon resulted in a significant reduction in the details of the policy content. While there is not necessarily a correlation between the detail of proposed legislation and the quality of its content, as mentioned in section 3, some interviewees argued that the quality of legislation might be affected due to the fact that there is now less time to spend on the respective proposals.

5.2 Voting and recorded disagreement per policy area

Besides the quantity of legislation adopted in each policy field before and after the enlargement, another interesting topic to explore is whether the level of recorded disagreement varies from one area to another. Since one of our main findings in section 3 was that the governments

increasingly rely on the opportunity to record their opposition in formal statements, it seems relevant to investigate whether this phenomenon is limited to only a few policy areas or is apparent in all of them. The possibility that enlargement may also have affected this issue to varying degrees across the policy fields should also be explored.

Figure 10 below provides a general overview of the amount of opposition registered through voting, abstentions, formal statements and the total number of oppositions per policy area before the enlargement. Two findings stand out: First, it seems that there is a considerable difference in the level of opposition across the respective policy areas. Agriculture & Fisheries is by far the area with the most recorded oppositions, but several other areas also show a notable amount of recorded oppositions, particularly in light of their respective adoption rates (see Figure 9 above). Second, Figure 10 suggests that different means of voicing disagreement are used differently across policy areas. For example, whereas Agriculture & Fisheries registered a total of 204 oppositions (when adding the figures for ‘Abstentions, ‘Formal statements’ and ‘Opposition through voting’), only 69 of these came in the form of direct votes against the majority. Abstentions were recorded on 38 of the acts adopted within this policy area, and formal statements were recorded 79 times. A somewhat similar picture is given in the area of Economic & Financial Affairs – although on a completely different scale – with 18 acts including opposition through voting, 30 acts adopted with formal statements and only a very low number of abstentions. For Transport, Telecommunications and Energy, however, the record is rather different: here the largest proportion of disagreement is recorded as oppositions through voting (24 acts), whereas formal statements come only second with a total of 15 and abstentions are recorded on 9 acts. Hence, the option of using formal statements as a means of opposing the majority is not always the dominant alternative, despite the impression created by data presented in section 3. Nevertheless, it definitely seems to be a popular measure for voicing opposition in the majority of the policy areas.

Figure 10. Oppositions, abstentions and formal statements per policy area, September 2001-April 2004

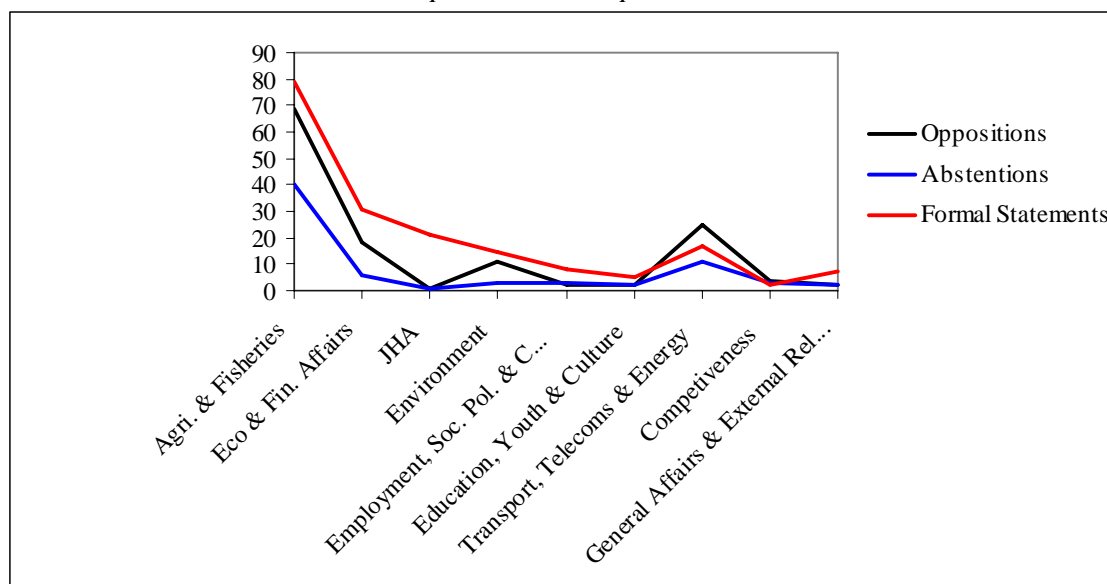
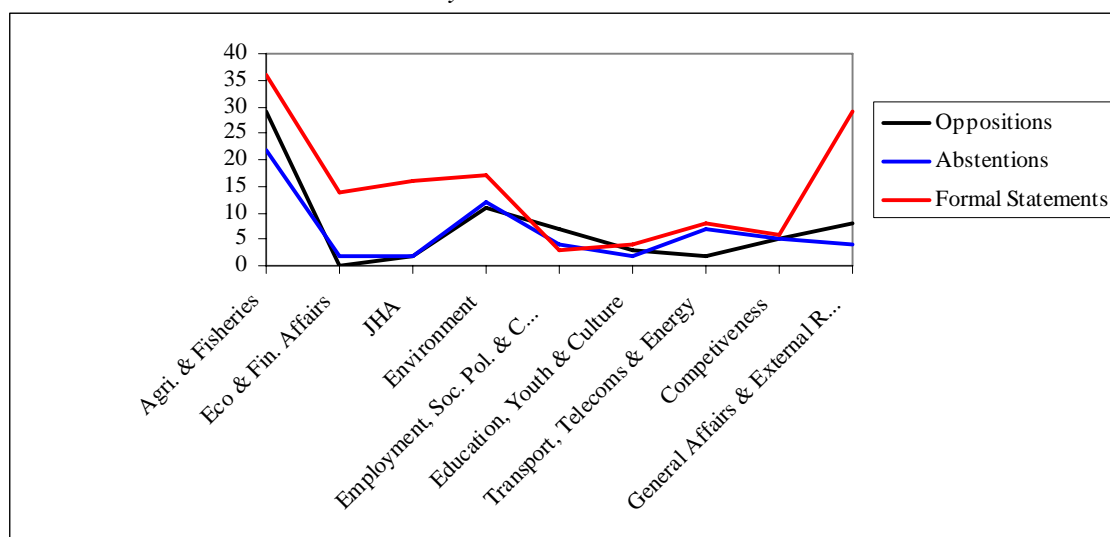


Figure 11. Oppositions, abstentions and formal statements per policy area, May 2004-December 2006



Turning to the period after enlargement, Figure 11 shows a rather dramatic change in the use of formal statements and opposition through either direct voting or abstention. The first observation to make in comparing Figure 10 and Figure 11 is the difference in the values on the y-axis: it is immediately clear how much the opposition rates have been lowered in the area of Agriculture & Fisheries, which lead to ‘inflation’ of the values on the y-axis in the figure reporting the data for the period prior to the enlargement (Figure 10). The second-most notable change from Figure 10 to Figure 11 is in the use of formal statements: the difference between the amount of recorded formal statements and opposition voiced through voting has increased considerably in some areas, particularly Justice & Home Affairs and General Affairs & External Relations. Of course, these areas customarily pass legislation by unanimity and, hence, opposition through voting or abstention is usually not recorded in these areas. What is interesting from these figures, however, is that opposition through formal statements is clearly recorded following the enlargement. Unanimity does not necessarily indicate that the Council has reached a *consensus* in which all governments have adapted to a common, homogenous set of preferences. Rather, it seems to be a game of *compromise* bargaining, with the formal statements providing the possibility to signal to external actors that an alternative position was held by a single or number of governments, without those actually having to make the drastic step of vetoing a given proposal. Such behaviour was already noted in section 3, but the increases in the graphs representing the specific areas of Justice & Home Affairs, General Affairs & External Relations as well as Economic & Financial Affairs¹⁸ further support the importance to be attributed to the use of formal statements.

From Figure 11 it can furthermore be observed that some of the areas that fall predominantly under QMV have seen a change in how contesting positions are recorded. For example, the area of Transport, Telecommunications & Energy, which previously had a much higher rate of disagreement recorded as opposition through voting, now seems to have reversed that pattern to a much higher reliance on formal statements and abstentions. Conversely, the area of Employment, Social Policy & Consumer Affairs has now a higher rate of opposition recorded as contesting votes and a lower level of formal statements and abstentions. Prior to enlargement,

¹⁸ Economic & Financial Affairs are mentioned, although this area already had a high level of recorded formal statements prior to the enlargement.

these categories were ranked in reverse order with the greatest incidence of opposition voiced as formal statements, and a very low level of opposition expressed either via direct voting or abstention.

The reason why Agriculture & Fisheries has seen a considerable reduction in the level of opposition is most likely related to the lowering in the rate of passed legislation within this area after the enlargement (see Figure 9). Still, Agriculture & Fisheries seems to have maintained the same rate of opposition through voting, abstentions and formal statements issued prior to and after May 2004. In this most contested area (in absolute terms), formal statements have been recorded 36 times following enlargement, opposition through voting (the black line) 29 times and abstention 21 times. In the area of Environment, however, a considerable rate of all three forms of oppositions can be observed, representing an increase of opposition since enlargement. This result is particularly striking in light of the reduced amount of legislation passed in this area, which was also remarked upon by many of the practitioners involved in policy-making in this area.

Figure 12. *Oppositions per country, per policy area, May 2004-December 2006*

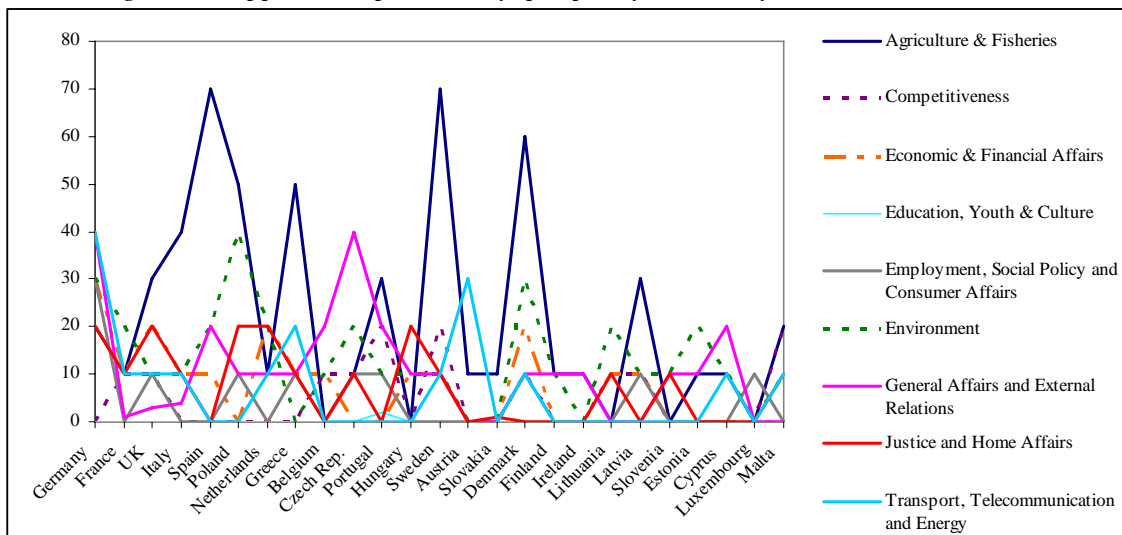


Figure 12 further divides opposition per policy area to also include divisions per country. It should be stressed that the figure is not intended to be used for a detailed analysis of each graph, but rather is included to give a general indication of the fluctuations of opposing votes by member states across the different policy areas. Against this background, two interesting findings are evident: Although there is considerable variation in the Council members' frequency of opposition within the various policy fields, all 25 governments tend to oppose within certain policy fields and refrain from opposing in others. This is particularly apparent in Agriculture & Fisheries, and to a lesser degree in Justice & Home Affairs, Transport, Telecommunications and Energy, General Affairs & External Relations and Environment.

The second interesting observation from the figure is that none of the countries seems to consistently dominate throughout all policy areas in terms of recorded opposition. Germany has a relatively high opposition rate in a few of the areas, but none of the Council members is found to oppose in all areas. Apart from Germany, all countries seem to generally vary in the frequency with which they register opposition across the policy fields. Hence, some of the assumptions expressed in the current debate concerning certain countries' general predisposition to take an opposing position warrant closer scrutiny. For example, the assertion that the UK and

Poland are always present in the group of opposing countries appears to only hold in certain policy areas.

The results presented in Figure 12 further show that the variance in the levels of opposition across policy fields may correlate with the fields in which a country has vital interests. The field of agriculture is the most explicit illustration of this case: High levels of opposition are recorded among the producers especially in the South (Spain, Italy, Poland and Greece) and in the North (Sweden and Denmark). Similarly, Germany frequently opposes legislation in Transport, Telecommunications & Energy. While it is somewhat more difficult to draw conclusions in some of the other areas, e.g. Justice & Home Affairs, it is nevertheless interesting to detect such patterns.

As a final remark it needs to be pointed out that the variations in opposition across policy areas is presented in Figure 12 presented in the form of absolute figures. Since the results are highly correlated with the amount of legislation adopted within the respective areas, the policy areas with most legislative activity are also the ones with the highest amount of legislation passed with recorded opposition. This means that, although Agriculture & Fisheries is certainly the area with highest level of recorded opposition, it does not necessarily have the highest level of disagreement when considering the amount of legislation adopted. Therefore, when making comparisons of the relative distribution across the policy areas, the relative adoption rates in each area also need to be taken into account. Figure 12 qualifies the finding from section 3 that the large and medium-sized member states tend to oppose more frequently than the smaller ones by specifying that this is particularly due to their stronger inclination to oppose legislation in the policy areas of Agriculture & Fisheries, General Affairs & External Relations and Justice & Home Affairs.

In sum, it is evident that the level of contested decisions varies widely across the different policy areas, but also that enlargement has had a different impact on the respective policy fields. Whereas all areas have experienced a decrease in both the adoption rates and the level of contest immediately following the enlargement, some areas seem to have returned to almost the same levels of 'productivity' as prior to May 2004. Still, particularly the areas falling under unanimity seem to have been challenged by the introduction of the 10 new member states when considering both the decrease in the amount of passed legislation and the elevated levels of contest recorded in the form of formal statements. Given our finding illustrated in Figure 12 that governments vary from one policy area to another in how often they decide to oppose a policy proposal, it was made even clearer that it is necessary to distinguish between policy areas when investigating both the general decision-processes in the Council as well as individual government's behaviour.

6. Conclusions

The institutions, governments, politicians and officials that make up the unique political system of the EU are fast approaching a crossroads. The reflection period that followed in the wake of the negative French and Dutch referenda is coming to an end, and it is increasingly apparent that despite the difficulty of the task of finding a consensus on the way forward, a move towards solving the current reform impasse is sorely needed.

This report seeks to contribute to the current debate by presenting the results and analysis of a large body of data and insights gleaned from interviews with over 50 practitioners involved in decision-making in the EU's most important legislative institution, the Council of Ministers. The intention has been to establish the current state of affairs in the Council based on facts and figures. No in-depth analysis has been presented to date that draws from both quantitative and qualitative material in this manner, and the relatively long period covered by our data allows for specific investigations into the implications of the 2004 enlargement for the Council's internal processes.

Some evaluations of the integration of the new member states into the respective EU institutions have been carried out by both by the Commission and external observers. The evaluations of the enlargement's impact on the internal working processes in the Council, in particular, however, have relied almost exclusively on qualitative descriptions of the changes. These evaluations have concluded that the integration is running relatively smoothly and that the expansion of the Council has by and large been found to be a success. The results presented in this report do not dispute this interpretation of the current state of affairs as such, but through a presentation of quantitative data and first-hand accounts of the changes that have occurred in the expanded Council, a more nuanced evaluation is offered.

6.1 Summary of the findings

Although the Council has managed to continue to adopt legislation at an impressive rate, we find that there have been significant changes to the internal processes and legislative procedures in the Council since the enlargement of May 2004. Many of these changes are the consequence of the increased number of interests that need to be accommodated in the legislation, a general formalisation of the meetings and an emphasis on high 'productivity' in terms of short legislative sessions and limited negotiation time spent on individual proposals. The number of pieces of legislation adopted at the 1st reading in the Council is gradually increasing, and in the view of many of the insiders interviewed, this tendency is likely to continue. The country holding the presidency at any one time especially feels strong pressure to reach early and swift agreements.

The period immediately following the enlargement saw a significant drop in the amount of legislation passed, but the total number of acts adopted in 2006 has increased to almost the same level as prior to enlargement. This may be explained by the increase in the percentage of legislation passed under the co-decision procedure or adopted by QMV.¹⁹ In 2006, more than 40% of legislation passed fell under co-decision, compared to 34% in 2005, and only 26% in 2004. The use of the QMV decision rule (which in some cases is also applied to non-co-decision legislation) has reached an even-higher level and covered more than 53% of the legislation adopted in 2006.

¹⁹ These two phenomena are of course somewhat related since co-decision by definition includes the QMV adoption rule. In some cases, however, legislation falling under either of the other procedures (consultation or cooperation) may also be passed by QMV. See section 3 for details.

Contrary to what was expected to result from the sizeable increase in the number of representatives around the negotiation table, official disagreement in voting situations following enlargement has not been found to increase. There must then be other measures in place to explain the smooth legislative process, since the representation of more divergent preferences surely cannot have led to a decrease in the level of disagreement in meetings. One such measure is the use of formal statements, which are included in the official Council decision records, to signal a country's reservations or even outright opposition to an act, even in cases where this was not expressed through voting. Hence, while the Council records now show an even-greater degree of consensus as far as voting behaviour is concerned, the governments are at the same time able to ensure the recording of their political positions in these formal statements. The use of formal statements has risen considerably since enlargement, and the proportion of legislation adopted in 2006 with one or more governments voicing reservations either through direct voting or in the formal statements amounted to a surprising 45%. Adopting legislation in the Council hence seems to be a two-sided political game that is increasingly accepted even in the official records.

Section 3 presented descriptive statistics on individual government's behaviour and looked into the differences between, inter alia, the following groupings of countries: 1) large, medium and small members, 2) new and old members, and 3) Northern, Central, Eastern and Southern members. The adaptation to the work processes of an EU of 25 was reflected in the data, which showed that the old members have gradually decreased their opposition rates, whereas the new members have conversely increased theirs since May 2004. The results for 2006 revealed that the two groups now stand on an equal level, indicating that the distinction between old and new is largely irrelevant on this account. The grouping into large, medium and small members showed that the largest members clearly dominate in terms of having the highest opposition rates prior to enlargement, while the medium-sized and small members recorded a significantly lower level of recorded opposition in this period. Two outliers stood out in the figures, namely Denmark and Sweden, but the distribution of opposition was nevertheless clearly biased towards the large countries. Following the enlargement this situation changed drastically. The months immediately following May 2004 continued to see a larger opposition rate by the biggest members, but already in 2005 did this role shifted to the medium-sized members,²⁰ only to be further accentuated in 2006. None of the alternative groupings – such as for example between Northern, Central, Eastern and Southern members – reflected stable cleavages over the years covered by the data.

The geometrical scaling method technique used in section 4 further confirmed the last point above, namely that a distinction between old and new members cannot be found in the Council. The findings in this section also established that the patterns detected in the other groupings were in fact not due to a permanent coalition structure: the observation that the medium-sized member states have taken an opposing position most frequently than the others since the enlargement does not mean that they have opposed the same policies, thereby forming a separate bloc. Rather, from the analysis in section 4 it became clear that the enlargement has led to somewhat unstructured alliances, particularly when considering the finding in the recent literature of a North-South coalition before the enlargement. We did not detect a North-South division in our data after May 2004, although a few clusters of countries based on geographical location could be observed.

The 2004 enlargement has had a rather different impact on the various policy areas. This was made clear in section 5, in terms of the amount of legislation adopted per year, the number of

²⁰ Particularly the group categorised as 'Medium 1' in Figure 5 and which included the Netherlands, Greece, Belgium, the Czech Republic, Portugal and Hungary.

contested decisions as well as in the variance of how the governments used either direct voting or formal statements to voice disagreement with a policy proposal. Most areas experienced a rather significant drop in the amount of legislation adopted immediately following enlargement, yet, while this has been only a temporary reaction in a large number of the areas, some – and particularly the area of Justice & Home Affairs – have still not returned to the same adoption rates as prior to enlargement. Both the data and the interviews relate the slowdown of the adoption rates in these areas to the decision rule: negotiations have become more cumbersome where legislation is predominantly passed by unanimity (particularly in Justice & Home Affairs and also General Affairs & External Relations), whereas less discrepancy can be observed from the time before to the time following the enlargement in areas that fall under QMV. The increased rates of the total QMV legislation adopted per year (reported in section 3) may be a reaction to this, as the institution seeks ways to avoid policy deadlocks. Still, the figures in section 5 emphasise the need to pay close attention to the individual policy areas, and not just the total amount of legislation adopted each year, when evaluating whether deadlocks have indeed occurred or not.

6.2 Is Council decision-making efficient?

Despite the substantial body of data and qualitative findings presented in this report, drawing a conclusion on the controversial issue of whether the Council is an efficient institution is a difficult matter. ‘Efficiency’ is a normative concept (who can say what efficiency really means in any context?) that requires strict definitions in order to serve as a benchmark in evaluations and analyses. Nevertheless, since the matter is of great importance – and highly disputed – in the current debate on the need for institutional reform, we suggest approaching the topic by distinguishing between two criteria for efficiency. The first is a criteria of efficiency in terms of *quantity* (i.e. policy output). The second is a criteria of efficiency in terms of *quality* (i.e. policy content).

Given the *sui generis* nature of the EU as a political system, it would be futile to compare the Council with either domestic institutions (parliaments) or other international organisations. Rather, any assessment of the Council’s efficiency must in fact be made against the institution itself. The 32 months prior to enlargement can serve as the standard of comparison for the efficiency of the Council in terms of policy output for the 32 months after enlargement. This is not meant to imply that the Council was necessarily an efficient institution before the enlargement, but some sort of benchmark is needed for such a discussion and in the absence of a better empirical alternative, this method seems the most convincing. Other caveats should of course also be acknowledged, such as the fact that internal administrative and domestic political agendas vary and thus one should not expect a similar level of output every month or even every year. Nevertheless, these anomalies should be sufficiently allowed for, since the period covered by our data is long enough to balance out most such fluctuations.

Regarding efficiency in terms of quantity, the results summarised above give mixed evidence as to whether the Council’s ‘productivity’ level has really been left unaffected, as is often stated. While the total amount of legislation passed in 2006 reached a level almost comparable to the years before enlargement, the quantity of policies passed within the respective areas certainly varies. In fact, the data and interviews used in this study could indicate that a policy gridlock may have occurred in certain fields; those areas falling under the unanimity rule particularly seem to have experienced a change in the adoption rate, a point echoed by many of the interviewees. To be specific, the areas of Justice & Home Affairs and General Affairs & External Relations appear to face great challenges in constructing agreements in a 25 (now 27) member Council. The data reporting on both the duration of meetings, the number of negotiation rounds on individual proposals as well as the amount of legislation passed since

enlargement within these policy areas reflect a more cumbersome legislative process. On the other hand, the data covering the areas falling under QMV, such as Environment and Transport, Telecommunications and Energy, showed that these areas have in 2006 managed to more or less return to their adoption rates prior to enlargement. In fact, for the area of Employment, Social Policy and Consumer Affairs, the post-enlargement period has even seen an increase in the amount of legislation adopted. But even within these areas, it was found that negotiations generally take longer and have become more formalised, though this leaves little time to negotiate on individual acts due to the large number of representatives present in the meetings.

The second criteria, regarding the quality of the passed legislation is obviously much more difficult to assess objectively. In fact, we are not able to present any supportive data or objective observations for a strong conclusion on this matter within the frame of this report. Nevertheless, we deem it important to keep the consideration of quality of legislation in mind, and can at least report the findings from the statements made on the topic by the practitioners in the large series of interviews conducted for this study. These sources suggest that there may be reason for concern regarding the issue: As mentioned in section 3, negotiators experience agreements being reached on the basis of a lower common denominator since the content of individual proposals must now accommodate a more diverse set of interests. Especially legislation falling under unanimity has become more cumbersome after the enlargement, and may more often than before satisfy only parts of the preferences the member states bring to the negotiation table. As a consequence, policy proposals include considerably less detail and leave a greater scope to the national levels in the implementation phase. Concerns were also raised about the trend toward first reading adoptions by the Council, which was thought to result in bigger compromises being made by the negotiating parties.

In sum, an impressive amount of legislation has been processed and adopted by the Council since the 2004 enlargement. The institution seems to have almost fully ‘recovered’ from the significant increase in the number of actors involved in the internal decision-making processes since 2004 in terms of the total amount of legislation passed per year. Yet, further challenges present themselves than what is reflected in the general adoption rates. These challenges raise important questions with regard to both the efficiency of the institution in terms of producing robust, high-quality legislation and the effective functioning of individual policy areas. The next section discusses what the Constitutional Treaty may - or may not – change in this respect.

6.3 What would the Constitutional Treaty change?

The proposed Constitutional Treaty includes a number of important reforms with direct implications for the issues addressed in this report. While the Treaty obviously consists of many more articles than those concerned with the Council’s decision rules and legislative procedures, these are the ones which have received the most attention in the debate on institutional reform, and also the ones we will focus on here. The most notable changes proposed in the Treaty are the changes from the complex system of a triple majority rule to a simpler double majority rule, as well as the extension of qualified majority to cover a number of additional articles within certain policy areas. The following discuss each of these issues in turn, based on the results from the previous sections.

The introduction of the double majority voting system (Article I-25 of the Constitutional Treaty) comprises a dramatic switch (at least on paper) from the triple majority rule described in section 2. While the current rule includes a threshold for weighted votes of 72% (232 out of 321 votes are needed), a simple majority of member states (i.e. at least 13) and 62% of the total EU population (i.e. 282.7 million), the proposed double majority rule would include a majority requirement of 55% of the member states and 65% of the population. Thus, while external

observers may still find this rule rather cumbersome, it clearly implies a simplification of the decision rule.

One of the reasons for the proposed double majority rule was to avoid an increase in the formation of blocking minorities in the enlarged Council, a scenario which was much predicted and greatly dreaded before the enlargement. As we have seen in the results presented in the previous sections, the level of contested decisions has indeed been elevated since the enlargement. However, this has not been in the form of opposing votes, but rather through an increased reliance on voicing opposition through formal statements following the adoption of a decision. The amount of legislation contested through direct voting has remained at the same level as prior to enlargement, although the data did report a tendency to larger ‘coalitions’ of opposing countries being formed now than before 2004 (see section 4). Yet, the percentage of legislation opposed through either formal statements or direct voting is considerably higher, with a total 45% in 2006. As discussed in section 3, the reason why the Council members turn to the formal statements is to have their positions recorded without actually hampering the passing of legislation. Therefore, switching to a decision rule of a double majority rather than the current triple majority may allow for more of these oppositions to be voiced through direct voting rather than merely in the formal statements. In other words, a consequence of introducing a lower threshold may not be an actual increase in the amount of legislation blocked, but could instead be a more ‘honest’ and transparent voting scenario where countries are able to record their position in voting situations without the pressure and concern of causing a situation similar to the dramatic veto under unanimity. Many of the practitioners interviewed supported this analysis as they attached mainly symbolic value to the proposed reform in terms of the implications for policy outputs. Rather than a ‘revolution in Council decision-making’ – the term officially coined for the reform by the institutions²¹ – this simpler decision-making rule could be a step towards a higher level of transparency.

It has further been argued that the double majority implies a major power shift in the decision making process by giving more weight to the bigger member states. While it is true that the rule favours bigger members with larger populations to some degree, this observation may not indicate any significant changes in reality. Rather, our finding in section 4 show that a new grouping of medium sized member states are equally dominant to the larger members. By introducing a large group of medium and smaller states, enlargement has considerably shifted the balance of power between the members. It is therefore not possible for the large member states to dominate negotiations similarly to prior enlargement. This is underlined by results from the interviews which expressed the observation that big states such as France and Germany, which were previously to be seen in the drivers seat for integration, have become more ‘sensitive’ and defensive. Our results also showed little evidence of any large versus small coalitions emerging in the enlarged Council. As a consequence, while the double-majority rule may return some weight back to the larger members, it is unlikely that it can seriously diminish the role of the increased number of medium sized countries.

The planned extension of QMV to cover more areas, on the contrary, has been emphasised by all interviewees as a crucial change which would greatly change decision-making. The draft Treaty proposes the extension of QMV to 23 policies which previously fell under unanimity, as well as an introduction of 19 new policy areas to also be covered by this decision rule. Given that we have found that policy areas falling under unanimity on the whole seem to be hampered more by the recent enlargement(s) than those under QMV, we can conclude that any extension of QMV would most likely speed up the legislative process as well as enable a higher adoption rate than is currently observed. However, as was also made clear in our results, extension of

²¹ See http://europa.eu/scadplus/constitution/doublemajority_en.htm

QMV may imply a push for more first reading adoptions and, of course, the possibility that a group of Council members will not have their preferences met by a given piece of legislation. This latter point is made clear in section 4 where it shows that more oppositions are recorded under QMV than under unanimity even when the formal statements are taken into account. By definition, QMV allows for oppositions to be recorded to a wider extent²² than the unanimity rule which somewhat ‘suppresses’ the governments’ ability to do so. An extension of the QMV rule should therefore not only be evaluated on the basis of the possibilities for increasing the amount of legislation passed, but must also consider the consequences of a possible effect for the quality of a policy consensus.

The extension of QMV is limited to certain policy fields, which – as we learned in section 5 – should be taken into account separately. The majority of changes fall under the policy area of Justice & Home Affairs, a policy area where major difficulties have been noted in our data since enlargement. Our findings in section 5 show that there were changes both regarding the policy output as well as the level of contested decisions in this area. Numerous interviews with practitioners and comments from policy experts regard the changes envisaged in the Constitution as crucial in resolving the current difficulties of finding agreement. As above, however, a concern for the content of policy agreement rather than solely the quantity of legislation of course needs to be kept in mind when considering these views. Since the findings in section 3 showed that there is a tendency – particularly from the Presidency – to push for early agreements of matters falling under QMV, any consequences of introducing a pressure on member states to make compromises early on in the negotiation process - rather than taking the time for more in-depth negotiations - should be carefully considered.

Other policies that would be moved to QMV, or where new articles would be introduced and covered by the QMV rule, include the following areas: 1) General Affairs & External Relations; 2) Economic & Financial Affairs; 3) Employment, Social Policy & Consumer Affairs; 4) Transport, Telecommunications & Energy; as well as 5) Education, Youth & Culture. Apart from the fields of Economic & Financial Affairs and Education, Youth & Culture these are all areas in which we have found considerable decreases in policy output in the period immediately following the 2004 enlargement. While some of these areas seem to have already ‘recovered’, others have not quite reached the levels of policy adoption prior to enlargement but could be expected to do so if more policies were moved to QMV. Still, some of the issues that have proved most controversial since enlargement, such as the services directive and VAT negotiations, would not have been moved under QMV with the new treaty. Despite being characterised as an increasingly problematic policy area by practitioners, we have observed a rather impressive increase in the adoption rate of legislation for General Affairs & External Relations. A move to more QMV would most likely even increase this trend.²³

Beside an extension of the QMV rule, the Constitutional text also stipulates an extension of the co-decision procedure. Introducing the European Parliament into policy areas where it has so far had no real power, could lead one to assume that the policy process would become more time consuming and perhaps more cumbersome. Our results in section 4 showed, however, that this is not necessarily the case, at least not in terms of the duration of the legislative process. The

²² QMV includes, of course, both the opportunity to oppose through voting, through abstentions and through formal statements.

²³ As explained in Section 5, the classification of policies under General Affairs & External Relations seems to have changed somewhat after enlargement, and we are therefore careful not to draw any extensive conclusions in this area about the variance in the adoption rate from before to after the enlargement. It appears as if more policies are now classified as General Affairs & External Relations, whereas some of these policies would perhaps have been classified under other areas before the enlargement depending on which area(s) the policy content would also be related to.

data showed an increasing tendency to aim for first reading agreements and hence a great emphasis on a smooth and (relatively) quick legislative process. It also showed that the temporary decrease in policy output for co-decision legislation in the years 2004 and 2005 has been followed in 2006 by an increase that even superseded the pre-enlargement levels. The findings therefore indicate that an extension of the co-decision procedure may not necessarily cause a prolongation of the legislative process. Nevertheless, the issues raised above about other challenges that policy proposals adopted at an early stage may face are still valid.

As a last point we would like to turn to an issue which is somewhat more political than merely a ‘weighing’ of the likely implications of the Constitutional Treaty against our findings in the previous sections. As we have showed, enlargement has brought about also important atmospheric changes related to the work processes and conduct of negotiations in the Council. It was reported that our 52 interviewees (though, of course mainly the interviewees from the old members commented on this) have experienced an increasing impersonality in the style of the meetings. The legislators do no longer necessarily know each other, let alone are able to connect across an increasingly longer negotiation table. Some observers therefore emphasise the increasing tendency towards ‘statement reading’ in the Council formations rather than actual negotiations. This has been seen as one of the reasons why negotiations have now moved elsewhere. While institutional reform could do little to address these issues, it has been argued that resolving the ‘constitutional crisis’ would give new impetus to the common European ethos behind integration, as well as pushing some actors out of the current defensive behaviour in negotiations, and prevent others from having an explicit negative attitude towards further integration. This is clearly a somewhat ideological argument. Nevertheless, in addition to the above predicted consequences of the Constitutional Treaty - if it was to be adopted in its current form - it might be true that the impact of reform could have an equally important effect through its symbolic value and on the political mood amongst policy actors.

6.4 Remaining issues to be explored in future research

This report presents the basic findings from our data and interview material with regard to the general changes in Council decision-making since the 2004 enlargement. As discussed, these findings are essential for establishing and evaluating the current state of affairs as well as for making an informed analysis of likely future political scenarios. However, the topics we have covered here by no means exhaust the issues that should be taken into account in the debate on future institutional reform and on the general topics of efficiency, policy impact, accountability and transparency of the EU’s most important legislative institution. The data and interview material we have drawn on in this study include information on a large number of other issues that also deserve closer scrutiny by politicians, officials, academics, and external EU observers at large. In our view, the following five topics merit further study in relation to the current debate:

1. More differentiated analyses according to policy areas.

Section 5 provided key results with regard to general variances across policy areas on a number of issues; several topics still need to be investigated in a comparative manner between the different policy fields. Research projects within individual fields have started to emerge in the literature (e.g. Van Schaik et al. 2006; Guild & Carrera, 2005), but detailed analyses of cross-sectoral trends should also be carried out, particularly when considering the elaborate flow of policies between the Council’s different sectoral entities. The data set used in this report contains information on a number of policy-specific issues and a consistent update of the data set will allow for in-depth analyses of the decision processes across these respective areas and across a large number of years.

2. The use of formal statements.

The importance we – and our interviewees – have attributed to the two-sided game that is apparent in the Council’s decision records in terms of the possibility a government to voice its position not only through voting (under QMV) but also in formal statements, raises a number of questions with regard to the transparency and efficiency of the current legislative procedures. Unlike most other legislatures, the Council members do not pass policies according to a set of policy preferences publicly announced to the full population affected by these policies. It is thus often difficult for the constituencies to have a clear overview of all governments’ positions on a specific policy issue. As a result, the transparency of the Council has been, and remains, a much debated issue. The increasing tendency by governments to use formal statements instead of voting could be regarded as even increasing the problems of transparency, as it may encourage policy-makers to hold a two-sided position with respect to European policies. One position may be their ‘Brussels position’ whereas another is used to signal a political message to their home constituencies. Our findings of how the Council members use voting and formal statements need further enquiry in order to establish the effects of both voting and formal statements on the construction of policy agreements, if they play a role in the implementation phase, in future negotiations on similar policy proposals or if an effect can be correlated to national level politics.

3. Do votes matter?

The distribution of votes is receiving considerable attention in the current debate, mainly due to the Constitutional Treaty’s proposed changes to the voting threshold. We have already presented and analysed essential information in this report on the general voting patterns, on how voting varies between policy areas as well as how individual governments behave in the voting situations. However, our data also allows for rigorous analyses and presentation of facts with regard to *when* voting takes place and whether the distribution of votes actually matters in these situations.

4. Changes in other institutions, notably the Commission

An issue that follows on from decision-making in the Council is decision-making in the other EU institutions. As the sole legislative agenda-setter, the Commission evidently plays a role for adoption of policies in the Council, but also its supervisory powers in the implementation process could be an issue for further investigation. Similarly to our approach in this report, we would suggest an investigation of correlations between decision-making in the Commission and decision-making in the Council based on both quantitative and qualitative material; fortunately, studies relying on quantitative analyses of the Commission have started to emerge (e.g. Franchino, forthcoming 2007).

5. Bicameral politics in the EU

It is commonly acknowledged that decision-making in one legislative chamber influences decision-making in another chamber in bicameral political systems. Whether the EU falls within the category of a bicameral system is evidently a matter for debate. However, the current institutional set-up for passing legislation under the co-decision procedure makes it relevant to explore the topic of bicameral bargaining and, for example, national or party political affiliations across the institutional divide of the Parliament and the Council. Our findings in the previous sections that the presidency is frequently successful in achieving 1st reading in the Council suggest that the bicameral talks prior to the Council meetings should be further accounted for.

References

- Banzhaf, J.F. (1965), “Weighted Voting Doesn’t Work: A Mathematical Analysis”, *Rutgers Law Review* 19:317-343.
- Brams, S.J. and P. Affuso (1985), “New Paradoxes of Voting Power on the EC Council of Ministers”, *Electoral Studies* 4:135-139.
- Dinan, D. (1999), *Ever Closer Union? An Introduction to European Integration*, 2nd edition, London: Macmillan.
- Emerson, M., S. Aydin, J. De Clerck-Sachsse and G. Noutcheva (2006), *Just what is this absorption capacity of the European Union?*, CEPS Policy Brief No. 113, CEPS, Brussels, October.
- European Commission (2006), Communication on Enlargement Strategy and Main Challenges 2006-2007, COM(2006) 649 final, Brussels, 8.11.2006.
- Felsenthal, D.S. and M. Machover (1998), *The Measurement of Voting Power: Theory and Practice*, Cheltenham: Edward Elgar.
- Felsenthal, D.S. and M. Machover (2001), “The Treaty of Nice and Qualified Majority Voting”, *Social Choice and Welfare* 18 (3): 431–64.
- Franchino, F. (forthcoming, 2007), “Experience and the Distribution of Portfolio Payoffs in the European Commission”, University College London, London.
- Golub, J. (1999), “In the Shadow of the Vote? Decision-making in the European Community”, *International Organization*, 53(4), 733-64.
- Guild, E. and S. Carrera (2005), *No Constitutional Treaty? Implications for the Area of Freedom, Security and Justice*, CEPS Working Document No. 231, CEPS, Brussels, October.
- Hagemann, S. (2007), “Voting behaviour and coalition formations in the EU’s Council of Ministers”, *European Union Politics*, Vol. 8, No. 2, forthcoming.
- Hayes-Renshaw, F. and H. Wallace (2006), *The Council of Ministers*, Basingstoke: Palgrave Macmillan.
- Heisenberg, D. (2005), “The institution of consensus in the European Union: Formal versus informal decision-making in the Council”, *European Journal of Political Research* 44:65-90.
- Hix, S. (2005), *The Political System of the European Union*, 2nd edition, London: Palgrave.
- Hix, S., A. Noury and G. Roland (2007), *Democratic Politics in the European Parliament*, Cambridge: Cambridge University Press, forthcoming.
- Kurpas, S. and J. Schönlau (2006), *Deadlock avoided, but sense of mission lost? The Enlarged EU and its Uncertain Constitution*, CEPS Policy Brief No. 92, CEPS, Brussels, February.
- Leech, D. (2002), “Designing the Voting System for the EU Council of Ministers”, *Public Choice*, 3(4): 437-464.
- Mattila, M. (2004), “Contested Decisions: Empirical analysis of voting in the European Union Council of Ministers”, *European Journal of Political Research*, Vol. 43, No. 1, pp. 29-50.

- Mattila, M. (2006), *Voting and Coalitions in the Council – Two Years after the Enlargement*. Robert Schuman Centre for Advanced Studies, EUI Discussion Paper 2005-6/CoM-3 European University Institute, Florence.
- Mattila, M. and J.-E. Lane (2001), “Why Unanimity in the Council? A Roll Call Analysis of Council Voting”, *European Union Politics*, 2, 31-52.
- Moberg, A. (2002), “The Nice Treaty and Voting Rules in the Council”, *Journal of Common Market Studies*, Vol. 40, No. 2, pp. 259-82.
- Penrose, L.S. (1946), “The Elementary Statistics of Majority Voting”, *Journal of the Royal Statistical Society* 109: 53-57.
- Poole, Keith T. (2005), *Spatial Models of Parliamentary Voting*, Cambridge: Cambridge University Press.
- Shapley, L.S. and M. Shubik (1954), “A method for evaluating the distribution of power in a committee system”, *American Political Science Review* 48:787-792.
- Sherrington, P. (2000), *The Council of Ministers: Political Authority in the European Union*, London/New York: Pinter.
- Thomson, R., J. Boerefijn and F. Stokman (2004), “Actor Alignments in European Union Decision Making”, *European Journal of Political Research* 43 (2): 237-61.
- Trumpf, J. and J.-C. Piris (1999), “Operation of the Council with an enlarged Union in Prospect”, Report of the working party set up by the Secretary-General of the Council, Brussels, 10 March.
- Van Schaik, L. et al. (2006), *Policy Coherence for Development in the EU Council – Strategies for the Way Forward*, Centre for European Policy Studies, Brussels.
- Van Schendelen, M.P.C.M. (1998), *EU committees as influential policy makers*, Brookfield, VT: Ashgate.
- Zimmer, C., G. Schneider and M. Dobbins (2005), “The Contested Council: The Conflict Dimension of an Intergovernmental Institution”, *Political Studies*, Vol. 53, No. 2, pp. 403-22.

Appendix I. Research methods, data, interviews, etc.

Interviews

The qualitative material used for the analysis in this report consists of 52 interviews with practitioners from the Council of Ministers, the European Commission and the European Parliament, external experts as well as diplomats from the permanent representations of the member states, both old and new. The interviews have been conducted over a time span of 13 months from January 2006 to February 2007. All of the interviews were of a semi-structured nature, following the order of a questionnaire of 12 questions, with additional questions included according to the special function and field of expertise of the interviewee. Follow-up interviews of these same practitioners were later conducted in order to present the results from our statistical data and to solicit their interpretation. Our interviewees agreed that we may use the information they provided on condition that they remain anonymous.

Data

The data used for the quantitative analysis in this report are drawn from a sample of a larger data set collected by Sara Hagemann, who retains full copyright of the data. The data set covers all legislation passed in the Council from January 1999 until January 2007 and is continuously updated as more information becomes available. The findings presented in this report rely on information from the 32 months leading up to May 2004 and the 32 months that have now passed since then. In other words, the data used here covers a period of more than 5 years (September 2001 to December 2006) and consists of information on all legislation adopted within this period.

The data consist of individual votes cast by each government on 872 pieces of legislation. Legislation that was initiated and voted upon in the Council but not finally adopted in the period September 2001 to December 2006 is not included in the analysis. However, of these 872 acts, 214 pieces were presented to the Council several times. A proposal that is voted upon X number of times is treated as X individual votes as behaviour in the Council can be assumed to change throughout the different stages of the legislative process (see Mattila, 2004; Mattila & Lane, 1999). Furthermore, the data include several cases where a single policy proposal presented to the Council had to make a decision upon more than one issue. For instance, a proposal on regulation of emissions from vehicles may include several different levels of emissions standards depending on the type of vehicle.²⁴ Decisions may therefore be taken on each of these regulatory levels and are also included in the data as separate decisions. In sum, the total number of decisions in the September 2001-December 2006 period amounts to 1,473 and results in 22,195 decisions by the individual governments.

The data are collected from the minutes of individual Council meetings and includes information on the following issues:

- Procedure
- Date of introduction
- Date of adoption
- A and B points
- Policy area (as categorised by the General Secretariat/working groups)
- Title of proposal

²⁴ See e.g. Council document number 8118/00: Decision of the European Parliament and of the Council establishing a scheme to monitor the average specific emissions of CO₂ from new passenger cars. Reference numbers are PE-CONS 3608/00 ENV 48 ENT 28 CODEC 145 + COR 1 and corresponding documents from meetings held in relation to this decision can be found based on these references through the PreLex database.

- Details about the policy content
- Inter-institutional reference number
- Sectoral Council
- Stage at which of the legislative process the vote was taken
- Stage at which of the legislative process the proposal was adopted
- Identity of the member holding the presidency
- Each country's decision to
 - support
 - abstain
 - oppose
 - and/or make a formal statement. Formal statements are usually included in the minutes.

Each of the points of information above has then been coded such that Procedure, Policy Area, Sectoral Council, Stage of Vote, Stage of Adoption, Presidency (i.e. nationality of the member holding the Presidency) is included as categorical variables in the data set. Date of Introduction and Date of Adoption are continuous variables, whereas A and B points and a country's decision to Support, Abstain, Oppose or make a Formal Statement are binominal.

The data are collected from the Council's website,²⁵ the inter-institutional data base PreLex²⁶ and from the Council's Access Service.²⁷ Since 1999, it has been possible to trace a legislative proposal through the public register of the Council and/or the PreLex database. For this purpose, it is sufficient to know the COM reference number of the initial Commission proposal, the title of the proposal or the inter-institutional file number. The inter-institutional file number will provide all the documents linked to the same proposal/dossier (also from working groups) and can be found through PreLex (when the COM number is known) or on the top of the page of the Council minutes.

Although it can hence be concluded that important information is indeed available from the Council, two important limitations to the data must be pointed out. First, analyses of Council decision-making based on official documents often point out problems with the information that is *not* included in the minutes and voting records (see e.g. Wallace & Hayes-Renshaw, 2006). Only those decisions that result in a successful adoption are recorded, and, hence, the material used in this report is unfortunately incomplete. Any legislative act that looks from the outset as though it will fail to be adopted will not be put on the Council agenda, but is rather sent back to the Commission 'for further study' (Heisenberg, 2005). Furthermore, although it is rarely the case, it should also be noted that member states can still choose not to make their positions on a proposal public. If a member state requests that its position is not officially recorded, the minutes will simply state that "...the Council has adopted the above [regulation/directive/decision]". This occurred only 9 times in the period under study. Yet, despite being rarely used, the fact that a member state is at least aware of this possibility may still play a role in the decision-making process.

The second limitation is related to the issue of vote trading. No final conclusion has been drawn with regard to the extent of vote trading in the Council, but recent findings suggest that it does take place (Hayes-Renshaw & Wallace 2006). In reporting on Council activities, this aspect has to be noted, but unfortunately cannot be incorporated in the results directly. The most appropriate way to meet this limitation is therefore to report on the available information and then subsequently consider the implications of vote trading when interpreting findings that may in some way be influenced by this issue.

²⁵ http://europa.eu/documents/eu_council/index_en.htm

²⁶ <http://ec.europa.eu/prelex/apcnet.cfm?CL=en>

²⁷ access@consilium.eu.int

Appendix II. Additional results

Table A1. Passed legislation per policy area, September 2001 to April 2004

Policy area	Pieces of legislation, Sept-Dec 2001	Pieces of legislation, Jan-Dec 2002	Pieces of legislation, Jan-Dec 2003	Pieces of legislation, Jan-April 2004	Pieces of legislation, Total	Legislation in % of total adopted
Agriculture & Fisheries	14	45	63	37	159	33.0
Economic & Financial Affairs	4	22	24	17	67	13.9
Justice & Home Affairs	7	32	28	13	80	16.6
Environment	2	17	13	9	41	8.5
Employment, Social Policy and Consumer Affairs	3	10	8	7	28	5.8
Education, Youth and Culture	1	10	6	6	23	4.8
Transport, Telecoms and Energy	3	13	15	19	50	10.4
Competitiveness	5	1	2	4	12	2.5
General Affairs and External Relations	2	6	7	7	22	4.6
Total	41	156	166	119	482	100.0

Table A2. Passed legislation per policy area, May 2004 to December 2006

Policy area	Pieces of legislation, May-Dec 2004	Pieces of legislation, Jan-Dec 2005	Pieces of legislation, Jan-Dec 2006	Pieces of legislation, Total	Legislation in % of total adopted
Agriculture & Fisheries	30	34	40	104	27.1
Economic & Financial Affairs	17	17	29	63	16.4
Justice & Home Affairs	20	14	15	49	12.8
Environment	6	13	13	32	8.3
Employment, Social Policy and Consumer Affairs	3	5	15	23	6.0
Education, Youth and Culture	1	1	3	5	1.3
Transport, Telecoms and Energy	4	15	12	31	8.1
Competitiveness	7	10	7	24	6.3
General Affairs and External Relations	22	12	19	53	13.8
Total	110	121	153	384	100.0

About CEPS

Founded in Brussels in 1983, the Centre for European Policy Studies (CEPS) is among the most experienced and authoritative think tanks operating in the European Union today. CEPS serves as a leading forum for debate on EU affairs, but its most distinguishing feature lies in its strong in-house research capacity, complemented by an extensive network of partner institutes throughout the world.

Goals

- To carry out state-of-the-art policy research leading to solutions to the challenges facing Europe today.
- To achieve high standards of academic excellence and maintain unqualified independence.
- To provide a forum for discussion among all stakeholders in the European policy process.
- To build collaborative networks of researchers, policy-makers and business representatives across the whole of Europe.
- To disseminate our findings and views through a regular flow of publications and public events.

Assets

- Complete independence to set its own research priorities and freedom from any outside influence.
- Formation of nine different research networks, comprising research institutes from throughout Europe and beyond, to complement and consolidate CEPS research expertise and to greatly extend its outreach.
- An extensive membership base of some 120 Corporate Members and 130 Institutional Members, which provide expertise and practical experience and act as a sounding board for the utility and feasibility of CEPS policy proposals.

Programme Structure

CEPS carries out its research via its own in-house research programmes and through collaborative research networks involving the active participation of other highly reputable institutes and specialists.

Research Programmes

Economic & Social Welfare Policies
Energy, Climate Change & Sustainable Development
EU Neighbourhood, Foreign & Security Policy
Financial Markets & Taxation
Justice & Home Affairs
Politics & European Institutions
Regulatory Affairs
Trade, Development & Agricultural Policy

Research Networks/Joint Initiatives

Changing Landscape of Security & Liberty (CHALLENGE)
European Capital Markets Institute (ECMI)
European Climate Platform (ECP)
European Credit Research Institute (ECRI)
European Network of Agricultural & Rural Policy Research Institutes (ENARPRI)
European Network for Better Regulation (ENBR)
European Network of Economic Policy Research Institutes (ENEPRI)
European Policy Institutes Network (EPIN)
European Security Forum (ESF)

CEPS also organises a variety of activities and special events, involving its members and other stakeholders in the European policy debate, national and EU-level policy-makers, academics, corporate executives, NGOs and the media. CEPS' funding is obtained from a variety of sources, including membership fees, project research, foundation grants, conferences fees, publication sales and an annual grant from the European Commission.

E-mail: info@ceps.be

Website: <http://www.ceps.be>

Bookshop: <http://shop.ceps.be>