

"Surviving enlargement: How has the Council managed?"

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Abstract¹

Three years after the 2004 enlargement of the European Union, the paper asks what has changed in how the Council does business, and what significance enlargement may have had. It assesses how the Council has 'survived' the doubling of membership, and whether this survival has been accompanied by qualitative changes in the nature of Council work. The paper relies on original quantitative evidence and qualitative insights from interviews and case studies. The findings suggest that the Council has successfully assimilated the new members in its decision-making dynamics and has adapted its internal working methods to the new conditions. Yet some qualitative changes can be detected in the process, with the Council becoming more 'bureaucratised', as well as in the output, with legislation decreasing in importance and changing in substance. The role of enlargement as an explanatory factor for these changes remains nevertheless, problematic to pin down: there are many other sources of change in EU policies and processes; and there are very rarely coalitions of 'new' versus 'old' Member States, acceding countries generally joining issue-based coalitions in which larger Member States continue to play the leading role. The continuing dynamics of change appear to be more important in inter-institutional relations than inside the Council itself.

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Introduction

This paper considers how the Council of the EU has evolved in the context of enlargement. It aims to answer two questions. First, has the Council 'survived' the expansion in membership from 12 to 27, in the sense of having been able to adapt its ways of doing business to new conditions in a stable and effective way? Second, has this survival been accompanied by qualitative changes in the nature of Council business, and perhaps of the EU system more broadly.

These questions are not only of academic interest but also of broader political concern given the continuing debates over a new Treaty which would change the basic rules of the game. The EU is naturally concerned about its 'integration capacity': that is, the ability to integrate new members without undermining the efficiency of its institutions, the ambition of its policies or the sustainability of its finances (Commission 2006). The Berlin Declaration of March 2007 urged that the Union should push ahead with a new political settlement, on the grounds that, without further institutional reform, the enlarged Union will not be able to function adequately.

Nearly three years after the 'Big Bang' of 1 May 2004, the paper therefore asks what has actually changed in how the Council does business, and what significance enlargement may have had. It also aims to assess whether things have settled down or whether there is still a significant potential for dysfunctionality and frustration which may be held 'objectively' to demand renegotiation of the basic principles of the system.

We are cautious about simple measurements of the 'impact' of enlargement on the Council. There has been a tendency to embark on comparisons implicitly based on an assumption that the Council is facing essentially the same policy agenda, the main difference being the expansion of membership, and to compare situations immediately before and after 1 May 2004. We argue that a more sophisticated approach to understanding change is required.

In the first place, enlargement has come on top of, and interacted with, other pressures for change over recent years. Enlargement became an integral element in the 'constitutional' debate, which has also been driven by a variety of other concerns and interests, and has contributed to broader concerns about effective implementation and better regulation. In terms of policies, to mention only three sectors which will be pursued further in this paper, the Common Agricultural Policy (CAP) has faced multiple pressures for change for many years as a result of its high budget costs, bad public image and environmental and international impact. In the case of environmental policy, there has been a global trend away from 'command-and-control' approaches since the early 1990s, reflected in the EU's move to 'look beyond a strictly legislative approach', as well as a clear shift more recently in the Commission and many Member States to give environmental considerations a lower priority. Employment policy and labour law have seen major changes since the early 1990s, away from legislation towards autonomous agreements between social partners and/or the non-binding forms of policy coordination.

Enlargement, and the concomitant increase in diversity, has accentuated many such trends, further encouraging flexibility in EU norms. It has interacted with other pressures to bring about change in the issues on the Council's agenda which would have to be addressed by the Council in its expanded form. In other words, it contributes to shifts in the nature of the challenge as well as the parameters of the response as part of an overall evolution of the EU system.

Second, enlargement has not been a matter of overnight change. The EU had been talking about institutional reform in preparation for enlargement for almost a decade. The potential impact began to shape debates over Council procedures already in 1994. The accession of Austria, Finland, Sweden and, as it then seemed, Norway, saw the beginning of wranglings the system of qualified majority voting (QMV) (and of a remarkable boom in academic debate on the measurement of voting power) which have lasted until the present. Pre-accession cooperation began in the second half of the 1990s. The new Member States were then 'phased in' to Council business, and there was significant anticipatory adaptation in terms of working methods and linguistic capacities. Arrangements for the interim period consisted of an information and consultation procedure following formal conclusion of the negotiations, through an 'interim committee' in place as of 19 December 2002, and active observer status following signature of the Treaty of Accession on 16 April 2003.

Third, one must distinguish between *levels* where change occurs. The discussions about preparation for enlargement have taken place at two levels. Adaptation of the basic *rules* of legislative decision-making – primarily the scope and modalities of the system of qualified majority voting, as well as the scope of 'colegislative' interaction with the European Parliament – has had to be pursued through treaty change. Amsterdam 'left over' this question; Nice introduced the current system; the Constitutional Treaty proposed further changes, which remain very much in the air. At the level of internal institutional *practice*, a working group was set up following signature of the Amsterdam Treaty. This group produced the so-called 'Trumpf-Piris' Report in March 1999, identifying a series of avenues to be explored not only for the structure of the Council but also the preparation and conduct of Council meetings (Council 1999). A Code of Conduct on 'Working methods for an enlarged Council' was drawn up in early 2003 and later annexed to the Council Rules of Procedure. The renewed 'Constitutional' debate is in part a continued discussion as to whether changes in practice within the current rules (i.e. first-order change) are proving sufficient to ensure continued performance at a generally satisfactory level in terms of quantity and quality, or whether change in the formal rules themselves (i.e. second-order change) are needed to guarantee continued stability of the system.

Fourth, the work of the Council cannot be approached in isolation from other institutional *actors*. For example, an evaluation of legislative output of the Council must take into account changes in the specific input coming from the Commission, notably the quantity and the quality of proposals. At the same time, in many areas the Council is nowadays a co-legislator with the EP and its performance cannot be judged independently from that of the Parliament.

Finally, traditional quantitative approaches measuring Council output not only have to deal with some well-known limitations with regard to the data (for example, the lack of information about pre-final and negative votes, or the impossibility of taking into account proposals that were not made) but generally tell us little about possible changes in the nature of either the procedure or the content. Most studies so far paint a reassuring picture of overall continuity between pre- and post-enlargement Europe (Sedelmeier and Young 2006). Dehousse *et al.* (2006) maintain that enlargement has not blocked the European machine and that, in certain respects, its decision-making process is even more expedite after 2004. Hagemann and De Clerck-Sachsse (2007, pp.36, 34) report that, in terms of the total amount of legislation passed per year, the Council 'seems to have almost fully 'recovered' from the significant increase in the number of actors' and that, concerning voting behaviour, 'official disagreement [...] has not been found to increase'. Yet even if the overall figures may seem to remain more or less the same, the work of the Council, and the EU, may have changed in other ways.

1. Data and approaches

This paper tries to go beyond these kinds of comparison. On the one hand it proposes a new way of using quantitative data to assess the nature of the post-enlargement Council and, in broader terms, the decision-making capacity of the EU. On the other hand, it looks at a number of cases across sectors in order to provide some qualitative observations, which can shed light on how the specific issues introduced by enlargement have been dealt with. It is organized in three sections, which respectively assess the nature and significance of changes in:

- Council procedures and working methods;
- the nature of Council output; and
- inter-institutional relations.

The quantitative data is based, unless stated otherwise, on a new dataset (described in greater detail in Appendix), which contrasts legislative activity in two comparable periods of decision-making before and after enlargement. These periods comprise two presidencies each: the Greek and the Italian presidencies in 2003; the British and Austrian presidencies in the second half of 2005 and the first half of 2006.² The two selected periods are considered as a more reliable proxy for 'normal' politics in

² The dataset excludes on purpose three semesters of decision-making: the whole of 2004 and the first half of 2005. An extraordinarily high number of acts was passed in the few months preceding the entry of the new members: in the first four months of 2004, the EU adopted a number of bills equal to the 85% of bills adopted in the entire 2003. As practitioners report, this was due to additional legislation adopted in preparation for accession and also to a number of politically sensitive files concluded on purpose before enlargement took place. There was then a dramatic, if unsurprising, drop in the amount of legislation adopted in the months after enlargement. The European elections of June 2004 caused a suspension of all the codecision files until after the summer. The troublesome appointment of a new Commission, which was finalised in late November 2004, made the European executive ready and operational not earlier than at the beginning of 2005. It took a few additional months until the bills introduced by the new Commission were discussed and adopted by the other institutions.

the EU. This temporal gap also allows a longer-term and more distanced evaluation of the adaptive capacity of the EU as a system.

The dataset measures legislative *output* not only in terms of volume but also in terms of certain qualities. Novelty is measured on the basis of whether acts represent new initiatives as opposed to amending or implementing pre-existing legislation³. Saliency is measured in addition according to whether the Commission introduced the act by oral procedure, the Council discussed it at least once as a 'B point';⁴ any other committee of the EP, in addition to the responsible one, gave an opinion on the act, and/or the act is based on a treaty article as opposed to secondary legislation. Pieces of legislation that score positively on all five or four of these questions are considered as important (major acts) for the purposes of this research. Pieces that score positively on three or two questions are considered of average importance (ordinary acts). All the other pieces are considered of marginal importance (minor acts). The length of the acts is also taken into account, as a reflection of the degree of divergence of policy goals and preferences, the technical complexity of policy issues (Huber and Shipan 2002, pp.78-79).

The data concerning the *process* have been gathered with a view to assessing not only the degree of contestation (number of negative votes and abstentions) and delay (average number of days necessary to adopt a proposal) but also, whether the reported decisional efficiency of the Council as a legislator has been accomplished at the expense of a weaker political input. This latter factor is measured by the percentage of acts adopted without discussion as a 'B point', the average number of discussions as 'B point' per act and the frequency of five different types of representation in the Council.⁵

The data also reflects trends in *inter-institutional relations*, including the stages at which codecision files are concluded, as well as the relative length of consultation and codecision procedures in the two periods under consideration.

This dataset is complemented by qualitative input focussing on three sectors which present both different procedures and different kinds of policy: agriculture; environment; and employment and social affairs. This consists of 24 interviews carried with relevant officials in the Council Secretariat, Commission, Parliament, as well as particular and Member States, supported by Council documentation on a number of selected, and cautiously presented, examples.

It is very difficult, in this context, to carry out meaningful 'before-and-after' case studies. Quite apart from the caveats already mentioned, it is hard even to find cases in which the same issues were considered in Council before and after 1 May 2004, the only

³ Although limited to Commission proposals, this experiment is also pursued by G. Ciavarini Azzi in Dehousse *et al.* (2006, p. 48).

⁴ The Council agenda is divided in two parts: A and B. "A" items can be approved without discussion. "B" items are usually discussed and, under certain conditions, can be subject to a vote.

⁵ Depending on the exact number of ministers, deputy ministers or diplomats present when the Council reached political agreement on a proposal or when it discussed it for the last time as a "B point", five different categories of representation in the Council have been created: "Plenum of ministers" (only ministers present), "Full ministerial" (only ministers and deputy ministers or equivalent), "Over 90% ministerial" (ministers and deputy ministers account for at least 90% of the total representation), "Mixed ministerial – diplomatic" (the sum of ministers and deputy ministers is less than 90% of the total: the rest are diplomats) and "Full diplomatic" (only diplomats present). In the case of an act never discussed as a B point in the Council, the act is considered as discussed only by diplomats (i.e. "Full diplomatic" representation).

major change being the expansion in the number of Member States. Moreover, there was a sort of understanding, or gentleman's agreement, that new Member States would not reopen issues which had been agreed before their accession. Although this may not always have been the case in practice, this inevitably weakens any attempt at simple comparisons.

In addition, one has to be careful not to confuse the Council's need to deal with specific issues imported together with the new Member States and the ability of the enlarged Union to deal with issues which are not specific to them. Thus, on the one hand, it tells us very little to compare how the Union institutions have acted before and after enlargement in the case of, say, Kaliningrad. On the other hand, even if one can identify particular issues which have required a decision before 1 May 2004 and another decision afterwards, which are not of specific interest to particular Member States, and which are not significantly shaped by any other trends, such that the only difference would be in the decision-making procedure,⁶ it is not obvious what the comparison would tell one, even if documentation was available to measure all dimensions of the two procedures in practice, which it is not. No documentation is available to measure the number and nature of contacts made in advance of meetings, informal interactions around the meetings, or the number and length of interventions during meetings.

Nonetheless, it is only by looking into particular cases that one can try to explore how the specific issues introduced by enlargement - whether in procedure or in substance or both - have been dealt with in practice.

The reform of the sugar market is taken as a case of negotiating styles within the Council since the 2004 enlargement. The Directives on bathing water and extractive industries' waste are taken as cases which are relevant both for consideration of the impact of enlargement on the nature of the output and for inter-institutional dimensions. Other examples are mentioned in passing to illustrate specific points.

2. Council procedures and working methods

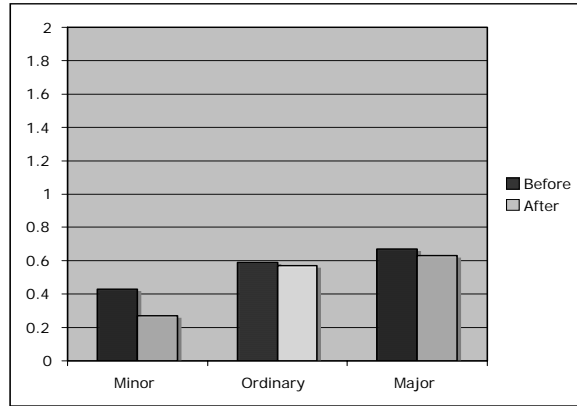
There has been no change in the basic rules of the game since the entry into force of the Nice Treaty in February 2003, other than the application since 1 January 2005 of codecision and QMV to most measures concerning asylum, immigration and the movement of persons (except legal immigration and family law).⁷ The decisions taken by the Council in the two periods compared are therefore generally subject to the same formal rules. The difference concerns internal and inter-institutional practice before and after enlargement. Comparison of the two 12-month periods indicates that there has not been any major change with regard to the 'ease' with which decisions are taken.

The contestation of legislation adopted under qualified majority has not increased. On the contrary, it slightly decreases even in the case of important legislation (Figure 1).

⁶ For example, the Council agreed in March 2003 to authorize the importation of certain Argentine wines to which malic acid has been added, an oenological practice not authorized by Community rules. A proposal to amend that Regulation was presented in March 2007.

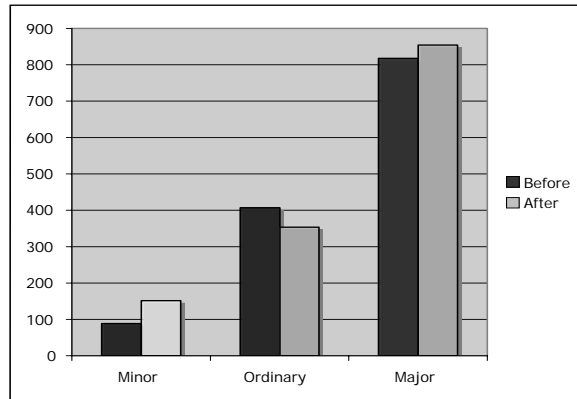
⁷ Some changes in voting procedure came into effect on 1 January 2007, following agreement of the new Financial Perspective.

Figure 1
Average number of states abstaining or opposing the adoption of an act under QMV



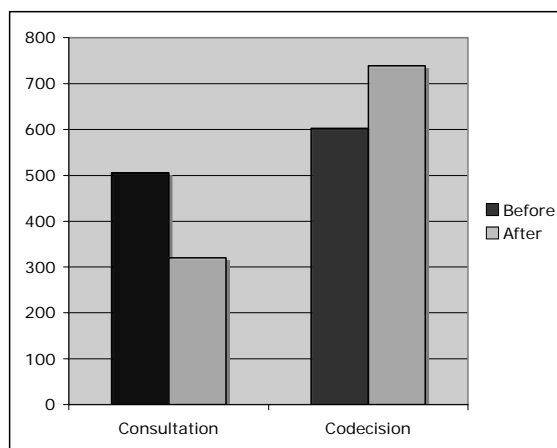
Broadly speaking, enlargement has not entailed a slower decision-making process. Predictably, important legislation takes longer to be decided upon than ordinary or minor, but there is no significant difference between EU 15 and EU25. Ordinary acts are actually decided significantly faster (13.2%) after enlargement. (Figure 2).

Figure 2
Average number of days necessary to adopt a Community act by importance



Interestingly, the situation changes if the data are presented by procedure (figure 3): whereas acts under consultation are decided increasingly rapidly (-36.8%), decisions under codecision take longer (22.7%). In fact, it took 4.5% longer for the EU25 to adopt 69 codecision files than it took EU15 to adopt 81.

Figure 3
Average number of days necessary to adopt a Community act by procedure



These results suggest that the Council has rather successfully adapted its own working methods. The Code of Conduct mentioned above (now Annex V to the Council Rules of Procedure) laid down guidelines for the preparation and management of meetings. These included active preparation of meetings by the Presidency; the request for written input in advance, whenever possible on behalf of groups of like-minded countries; proscription in principle of formal table rounds; fixing of time limits by the Presidency; submission of drafting proposals rather than simple disagreement; silence to be taken as agreement. These guidelines have been followed in different ways in different sectors, and under different Presidencies.

In agriculture, there is felt to be a slight increase in the length of procedures.⁸ The increased number of languages causes delays in receiving the proposal and in carrying out the jurist-linguist work. There may be a slight increase in the number of meetings required to reach a conclusion since less can be achieved in each meeting (although the complexity of many recent dossiers may be just as important). Enlargement has further increased the importance of the Presidency and Council Secretariat, as well as the Commission, in preparing meetings and achieving results. Voting practices, and the importance of the 'shadow of the vote', are not felt to have changed significantly. Table rounds do still take place in the SCA and the Agriculture Council when there is an orientation debate, but these are generally avoided in Working Parties. While there has been an increase in written contributions, there are still few joint written positions or

⁸ The Special Committee on Agriculture (SCA) adopted its own text (revised in April 2005), highlighting relevant elements of the guidelines and 'additional arrangements to make the principles operational'. For example, the Secretariat is encouraged to use its judgement in listing the delegations which support different options to help gauge support; Working Party Chairmen are not to give oral reports; 'targeted tasking' could be arranged by the Presidency between meetings to consult on specific problems with concerned Agriculture Counsellors/Attachés; and 'delegations are asked to exercise self-discipline in requesting the inclusion of items under "other business".' (Presidency Information Note to Special Committee on Agriculture of 4 April 2005. Doc. 7783/05.)

presentations on behalf of groups of 'like-minded' delegations.⁹ Business is done in ways which are not fundamentally different from before.

The Council has adapted its ways of working without too much difficulty to enlargement in the field of the environment. Table rounds are rarely made. Written contributions have increased considerably. Joint presentations are made, but usually not on difficult points. Time limits are used in principle at Council level, at the discretion of the Chair, but are rarely imposed in Coreper or working parties. There has been a certain change in the dynamics and the atmosphere of meetings. These have become a bit more formal, rather than less, given that it would be time-consuming and perhaps provocative to interrupt meetings in order to talk to two or three delegations. On the other hand, more contacts take place before meetings.

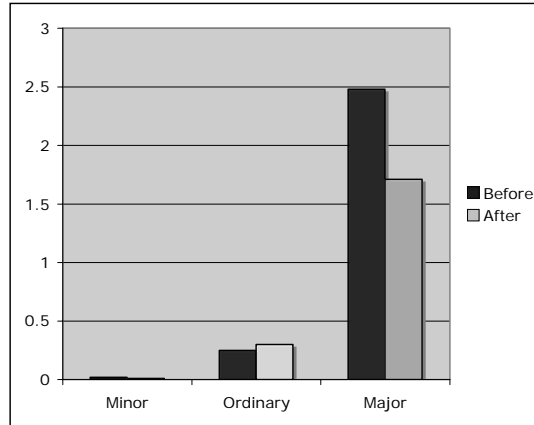
In the case of employment policy, it is harder to trace changes in how business is done. Most measures are not legislative and the Employment Committee (EMCO) set up in 2000 has a distinct composition and nature within the Council system. EMCO operates by consensus, although simple majority voting is theoretically possible, and the minority group can state its views. EMCO documents are not publicly available. Moreover, unlike in legislative procedures documents do not indicate the positions of Member States. Yet the overall impression is that enlargement has not caused major changes. More people may speak, but there is not necessarily any increase in the number of different positions. Moreover, most new Member States have not intervened in OMC procedures. There are no formal time limits but in practice they are applied: delegations know that they need to be brief and if need be the Chair intervenes. This varies according to the Presidency (the consensually-oriented Finns, for example, tending to be more tolerant than some others). Table rounds do still take place for orientation debates. Language is an issue in EMCO, but not because of enlargement: documents are only available in English, French and German, but the complaints come from Spain and Italy, not the new Member States.

In general, then, the Council has adapted to enlargement without major problems in terms of its internal procedures and practices. Nevertheless, certain qualitative shifts can be detected.

One is 'bureaucratization', in the sense of a further increase in the proportion of decisions which are reached below the Ministerial level, and a decrease in the number of real debates which take place in the Council itself. In global terms, the overall number of acts adopted without discussion as 'A Points' in the Council has only slightly increased after enlargement (from 80.0% to 82.3%). More interestingly, the average number of 'B point' discussions held per act has decreased significantly for important acts (Figure 4).

⁹ One exception was the joint written contribution of the Estonian, Latvian, Lithuanian, Polish, Finnish and Swedish delegations regarding the definition of vodka – Doc. 9871/06 of 21 June 2006. Earlier Poland also spoke on this issue on behalf of the same group of countries (e.g. Doc. 15902/05).

Figure 4
Average number of discussions as 'B point' at the Council per act



The same trend is confirmed by more comprehensive information on the type of representation in the Council (Table 1): 22.0% of important acts are adopted in EU25 without any discussion among ministers as compared to 3.3% in EU15.

Interviews confirm a partial trend toward a decreased relevance of ministerial meetings. This does have a certain enlargement dimension. It is partly a reflection of the reduced time available for individual ministers to speak, given the greater numbers involved. There may also still be a certain preference for some ministers from newer Member States to avoid participating in negotiations. Yet the main issue seems to be the type of content. Debates still take place in, for example, agriculture or the environment, where difficult specific decisions need to be taken. Ministerial meetings are seen to have lost much of their added value at the general level (General Affairs and External Relations - GAERC) or where they tend to consist mainly of orientation debates or the adoption of Conclusions, the extreme case being seen as Education, Youth and Culture.

Table 1
Type of representation in the Council by importance of legislation

		Minor	Ordinary	Major
Before	Plenum of ministers	0.6%	3.8%	28.3%
	Full ministerial	0.0%	1.9%	23.3%
	Over 90% ministerial	1.3%	10.3%	18.3%
	Mixed ministerial – diplomatic	0.0%	5.8%	26.7%
	Full diplomatic	98.1%	78.2%	3.3%
After	Plenum of ministers	0.0%	1.0%	0.0%
	Full ministerial	0.0%	1.0%	24.4%
	Over 90% ministerial	1.0%	19.6%	43.9%
	Mixed ministerial – diplomatic	0.0%	2.9%	9.8%
	Full diplomatic	99.0%	75.5%	22.0%

The newer Member States have been on a learning curve with regard to procedures and norms, including the rules of the European game when it comes to pursuing national interests. Most of the new Member States are seen as still remaining somewhat passive and cautious. Poland is seen to present a special case, not only in having a very assertive attitude but also in not seeming always to adapt to the norms.

The case of sugar reform is illuminating. Roughly equal proportions of old and new Member States were initially opposed to the proposed measures: six of the 15 (Greece, Spain, Ireland, Italy, Portugal, Finland) and five of the 10 (Latvia, Lithuania, Hungary, Slovenia and Poland). Poland and Greece opposed the 24 November compromise in the Council. When the SCA 'clarified and confirmed' the deal on 12 December, Latvia joined in opposing. In February 2006, negative votes in Council were recorded for Poland, Greece and Latvia. Declarations were made by Estonia, Sweden, Czech Republic, Latvia, Finland, Lithuania, and France/Germany/ Denmark/Netherlands. The Swedish declaration was a perfect example of what one might term the 'consensual complaint', in other words one of the ways in which Member States have adapted to the increased constraints imposed by enlargement: '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'(Hagemann and De Clerck-Sachsse 2007, p.14). Sweden stated that it respected the political agreement of the Council. It 'deplored' that the change introduced subsequently regarding the level of price reduction had not been accompanied by corresponding modifications concerning isoglucose quotas but concluded that 'Sweden is nonetheless ready to accept this in a

spirit of compromise'.¹⁰ Poland, like Greece, presented rotund opposition to the whole package.

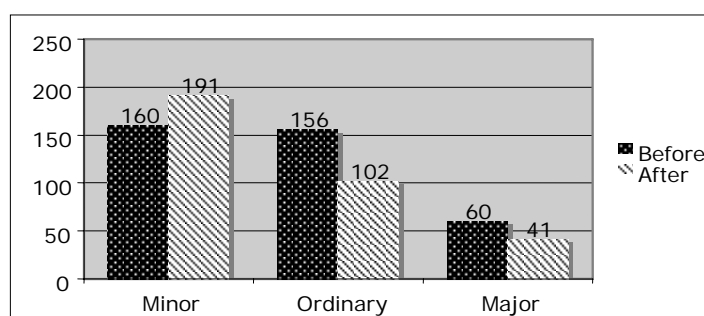
In the case of the spirit drinks proposal, similarly, a coalition of old and new Member States even presented joint positions in defence of their definition of vodka.¹¹ Yet as negotiations proceeded, different styles were noted. Sweden and Finland began to adjust in order to 'sell' their preferences in the overall deal. Poland continued to hold out, not realizing that to end up in isolated opposition, under majority voting, is to have lost.

3. The nature of the output

Even if the overall numbers of acts adopted by the Council seems to have remained fairly constant, there have been some shifts in the nature of the output.

First, there has been a drop in the share of important legislative bills. The number of both major and ordinary acts decreases by roughly one-third after enlargement (Figure 5). Although the total number of acts adopted decreases by 11%, marginal acts increase by almost one-fifth. The majority (57.2%) of acts adopted in EU25 is largely marginal (as compared to 42.6% in EU15).

Figure 5
Importance of acts adopted before/after enlargement



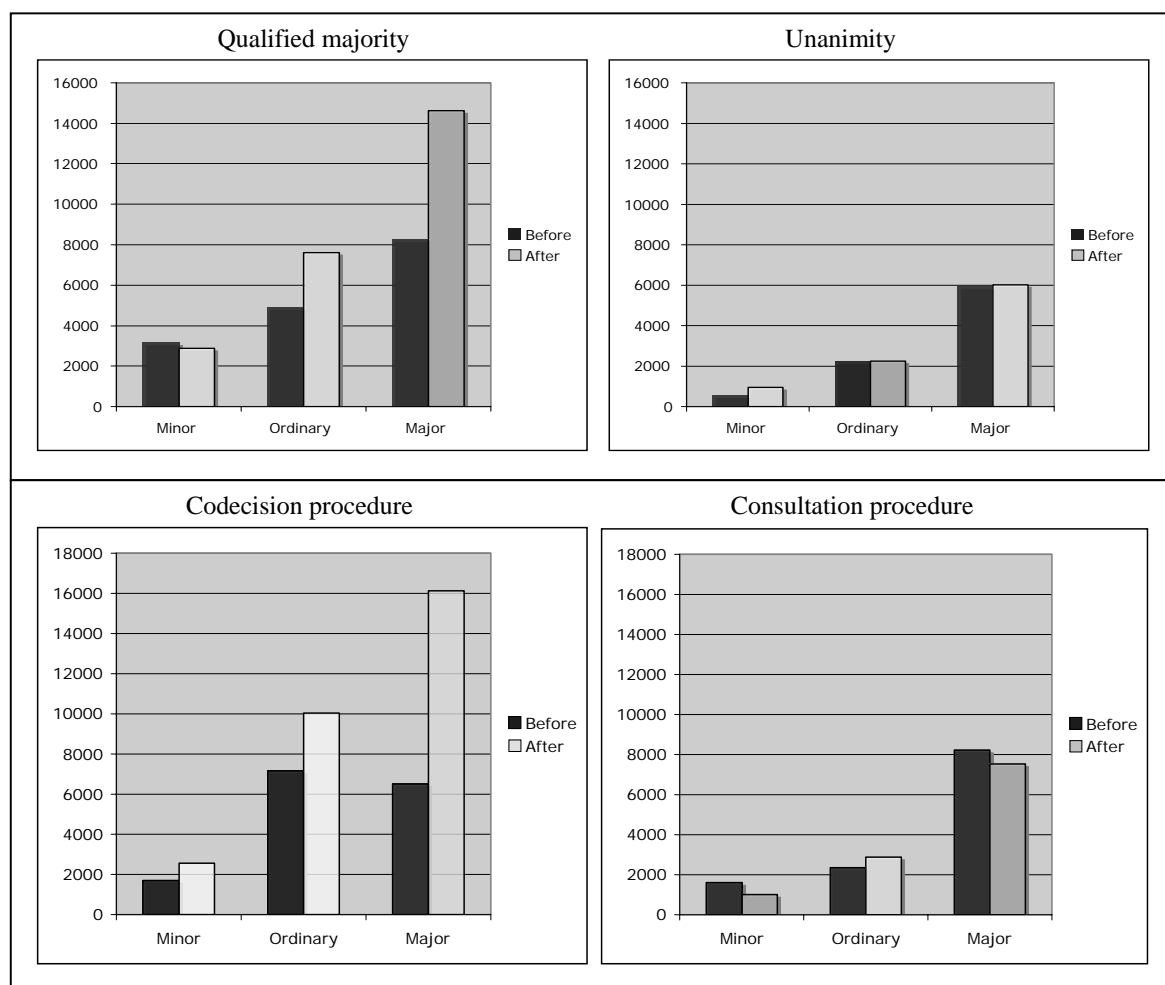
Second, the average length of texts has increased. In EU25, any act is on average one-fourth longer than in EU15. Directives have, on average, increased their length by more than 50%. The same measure, but excluding minor acts, show even greater rates of legislative levitation: ordinary and major bills are, on average, 51.1% longer after enlargement. Directives increased their length by 142.2% (Figure 5). Interestingly, there is an important difference between files decided under codecision and consultation procedure (Figure 6). Whereas, regardless of the procedure, legislation tends to be longer as its importance increases, the variation between acts within the same category of salience varies radically depending on the procedure. Under consultation, there is no increase (if not minimal, for ordinary acts) in the length of legislation before or after

¹⁰ Council of the EU, Doc. 6538/06 ADD 1, 3 March 2006.

¹¹ See note above.

enlargement. Under codecision, on the contrary, the increase is already pronounced for minor and ordinary acts (50.5% and 40.5%, respectively) and becomes dramatic for important acts (148.4%).

Figure 6
 Average length of legislation by importance of act and procedure



This increase in length merits further reflection, especially since it seems to go against both the trend to keep measures because of translation costs and the pursuit of simplification and 'better regulation'. The main factor appears to be the complexity of the issues in a context of increased diversity. In some cases this results in greater flexibility in legislative acts and, in some areas, a shift away from legislation towards non-legislative methods.

The specific impact of enlargement on the nature of Council output inevitably varies according to the issue. On the whole, though, it seems clear that the new Member States very rarely form a bloc within the Council. Although there are naturally some

issues of specific concern to a significant number of the 10/12, there are relatively few issues on which there is a simple opposition of Old and New countries, and there is indeed a preference to avoid going to a vote where this might seem to be the case. Even in the area of social policy, where the assumption has been strongest that enlargement has favoured the UK-led camp (for example over Working Time), the new Member States have split, with only a slight majority joining the 'Anglo-Saxon' camp. Coalitions continue to be issue-based, and generally led by the larger Member States, with the incoming members of Council joining these camps.¹²

Two cases shed light on how the acceding countries fitted into ongoing procedures. Bathing water 'straddled' the enlargement in the sense that the same dossier was discussed in Council both before and after 1 May 2004. In the case of extractive industries' waste, the Commission proposal was presented and Parliament's first reading took place before enlargement, and the Council common position was adopted in 2005.

Bathing Water (1)

The Commission presented a proposal in October 2002 to replace the 1976 Bathing Water Directive. The main issues concerned the scope, notably recreational waters; parameters, which would be reduced from 19 to two microbiological parameters complemented by visual inspection and pH measurement in fresh waters; the categories of classification of bathing water quality: 'poor', 'good' or 'excellent' in the Commission's proposal, based on a 95-percentile approach ('poor' being waters causing more than 5% risk of contracting gastro-enteritis); flexibility in monitoring frequencies; and provisions for public participation and information. The European Parliament adopted its amendments at first reading in October 2003.

A distinction between coastal waters and inland waters appeared in the Presidency's compromise texts towards the end of the year, proposing less stringent standards for inland waters (on the grounds that the presence of the same level of microbiological contamination represents a higher health risk in salt water than in fresh water). Although important differences remained with regard to the classification issue, it was hoped to find a political agreement in December 2003. The Council meeting, however, failed: there was no debate; the Commission and Germany made critical statements, and a sour atmosphere prevailed.

The Irish dealt with the file in the last two months of their Presidency, which coincided with the accession of the new Member States on 1 May. The reason, however, was not to try in some way to take advantage of the enlarged Council. First, the Irish Presidency had had a notably busy agenda in the first months of the year, pushing ahead with a multitude of dossiers which could be finished, not only in advance of enlargement but also before the European Parliament stopped doing business in advance of the European elections. Second, given the event of December, the Irish had no interest in having their Presidency tainted with a bad-feeling failure over bathing water. They would only take it forward if there was some reasonable chance of success.

¹² cf. D. Naurin, 'Network Capital and Cooperation Patterns in the Working Groups of the Council of the EU' *EUI Working Papers RSCAS 2007/14*.

Following talks with those delegations which had had difficulties, the Presidency indicated in late April 2004 that it intended to re-open negotiations, proposing two options: introduction of a new category of 'satisfactory' (based on a 90-percentile approach); or maintaining the original three categories, all based on the 90-percentile approach but with a specific review foreseen for 2012 to aim at reducing the health risk to 5% by 2015. At the 11 May meeting of the Working Party on the Environment, the option of introducing a new category received more support, and a revised proposal based on that option was considered on 24 May and 3 June. The draft was discussed three times in Coreper and a political agreement was reached in the Council on 28 June 2004.

Enlargement did introduce some substantive changes in the nature of the issues. Notably, given European geography, it increased the relative significance of inland waters compared to coastal waters. Hungary was particularly anxious to avoid the imposition of very high standards. Slovenia too was reported to have 'contributed actively' to the discussions in the course of 2003.¹³ On the specific issue of defining limit values for the 'satisfactory' classification of inland waters, seven of the eight CEEC countries (EE, LV, LT, HU, PL, SI, SK) opposed the Commission's proposal for lower limits in early June (together with BE, ES, IT, NL, PT, FI).¹⁴ On the whole, however, the concerns of the acceding countries were seen generally to mirror those of existing Member States.¹⁵ The new Member States were not very active at the higher levels within the Council framework. The only issue raised in Coreper, by Cyprus and Hungary, was the exact name to be given to the new category. None of them raised any issues within the Council.¹⁶ From the Common Position onwards, there was no particular influence on Council's position resulting from the new Member States.

Extractive industries' waste (1)

The Directive on mining waste of December 2005 has widely been seen as reflecting 'a more industry-friendly approach, attributed largely to the influence of the new member states, with their strong mining sectors and relatively low levels of regulation. Poland and other new member states successfully opposed measures in the extractive industries which would have imposed strict safety requirements on closed mines.' (Burson-Marsteller 2006, p.16). Yet things are not quite so clear if one looks into the case more closely.

The proposal was presented in June 2003. Parliament adopted its first-reading position in March 2004. It proposed broadening the scope, providing for continued obligations of operators after closure of mines, an inventory of closed sites, and the obligation to include safe disposal in waste management plan from the very beginning. Only two amendments proposed by the Committee failed to be adopted.

The Common Position of the Council was adopted in April 2005. This further weakened the Proposal in several respects by, inter alia, introducing a new category of non-hazardous non-inert waste for which some exemptions would apply, and further weakening definitions of extractive waste facilities and their most dangerous category.

¹³ Doc. 15790/03of 9 December 2003.

¹⁴ Doc. 10082/1/04 REV 1 of 11 June 2004

¹⁵ Doc. 15790/03of 9 December 2003.

¹⁶ Information from Council Secretariat.

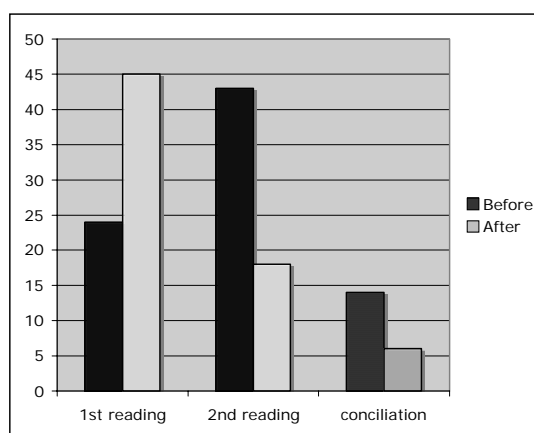
The leading actors in the negotiations were 'old' Member States, the camp generally preferring a weaker measure led by the UK and Germany, and that generally pressing for strong measures by Spain, which had suffered the Aznalcóllar accident in 1998. The 'new' Member States divided between these two positions. The pro-weakening camp was joined by Poland and the Czech Republic (and others on some issues). On the other side, Spain was joined by Hungary, which had received quantities of waste water containing cyanide and heavy metals from the Baia Mare accident in Romania in 2000. Hungary, together with Austria, indeed abstained in the adoption of the Common Position.

4. Inter-institutional dimensions

The data show a clear difference with regard to the observable changes concerning codecision as compared to consultation procedures. Yet the reasons for this difference are not easy to pin down.

In the period under consideration, there has been a significant increase in the share of codecision files which are concluded at first reading (as well as in pre-negotiation of agreement at the common position stage).

Figure 7
Evolution of acts adopted under codecision ("before" and "after")



However, it is doubtful whether enlargement has had much direct impact in this respect - and the available figures need to be treated with caution in all events.

There has been an inter-institutional learning process since the entry into force of the Amsterdam Treaty (reflected in the adoption and revision of a Joint Declaration on the Practical Arrangements for Codecision) regarding the development and consolidation of informal practices required to prepare formal outcomes. The Parliament may at earlier stages have found it of institutional interest to go to conciliation in order to demonstrate its new powers. It now has no need to do so, since the possibility of agreeing at first

reading may in fact be a stronger way of doing so. The institutions may also have come felt a certain public pressure to avoid unnecessarily long procedures.

There have also been changes in the substantive scope of codecision since enlargement, namely the extension as of 1 January 2005 to most Community provisions on visas, asylum, immigration and other policies related to free movement of persons. Coreper II, responsible for this field, is well known to favour early agreements.

The figures may also have been distorted by some temporary phenomena – for example the fact that a significant number of files were adopted under strong time pressure following belated agreement on the Financial Perspectives, in order to implement spending in 2007. In addition, files which began during this parliament (that is, in 2005) will only reach second readings in 2007, such that the overall proportion of conclusions at later stages may well be significantly higher for the Parliamentary term as a whole.

A second line of analysis looks at possible changes in the patterns of Member State-MEP interaction. Has there been any change in the extent to which MEPs act according to national interests – or simply in the predictability of Parliament's positions?

Two recent cases illustrate the way in which particular interests of new Member States have had a direct influence on policy processes.

The first concerns maize. In 2003, a Regulation was adopted establishing parameters for intervention in cereals. At that time, there were no intervention stocks of maize, as seemed normal given the fact that the EU has historically been a net importer of maize. Over the next few years, however, the situation changed. The intervention price for cereals became attractive in regions with lower production costs as well as high transport costs and logistical difficulties. The buying-in scheme was no longer serving its original purpose of a safety net, but had become a commercial outlet for which part of the harvest was systematically destined. This mainly concerned European regions, and was expected to be aggravated with the accession of Bulgaria and Romania.¹⁷ In December 2006, the Commission therefore presented a proposal to abolish intervention arrangements for maize. This proposal met strong opposition from Hungary (which accounted for 93% of maize intervention stocks in 2006), Poland and Romania. In the EP's AGRI committee, the maize intervention dossier was given to a Hungarian MEP. The Draft Report (6 March 2007) proposed rejection of the proposal.

The second case concerns potato starch. Following the 1992 reforms, a quota system was introduced in 1994 in order to limit production. A new Regulation was adopted in 2005 to renew the system, including the six new producing Member States - Poland (which received 78%), the Czech Republic, Latvia, Lithuania, Estonia and Slovakia - and fixing the quotas for 2005/2006 and 2006/2007. Italy, Poland and Lithuania voted against. In December 2006 the Commission presented a proposal for marketing years 2007/2008 and 2008/2009 which foresaw a roll-over for two years of existing quota arrangements. Poland and Lithuania had urged a roll-over of their quotas for four years. The dossier in the Parliament was given to a conservative Polish MEP.

This is not to suggest that 'new' Member States are more willing or able than 'old' ones to have their special agricultural interests pushed in the Parliament by MEPs

¹⁷ Proposal for a Council Regulation amending Regulation (EC) No 1784/2003 on the common organisation of the market in cereals. COM(2006) 755 final. 15.12.2006.

from their country. Compare, for example, the case of sugar reform. The Rapporteur was Jean-Claude Fruteau, French Socialist from Réunion (dependent on sugar cane for 85% of its exports). The Shadow from the EPP-ED was Albert Dess from Bavaria, centre of southern Germany's massive production and home to the EU's largest sugar company.¹⁸

Yet there are inevitable differences. By early 2007, indeed, enlargement itself had become an explicit issue for the Parliament in the case of agriculture. The Parliament adopted a Resolution on 29 March 2007 on the integration of the new Member States into the CAP, complaining that 'the Commission and the Council have been late or reluctant in understanding the new Member States' special problems and offering the necessary help'; that 'Community rules were not adequately adapted to the new conditions in certain markets'.¹⁹

The two environmental dossiers already mentioned can also shed some light on trends concerning Council's interaction with Parliament in the framework of codecision.

Bathing water (2)

In the case of bathing water, the Council agreed in its Common Position on the new category of 'sufficient', as well as the distinction between inland waters and coastal waters. Parliament's ENVI Committee proposed deleting both of these in its draft amendments adopted on 21 April, as well as advancing the deadline for the new system. These amendments in particular were seen to leave no flexibility for the Council. A proposed compromise package was drawn up in the Working Party on 21 April: Parliament would drop these amendments; in exchange Council would offer some changes on public information and participation, perhaps make more explicit the review clause to respond to concerns about the 'sufficient' category. For the rest, the Presidency sent a strong message to Parliament that 'the Council has no flexibility on other issues and would prefer the *status quo* to the adoption of a Directive containing the other elements of its draft second-reading opinion.'²⁰ The package was not accepted at the informal Trialogue on 25 April and the Committee proceeded with the amendments.

These proposals, however, were not adopted in the plenary vote on 10 May,²¹ although the plenary did introduce more stringent standards for the 'sufficient' category. The main reason for this seems to be a selective increase in the extent to which MEPs vote according to national interests rather than Group position. It is hard to evaluate to what extent, if any, enlargement has contributed to this. In the case of bathing water, there were only eight Roll Call Votes on the 55 second-reading amendments considered in plenary. In those cases, group discipline was maintained to a high degree, with one

¹⁸ According to figures on CAP beneficiaries released in 2005 by the Danish Government, Danish Liberal Democrat Niels Busk Simonsen, who led the debate for ALDE, had been receiving annual sugar subsidies in the previous years. <http://www.farmsubsidy.org/recx/denmark/> 198178.

¹⁹ 2006/2042(INI). It was based on an AGRI Committee Report drawn up a Hungarian Rapporteur, Csaba Sándor Tabajdi.

²⁰ Doc. 8075/1/05 REV 1 of 21 April 2005.

²¹ The vote on deleting the 'sufficient' category was actually in favour (320 in favour, with 291 against and, 11 abstentions) but was below the threshold of the absolute majority of members required to adopt second-reading amendments. The amendment on suppressing the distinction between coastal and inland waters was defeated by a show of hands. OJ C 92 E of 20 April 2006 p.31

exception - Amendment 42 from the Group of the Greens/European Free Alliance.²² In this case, the Socialist Group was more or less equally divided. The extent to which national delegations voted as such is more or less the same for 'old' and for 'new' Member States (see Table 2).

Table 2
A snapshot of national interests within political groups in EU 25: the division of PES voting over Amendment 42 on Bathing Water at Second Reading, 10 May 2005

"OLD"	FOR	AGAINST/ ABSTAIN		"NEW"*	FOR	AGAINST/ ABSTAIN
BE	4	-		LT	2	-
DK	3	-		MT	3	-
IE	1	-		SI	1	-
GR	7	-		SK	3	-
AT	6	-				
FI	3	-				
SE	4	-				
DE	20	1				
FR	24	1				
IT	7	2		PL	5	3
PT	4	3		CZ	1	1
ES	2	20		EE	1	1
NL	-	6		HU	-	6
LU	-	1				
UK	-	17				

*Cyprus and Latvia have no PSE members.

Source: elaborated from voting record in OJ C92E of 20 April 2006 pp.42-43.

Note: not all MEPs voted

Extractive industries' waste (2)

The mining waste directive shows a similar pattern. Following adoption of draft amendments by the Environment Committee on 25 May including key amendments proposed at first reading on scope and post-closure obligations. The Presidency proposed a compromise package for the informal triologue on 5 July.²³ The Committee only partially modified the draft Recommendation on 13 July, and maintained most of the

²² This amendment proposed replacing Article 5(4) 'b) If a bathing water *is classified as "poor" for five consecutive years, a permanent bathing prohibition or permanent advice against bathing shall be introduced. However, a Member State may introduce a permanent bathing prohibition or permanent advice against bathing before the end of the five-year period if it considers that the achievement of "sufficient" quality would be infeasible or disproportionately expensive.*' by '(b) If a bathing water *has still not reached the classification "good" within three years, it shall be considered as not being in conformity with this Directive.*'

²³ Council doc. 10682/05 of 29 June 2005.

amendments which had been considered unacceptable by the Council. The Parliament's press service stressed that the Committee was insisting on 'an inventory of closed sites to be established by every Member State in the three years following the entry into force of the directive, prioritising the most dangerous sites. The site should if necessary be rehabilitated in the following four years at the expense of the waste producers. This point is of particular importance to the new Member States of Central and Eastern Europe where many mining companies have long flouted safety standards.'²⁴

At second reading, however, 12 and one-half of the amendments failed to be adopted. Most of these had been proposed at first reading. None had been accepted (or accepted fully) by the Council in the compromise package. A common perception was that 'the Parliament had caved in to concerns expressed by Central and East European countries by removing a requirement to clean up old and abandoned mining sites'²⁵ Since there were no roll-call votes it is not possible to provide objective evidence as to whether the behaviour of MEPs from new Member States was the main element involved, far less the precise motivations behind the voting. Even at the Committee stage, there was some manifestation of uncertainty, with 36 votes in favour, five against and 15 abstentions.²⁶ It seems plausible that those larger countries which were pressing for a 'proportionate' measure may have succeeded in rallying MEPs from new (as well as old) Member States to vote against the repeated amendments of most concern. Although Council could not adopt all the amendments, and thus had to go to conciliation, the end-game for the UK Presidency was now much easier.

²⁴ http://www.europarl.europa.eu/news/expert/infopress_page/064-1450-238-08-34-911-20050826IPR01432-26-08-2005-2005-false/default_en.htm

²⁵ *Euractiv*, 'EU strikes agreement on mining waste.' 22 November 2005.

²⁶ The possibility of a change in position after enlargement was openly taken into account regarding admissibility of amendments. A point was raised at that meeting under Any Other Business on 'Second reading amendments on common positions currently being considered within the Committee. In reply to a question by Mr Bowis, the Chairman confirmed that he would support a flexible, open approach to amendments tabled on these issues on which Parliament's first reading had taken place in the last Parliament and before enlargement.' Minutes of the meeting on 12 and 13 July of the *Committee on the Environment, Public Health and Food Safety*. ENVI_PV(2005)0712_1.
http://www.europarl.europa.eu/meetdocs/2004_2009/documents/pv/572/572404/572404en.pdf

Conclusions

The enlargements of the EU in May 2004 and January 2007 have inspired a significant amount of academic work, as well as political debate, about their possible consequences for the functioning and further development of the EU's institutional system. Within this line of research, and with a special focus on the Council, this paper has tried to contribute two additional dimensions of analysis: first, providing a new way of looking at quantitative evidence; and second, combining quantitative accounts with qualitative evidence gathered from selected case studies.

On this basis, the paper has aimed to identify the kind of changes which can be observed to have taken place, and the significance of enlargement in initiating and shaping these changes. Since there has not been only marginal change in decision-making rules since the entry into force of the Nice Treaty, the analysis has focussed on Council procedures and practices, the nature of Council 'output' and trends in inter-institutional relations.

The Council machine still produces a comparable amount of legislation. Overall, the process does not appear to be more contested nor to take dramatically longer. It may therefore be concluded (at least at EU 25) that, when it comes to the 'ease' of decision-making the Council has largely assimilated its new members and has successfully adapted its internal working methods to the new conditions. The changes observed are minor and can be seen as part of a more general evolution in procedures and the role of key actors. The increased length in procedures are notably greater in the case of codecision, suggesting that the continuing challenges are less to do with internal Council practices than inter-institutional relations.

That said, some qualitative changes can be detected in the process. The issue is not so much that there has been a certain reduction in the 'club atmosphere, as that the Council seems to be becoming more 'bureaucratised', in the sense that less real political debate takes place. Changes are seen also in the nature of the output. Again, however, this cannot be related only to what happens in the Council. The salience of adopted acts (in terms of their novelty and importance) also appears to have been significantly reduced, but this depends at least as much on the nature of the proposals on which the Council is acting, and the broader European policy agenda. The average length of legislation has also grown, probably reflecting the need to deal with increased diversity.

Beyond obvious changes such as the number of languages or the number of people round the table, or the need to deal with new substantive issues which have been specifically imported together with the newer countries, it is not easy to pin down the specific role of enlargement as an explanatory factor for these changes. There are very rarely coalitions of 'new' versus 'old' Member States. As demonstrated in the qualitative elements in this paper, acceding countries have generally joined existing issue-based coalitions in which larger Member States continue to play the leading role. In most policy questions, enlargement is only one among many other concurrent variables and each issue has its own particular history.

Where do we go from here? There are at least three aspects connected with this paper that would deserve further attention in future research. The first one concerns time. Three years after enlargement is in many respects too short a period for a full appreciation of possible changes: the quantitative indicators and the selected case studies that have been presented will need to be analysed against a longer timeframe. The second has to do with the role played by contingencies in EU politics and the connected challenge of reconciling global figures with individual stories: more sophisticated indicators and more representative case studies are needed to strengthen this link. Third, in addition to works focused on single institutions, such as this one, more needs to be done in appraising the inter-institutional or systemic dimension of change. One hint arising from this paper is the evolution of codecision procedure: on many accounts, EU25 is much more different than EU15 under a codecision than a consultation environment. Exploring and explaining this puzzle requires a focus that goes beyond a single institution.

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Appendix

Data collected for this paper refer to all acts adopted by the Council (alone or with another institution, usually the EP) during four presidencies. It includes acts adopted on a proposal from the Commission or from a Member state (in particular decisions adopted in the framework of the II and III pillars) as well as acts having as a legal basis a treaty article or a piece of secondary legislation. It contains information on 939 acts, gathered through combined reliance on two databases: Commission's Prelex²⁷ and Council's monthly summaries of acts adopted²⁸ (both its annexes I and III).

For each act, the following information has been collected (in brackets, the type of variable):

- Title of the proposed act (nominal)
- Type of act (nominal)
- Paternity of the act²⁹ (nominal)
- Procedure pursued (nominal)
- Act adopted on a proposal from the Commission? (nominal, dichotomous)
- Council's internal decision mode³⁰ (nominal, dichotomous)
- Document adopted (nominal)
- Annex of the Monthly summary of Council acts where the information is reported (nominal, dichotomous)
- Majority requirements (nominal)
- Nature of legal basis³¹ (ordinal, dichotomous)
- Date of adoption of the Commission proposal
- Commission's internal decision mode (nominal)
- No. of discussion in the Council as a B point – at 1st reading (numeric)
- Has formal adoption by the Council been preceded by a political agreement – at 1st reading? (nominal, dichotomous)
- No. of discussion in the Council as a B point – at 2nd reading (numeric)
- Has formal adoption by the Council been preceded by a political agreement – at 2nd reading? (nominal, dichotomous)
- Date of final adoption (or signature) of the act (nominal)
- No. of days between introduction of the proposal and final adoption (numeric)
- No. of delegations represented by a minister at the moment of reaching political agreement or on the occasion of the last discussion as a B point in the Council – at 1st reading (numeric)
- No. of delegations represented by a deputy minister (or equivalent political representative) at the moment of reaching political agreement or on the occasion of the last discussion as a B point in the Council – at 1st reading (numeric)
- No. of delegations represented by a diplomat at the moment of reaching political agreement or on the occasion of the last discussion as a B point in the Council – at 1st reading³² (numeric)
- Final title, as published by the Official Journal, of the adopted act (nominal)
- Length of adopted legislation, measured by the no. of words (numeric)
- No. of "opinions" delivered by EP committees on the adopted act (numeric)
- Stage of codecision procedure at which the act has been adopted (ordinal)

²⁷ The database on inter-institutional procedures, monitoring the stages of the decision-making process between the Commission and the other EU institutions. Accessible at: <http://ec.europa.eu/prelex/apcnet.cfm>

²⁸ They are prepared by the General Secretariat of the Council. When necessary, the information of the summaries has been complemented by other sources from Council: these include, in particular, "Council minutes", "Press releases" and other documents searched through its "Register". All information is accessible at: <http://www.consilium.europa.eu>

²⁹ For example: "Act of the Council", "Act of the European Parliament and the Council", etc.

³⁰ Written or oral procedure

³¹ Primary or secondary.

³² In the case of an act never discussed as a B point in the Council, the act is considered as discussed only by diplomats.