

The European Commission after Enlargement: Does More Add Up to Less?

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Contents

Executive Summary	i
Introduction	1
1. From Prodi to Barroso: The output of two Commissions compared	3
1.1 Overall development	3
1.2 Changes according to policy area	6
a) Hard law	6
b) Soft law	10
1.3 New and amending legislation	13
1.4 Summary	15
2. Avoiding controversy: The Commission as ‘consensus-seeker’	16
2.1 Fewer new proposals and more soft law	16
a) A broader range of national socio-economic backgrounds	16
b) ‘Less is more’ and saturation in ‘old’ policy areas	18
c) Self-restriction	20
2.2 A larger and more diverse College	23
a) No voting in the college	23
b) Less collegiality	24
2.3 Trend towards output legitimacy (‘Europe of Results’)	26
2.4 A change in the institutional balance?	27
a) Changes within the Council and the European Parliament	27
b) Changes concerning the legislative process	30
c) Changes in the political context	31
3. More streamlined management in a more presidential Commission	32
3.1 A more presidential Commission	32
a) The changing role of the President: A ‘primus super pares’	32
b) Ensuring coherence in a larger College	34
c) Use of working groups and informal coordination mechanisms	39
3.2 Centralisation	42
a) A stronger Secretariat General	42
b) Planning as a policy tool	43
c) Impact assessments	44
3.3 Managing diversity	46
a) Language	46
b) Personnel	46
Conclusion	48
References	49
Annex A. Sources and Methodology	53
Annex B. List of interviews	55

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CEPS SPECIAL REPORT/FEBRUARY 2008

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Executive Summary

After the ‘glory days’ of the Delors era the Commission was frequently said to be on the decline, and the 2004 enlargement was expected to contribute further to this development. ‘More would add up to less’, it was predicted: a larger Union would come at the expense of a weaker Commission. Following last year’s report on the Council of Ministers after 2004, the present study focuses on the evolution of the Commission since enlargement. It draws on extensive data from the Commission’s PreLex database, on minutes of College meetings and a systematic analysis of Commission coverage in the *Financial Times*. Findings have been complemented by interviews with almost 30 Commission and Council officials, diplomats, senior correspondents and a Member of the European Parliament.

In a first part of the study the number and type of acts adopted by the Barroso Commission are compared to those of the Prodi Commission. The analysis covers a comparable 30-month period for each Commission and arrives at a perhaps unexpected overall result: Continuity. Contrary to many predictions of gridlock and paralysis, the number of proposed legislative acts (‘hard law’) has remained almost stable (-2.8%) and the number of non-binding acts (‘soft law’: Green Papers, Communications, etc.) has even increased after enlargement (+18.1%). Results vary, however, according to policy area. On hard law, Justice and Home Affairs leads the field (+128.6%) while some policies saw a significant decrease (e.g. Enterprise, Taxation, and Enlargement). The most marked increase for soft law could be observed for Trade (+125%), Energy (+107.7%) and again Justice and Home Affairs (+100%).

The Barroso Commission has, however, produced less entirely ‘new’ legislation. More acts than under Prodi were presented that amend, follow-up, update, terminate, extend or ‘codify’ existing law. Less ‘new’ legislation was especially (and not surprisingly) found in the areas of enlargement and (also mostly enlargement-related) trade policy, but could also be observed in the fields of Internal Market, Environment and Transport. The two legislative ‘packages’ on energy policy could not be included, as they were only adopted in the period following the investigated 30-month time period.

Given the many negative predictions and the objective institutional and political challenge of enlarging the EU from 15 to 27 members, the observed continuity of legislative output is a rather surprising result. So how can it be explained? Our search for explanation delivered a two-fold answer: *Externally* the Barroso Commission has become less controversial and *internally* it is managed more efficiently than its predecessor.

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The study takes a closer look at a number of concrete elements that contribute to the two developments:

- Better management is based on:
 - o a stronger presidential role,
 - o a more dominant Secretariat General,
 - o an increased use of impact assessments and ‘Strategic Planning and Programming’ as well as
 - o the successful integration of new staff and mastering linguistic diversity.
- Less controversy can be observed in the form of:
 - o a lower number of new legislative proposals,
 - o an increased use of ‘soft law’,
 - o an apparent reluctance to present proposals on sensitive matters,
 - o a move towards a consensual ‘Europe of Results’,
 - o a larger College that no longer votes and where Commissioners interfere less in other portfolios as well as
 - o a shift in the institutional balance, particularly to the advantage of the European Parliament.

The study also stresses that 1 May 2004 was not the ‘watershed’ it was predicted to be. All the elements mentioned above should be understood as part of a long-term process and must be seen in the wider political context:

- As regards internal reform, the perspective of enlargement certainly helped to give added impetus to certain measures and their full impact often only came to bear after 2004. Many of these measures had however been developed long before 2004 in response to the Commission’s general need for reform, not least after the 1999 scandals.
- In a similar vein, the Commission’s hesitance to present controversial proposals appears to be less a product of enlargement than of the general political context during recent years. Due to fears linked to globalisation, the Commission has often been on the defensive and the problematic treaty reform process has added to this cautiousness. A second ‘Bolkestein directive’ is apparently to be avoided at all costs. To what degree enlargement alone can be linked to a more cautious Commission will only become clearer once the Treaty of Lisbon is ratified.

A verdict would also come too early for the number of tests that this Commission still needs to pass. For example, it still remains to be seen how the Commission will react when its proposals on ‘flagship dossiers’ like climate change and energy come under greater fire from member states and the European Parliament. Tough negotiations on national contributions to the greenhouse gas reduction targets, on ‘ownership unbundling’ in the energy sector and on many other issues still lie ahead. As with the fall of the Santer Commission, we are only likely to see the full effects of enlargement in a few years down the line.

Introduction

Looking at the Commission from a long-term perspective, both the academic world and practitioners have frequently testified to a sense of ‘malaise’ engulfing the institution since the end of the Delors era. For example, Kassim and Menon have argued that: “The decline of the Commission, evident since the early 1990s, has continued since the Prodi Commission took office, and there seems little possibility that the situation will be reversed.”¹

Since the fall of the Santer Commission in 1999, it has been said that the European Commission lacks a sense of mission and the necessary legitimacy, efficiency and effectiveness to reach its goals.² It has also been argued that the relative power of the body once dubbed the ‘engine’ of European integration has been weakened within the delicate system of European governance.³

The 2004 enlargement was expected to contribute further to the perceived decline of the Commission. Even many institutional ‘insiders’ feared that it would become impossible to define (and defend) the ‘Community interest’ with ten additional member states, as they would bring a significant widening of socio-economic realities to an institutional framework that was insufficiently prepared. ‘More would add up to less’, it was predicted: a larger Union would come at the expense of a weaker Commission. It was expected to become an unwieldy legislative, administrative and executive body unable to fulfil its tasks. The larger College in particular was thought to lead to major problems for the internal decision-making of the institution.⁴

Following last year’s CEPS report on the developments in the Council of Ministers since enlargement,⁵ the present study focuses on the evolution of the European Commission.⁶ It analyses the main developments since the 2004 enlargement and will give a differentiated assessment of where the institution stands at present. We will consider whether the aforementioned negative expectations have actually materialised or whether ‘business as usual’ has prevailed. And if results indicate that continuity reigns, then we shall attempt to identify the internal adaptations that are responsible for this continuity. Extending the scope of EU legislation from its application in 15 rather wealthy to 27 much more heterogeneous member states represents such a huge challenge that major adaptation measures must have taken place.

The study does not limit itself to covering only those changes directly due to enlargement, since our research has shown that it was impossible to discount the influence of other factors. Instead, we take a comprehensive perspective and note that enlargement is one – albeit important – explanatory factor for change, but certainly not the only one.

¹ Hussein Kassim and Anand Menon, “EU Member States and the Prodi Commission”, in Dionyssi Dimitrakopoulos (ed.), *The Changing European Commission*, Manchester: Manchester University Press, 2004, p. 102; similar observations can be found in John Peterson, *The Enlarged European Commission*, Policy Paper No. 11, Notre Europe, p. 1.

² Dionyssi Dimitrakopoulos, “Introduction”, in Dionyssi Dimitrakopoulos (ed.), *The Changing European Commission*, Manchester: Manchester University Press, 2004, p. 7. Dimitrakopoulos argues that after the resignation of the Santer Commission in 1999, one could talk of a systemic crisis.

³ Kassim and Menon, p. 90.

⁴ As early as 1985 Margaret Thatcher argued that: “A Commission of 17 is liable to be too large for efficiency or to provide all members with serious portfolios”, cited in David Spence, “The President, the College and the *cabinets*”, in David Spence and Geoffrey Edwards (eds), *The European Commission*, 3rd edition, London: John Harper Publishing, 2006, p. 55.

⁵ Sara Hagemann and Julia De Clerck-Sachsse, *Old Rules, New Game: Decision-Making in the Council of Ministers after the 2004 Enlargement*, CEPS Special Report, March 2007.

⁶ The authors would like to thank Wim Van Aken and Chris Sadler for their valuable contributions to an earlier version of this study. They are also grateful to H. Onno Ruding, Ben Crum and Pierpaolo Settembri for their constructive comments.

Box 1. Methodology and Sources (see also annex A for greater detail)

As regards the methodological approach, the study draws upon a mix of quantitative and qualitative elements. The following sources were used for the *quantitative* research:

- *Prelex: Output of acts adopted by the College*

As a first step the quantity and type of Commission output (i.e. measures adopted by the College) were analysed, based on figures provided by the EU's PreLex-database. We looked at both the Prodi and the Barroso Commission over the first 2½ years of their respective tenure. The comparison has allowed us to identify changes in relation to a number of indicators both concerning the quantity and the type of output. Results indicate the degree of change and the functioning of the 'machine'.

- *Sample of College minutes: Procedures*

In addition researchers have compared selected minutes of College meetings to investigate the developments concerning the length of meetings, the ratio between participating and absent Commissioners, the number of agenda items and the time allocated for discussion. The respective data was taken from 10 College minutes per Commission (5 in the spring, 5 in the autumn) for each of the Delors II, Santer, Prodi and Barroso Commissions. The resulting figures are taken as an indication of the importance of the College as a political body. The shorter and less deliberative meetings were, and the less they were attended by Commissioners themselves, the more it can be assumed that important decisions were not actually taken during the College meeting itself anymore, but rather outside in bilateral or multilateral talks among groups of Commissioners or relevant staff.

- *Sample of Press Coverage: 'Public coherence'*

The study also includes a comparative analysis of public coherence of the Barroso and the Prodi Commissions, which is based on two years of news coverage in the *Financial Times*, as presented in the *factiva* database. The paper was systematically consulted for reported disagreements between Commissioners and put into a comparative perspective. The number of public disagreements is seen as an indicator of the (in-)capacity of the Commission to provide political leadership in view of divergent national interests and party-political preferences.

The findings obtained from the data were complemented by *qualitative* research. Researchers conducted 29 in-depth, semi-structured interviews. Besides Commission officials, we also interviewed a number of officials from the Council and senior diplomats as well as other experts and long-time observers (senior EU-correspondents and one MEP). Interviewees were selected either on the basis of their important horizontal functions (coordination, interinstitutional relations, senior advisers) or because they worked in particular dynamic policy areas that either showed considerable changes in output (e.g. JHA, energy) or had high-profile proposals under discussion (e.g. environment, enterprise). Interviewees were shown the results from the PreLex search and their responses helped to put the data into a broader context. The interviewees, who wished to remain anonymous, provided important insights into the changes that have (or have not) occurred since enlargement.

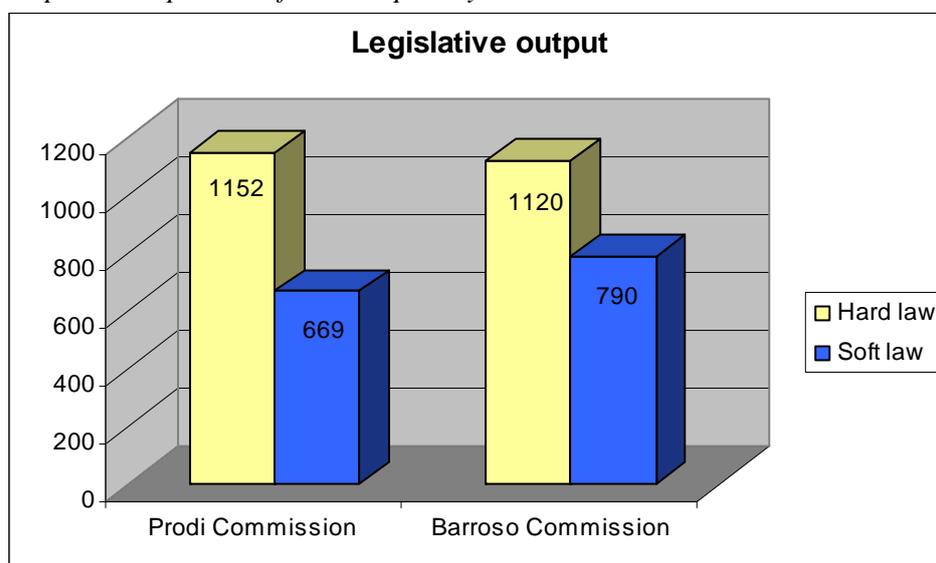
1. From Prodi to Barroso: The output of two Commissions compared

In this first part the development of the College's actual output (in terms of acts adopted) will be presented to set the stage for further analysis in part 2 and 3. It is based on data retrieved from the Commission's PreLex-database and compares the acts adopted by the Prodi and the Barroso Commissions during their first 2½ years in office. The two periods chosen are thus not only comparable in length, but also concern the 'life-cycle' of the Commission tenure. The timeframe deliberately excludes the periods immediately preceding and following enlargement, as they were characterised by a remarkable increase in legislative action before May 2004 and a disproportionate decrease in the months after the new members had joined.

1.1 Overall development

The overall development since 2004 can be summed up with one word: Continuity. The Prodi Commission adopted a total of 1,821 acts compared to 1,910 acts under the Barroso Commission in the respective 30-month period, which even means an overall increase of 4.9%.

Graph 1. Comparison of acts adopted by the Prodi and the Barroso Commission



Comparison based on a 30 month period for both Commissions (Prodi: 1 January 2000 to 30 June 2002; Barroso: 1 January 2005 to 30 June 2007)

Hard law: Legally binding acts (Directives, Regulations, Framework Decisions and Decisions).

Soft law: Non-binding acts (Communications, Reports, Green Papers and White Papers)

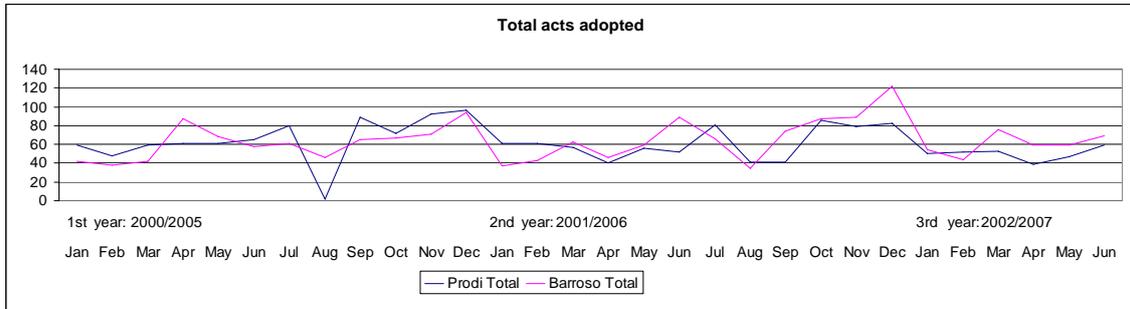
Source: PreLex database, (<http://ec.europa.eu/prelex/apcnet.cfm?CL=en>).

With only a very slight decrease in legally binding acts ('hard law') of -2.8% and a significant increase in 'soft law' (+18.1%), the worst-case-scenario of a paralysed Commission has – at least until now – not materialised. In view of the many predictions of a looming institutional breakdown that were voiced before enlargement, this result is somewhat surprising. It is however sustained by the most recent academic literature⁷ and by almost 30 persons who were interviewed for this study.

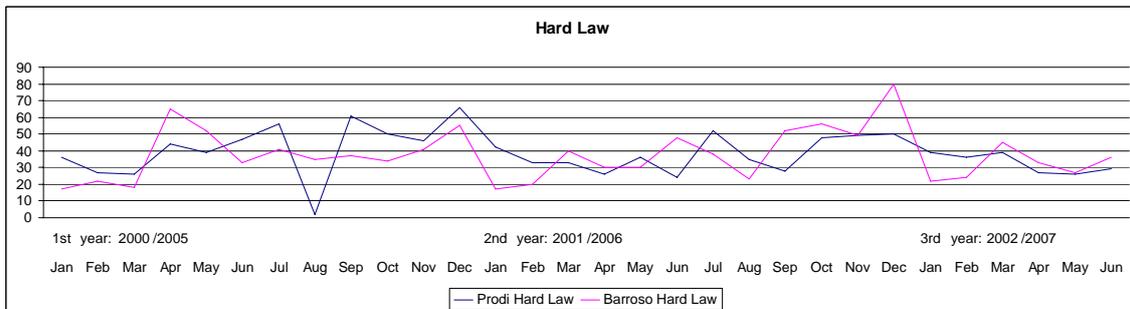
⁷ See for example Giuseppe Ciavarini Azzi, "La Commission Européenne à 25 – Qu'est-ce qui a changé?", in Renaud Dehousse et al., *Elargissement – Comment l'Europe s'adapte*, Science Po Presse,

The three graphs below also illustrate that the development over time has been rather similar. Some differing peaks and lows can be detected, but overall there have neither been strongly diverging patterns nor has one Commission adopted a significantly higher number of acts than the other over a long period of time.

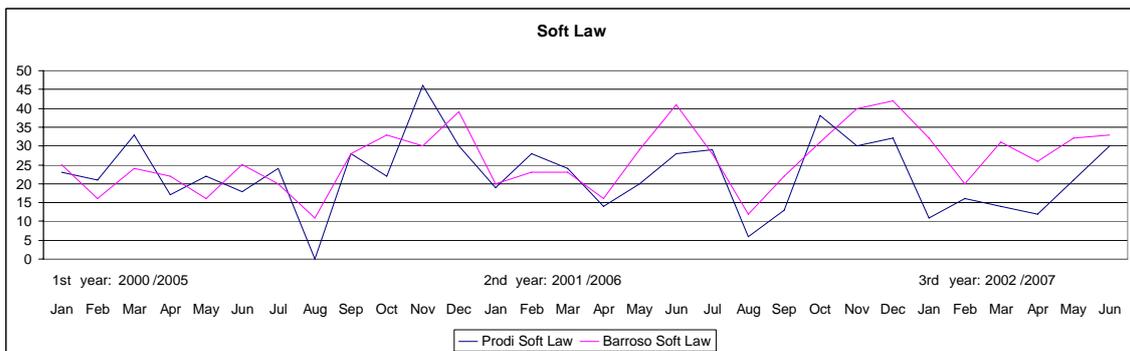
Graph 2. Total output of Prodi & Barroso Commission compared (over 30 months)



Graph 3. Hard law output of Prodi & Barroso Commission compared (over 30 months)



Graph 4. Soft law output of Prodi & Barroso Commission compared (over 30 months)



The increased share of soft law in the overall output of the Barroso Commission is an indicator of a somewhat less coercive approach by that Commission. Whereas 36.7% of legislation under Prodi was soft law, this figure rose to 41.4% during the comparable period under Barroso.

Paris, 2006, pp. 39-55; Helen Wallace, *Adapting to Enlargement of the European Union: Institutional Practice since May 2004*, Trans European Policy Studies Association (TEPSA), November 2007 (retrievable at <http://www.tepsa.be/TEPSA%20-%20Wallace%20Publication%20website.doc>).

Table 1. Share of hard and soft law

	Prodi Commission	Barroso Commission	Change (% of %)
Hard law	63.3%	58.6%	-7.3%
Soft law	36.7%	41.4%	+ 12.6%
Total	100.0%	100.0%	--

This finding is also supported by another one concerning **legally binding acts ('hard law')**: An increase in the number of directives and a decrease in the number of regulations have taken place. Whereas regulations are binding and to be implemented directly in all their elements, directives leave discretion to member states regarding the means to achieve the aims formulated at EU level. Although not a major shift, the figures suggest once more that since enlargement a somewhat more flexible approach has been taken by the Commission.

Table 2. Hard law (total numbers)

	Prodi Commission	Barroso Commission	Change
Regulations	491	453	- 7.7%
Directives	137	152	+ 10.9%
Framework Decisions	7	7	0.0%
Decisions	517	508	- 1.7%
Total	1152	1120	-2.8%

Interestingly, several of our interviewees argued that enlargement would actually have called for the opposite development. Because the range of socio-economic realities across member states has widened since the twelve new countries joined, the establishment of clear common standards would have become even more important for the creation of a level playing field (e.g. in the context of the internal market). In order to reach this degree of coherence, regulations would normally be the more appropriate tool, as directives would entail a higher risk of divergent results at the national level.

Regarding **non-binding acts ('soft law')**, the most important factor for the increase is a much higher number of 'Communications' under the Barroso Commission. However, the biggest *relative* augmentation concerns the number of Green Papers, which has almost tripled under Barroso.

Table 3. Soft law (total numbers)

	Prodi Commission	Barroso Commission	Change
Communications	354	503	+ 42.1%
Reports	294	247	- 16.0%
Opinions	2	2	0.0%
White Papers	7	5	- 28.6%
Green Papers	12	33	+ 175.0%
Total	669	790	+18.1%

In this context it needs to be explained that different policy tools are used at different times in the development of a policy area. Usually a new field is first tackled with 'soft' instruments like Green Papers or White Papers, before more concrete legislative proposals are put forward. For example, in the relatively new field of a common energy policy, the Commission first presented a Green Paper in March 2006, following the informal European Council at Hampton Court (October 2005). This Green Paper ("A European Strategy for Sustainable, Competitive and

Secure Energy”)⁸ broadly set the scene and was then followed by a Commission Communication (“An Energy Policy for Europe”)⁹ in January 2007 that put forward more detailed ideas in view of the European Council in March 2007. At the European Council meeting, heads of state and government agreed on concrete goals for the reduction of CO₂ and an increased use of renewable energy. Only following this agreement did the Commission move into ‘legislation mode’ and presented a ‘package’ of initiatives on the internal market for energy in September 2007,¹⁰ which was followed by another set of initiatives (particularly on renewable energy) in January 2008.¹¹

Such a ‘cycle’ of various policy instruments does not apply to all cases in all policy areas and the move from ‘soft’ reflection to ‘hard’ legislative initiatives can of course only be made where the Commission has the competence to do so. The cycle outlined for energy policy is nevertheless a rather typical example.

1.2 Changes according to policy area

A closer look at the figures shows that the development of ‘output’ differs widely across policy areas and according to the type of instrument used. In the following part we will first look at ‘hard law’ in different policy areas, before turning to softer instruments.

a) *Hard law*

Table 4 below illustrates the developments regarding hard law.¹² Three policy areas stand out with a substantial increase in legislative output: justice and home affairs (JHA),¹³ administrative and institutional issues and transport.

⁸ Green paper, A European Strategy for Sustainable, Competitive Energy, COM(2006)105 final, 8.3.2006 (<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2006:0105:FIN:EN:PDF>).

⁹ Communication from the Commission to the European Council and the European Parliament. An Energy Policy for Europe, COM(2001)1 final, 10.1.2007 (<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2007:0001:FIN:EN:PDF>).

¹⁰ Proposal for a Regulation amending Regulation (EC) No 1775/2005 on conditions for access to the natural gas transmission networks, COM(2007)532;

Proposal for a Regulation amending Regulation (EC) No 1228/2003 on conditions for access to the network for cross-border exchanges in electricity, COM(2007)531;

Proposal for a Regulation establishing an Agency for the Cooperation of Energy Regulators, COM(2007)530;

Proposal for a Directive amending Directive 2003/55/EC concerning common rules for the internal market in natural gas, COM(2007)529;

Proposal for a Directive amending Directive 2003/54/EC concerning common rules for the internal market in electricity, COM(2007)528.

¹¹ See http://ec.europa.eu/energy/climate_actions/index_en.htm:

Proposal for a Directive on the promotion of the use of energy from renewable sources. COM(2008)19 final (http://ec.europa.eu/energy/climate_actions/doc/2008_res_directive_en.pdf);

Communication from the Commission, Supporting Early Demonstration of Sustainable Power Generation from Fossil Fuels, COM(2008) 13 final (http://ec.europa.eu/energy/climate_actions/doc/2008_co2_comm_en.pdf);

Communication from the Commission, A First Assessment of National Energy Efficiency Action Plans as Required by Directive 2006/32/EC on Energy End-Use Efficiency and Energy Services – Moving Forwards Together on Energy Efficiency, COM(2008)11 final.

¹² Categorisation was made according to the respective ‘lead Directorate General’ (DG) indicated by Pre-Lex, i.e. the DG responsible for the respective dossier. Where an attribution to a policy area was not clear

JHA is leading the field with an increase of 128.6% (from 35 to 80 acts adopted). Statements in interviews are in line with these figures, as JHA was described as one of the “growing areas” of Commission activity. It is still a relatively ‘new’ policy where legislative activity was very much boosted after the adoption of the Treaty of Amsterdam in 1999. Over the years, member states have built up mutual trust and there is a general acknowledgement that more should be done together at the European level, especially after 9/11 and the Madrid and London bombings. This trend is likely to persist, especially if and when the Lisbon Treaty comes into force.

The second largest increase (+90%; from 32 to 61 acts adopted) concerns **administrative and institutional issues**. This development is entirely due to rather technical matters (e.g. a higher number of regulations concerning executive agencies or Eurostat).

The increase in **transport** legislation (+80.6%; from 62 to 112 acts adopted) can be explained by a ruling of the European Court of Justice. The Court saw a breach of internal market rules due to bilateral agreements on air services between individual member states and third countries. As a consequence, the Commission proposed numerous Council decisions that extended the application of these bilateral agreements to all member states.

The increase in output for **research policy** (+70.6%; from 17 to 29 acts adopted) is mostly due to a greater variety of implementation tools available under the 7th framework programme. While many issues were decided through implementing acts under the 6th framework programme, a number of new tools were introduced under the 7th framework programme (e.g. public private partnerships, joint technology initiatives) that had to be agreed by Council decisions.

Finally, increased legislative activity on **health and consumer issues** (+22.9%; from 48 to 59 acts adopted) can partly be explained by a number of proposed directives that had still been prepared by the services during the Prodi Commission and only reached the College in 2005. Out of 8 proposed directives that were adopted by the College between January and May 2005 in total, 4 were in the field of health and consumer protection.¹⁴

As table 4 shows, there have also been a number of policy areas where the Commission has legislated *less*. The two most interesting policy areas with a marked decrease are enterprise and taxation policy.

Part of the decrease concerning **taxation** (-35.5%, from 107 to 69 acts adopted) is also due to enlargement.¹⁵ Besides this, the Barroso Commission proposed fewer regulations on tariffs as

(e.g. for ‘DG Transport and Energy’ as lead-DG), the acts were classified individually on the basis of their content.

¹³ The denomination ‘Justice and Home Affairs’ and the corresponding acronym ‘JHA’ has been changed to ‘Justice, Freedom and Security’ (‘JFS’) in the meantime. As JHA is still the more commonly known acronym, it is also used in the context of this study.

¹⁴ COM(2005)221, Proposal for a Council Directive laying down minimum rules for the protection of chickens kept for meat production;

COM(2005)171-1, Proposal for a Council Directive on Community measures for the control of Avian Influenza;

COM(2005)151, Proposal for a Council Directive on the control of potato cyst nematodes;

COM(2005)38, Proposal for a Council Directive amending Annex IV to Directive 2000/29/EC on protective measures against the introduction into the Community of organisms harmful to plants or plant products and against their spread within the Community

¹⁵ For example proposals for a Council decision on a Community position amending protocols to the Europe Agreement between the European Communities and the respective accession country, e.g. COM(2000) 677.

well as fewer decisions on national derogations. The latter leads to the interesting finding that there were more tax-related derogations when the Union still had fewer member states. Additionally, we were told in interviews that the Commission had become generally more hesitant to use hard law in the field of taxation. This was partly explained as the result of a deliberate political choice of the present College and it is no secret that a number of Commissioners regard all initiatives in this policy field with great suspicion. The Commissioner from Ireland, Charlie McCreevy (internal market) publicly voiced his concerns about the idea of a common consolidated corporate tax base (CCCTB),¹⁶ which put him at odds with his fellow-Commissioner for Taxation and Customs Union, László Kovács. The proposal is set to be adopted by the College in the autumn of 2008, but has been put on hold until the Irish referendum on the Lisbon Treaty. The experience with the ‘Bolkestein’-directive on services during the French referendum campaign has left its mark.

For *enterprise policy* a decrease in directives from 20 to 8 can be observed. No dominant subject could be identified, but several explanatory factors were mentioned in interviews. Firstly, we were told that legislation in the field of enterprise had seen a tendency towards ‘bundling’ several proposals into larger packages, thus reducing their overall number. Whereas under Prodi there were a number of ‘reviews’ that led to a high number of individual legislative acts (e.g. the pharmaceuticals review between June 2001 and March 2004), under Barroso larger ‘package acts’ have been adopted. By looking at the PreLex-database, we were however not able to verify this to be a general trend. In other interviews it was even stated that the rather negative experience with the comprehensive REACH-directive (first adopted by the Prodi Commission) had led to less ‘package legislation’ under Barroso. A second potential reason that was put forward to explain the downward shift is of a more political nature: The current Commissioner for enterprise, Günter Verheugen, put himself at the forefront of the Commission’s ‘better regulation’ agenda.¹⁷ He publicly declared ‘cutting red tape’ to be one of his key priorities, which clearly implies a lower level of legislative activity. As a third possible explanation, it was said that ‘saturation’ of the objective need for new legislation could be observed in some fields of enterprise policy, since it is a policy that has been tackled by the Commission for a long time.

Changes concerning *competition policy* and *information society* do not weigh very heavily as they are based on very small absolute numbers. The decline in activity on *enlargement policy* is unsurprising, as it is easily explained by the extraordinarily high number of acts adopted in preparation for the 2004 enlargement.¹⁸ Concerning *education and culture*, a closer look at the PreLex-database also showed us that the large decrease is linked to enlargement. Many of the proposed decisions under Prodi meant to include future member states in different EU activities (for example the association of a given candidate country with the Culture 2000, Socrates or Youth programmes, which together accounted for 23 of 31 decisions).

¹⁶ See *European Voice*, 13-19 December 2007, p. 1.

¹⁷ The ‘Better Regulation’ agenda is covered in greater detail in section 2.1 b) below.

¹⁸ For example under Prodi 13 Council decisions on the principles, priorities, intermediate objectives and conditions contained in the Accession Partnership were adopted (concerning all 12 accession countries and Turkey, e.g. COM (2001) 662). Other examples stem from the participation of (all or some) of the accession countries in community programmes (e.g. Fiscalis, training and education, Youth Community action programme).

Table 4. Changes in hard law according to policy areas

HARD LAW	DIRECTIVES			REGULATIONS			DECISIONS			TOTAL HARD LAW		
	Prodi	Barroso	Change	Prodi	Barroso	Change	Prodi	Barroso	Change	Prodi	Barroso	Change
Agriculture	0	4		80	57	-28.8%	17	31	82.5%	97	92	-5.2%
Budget	0	0		5	3	-40.0%	3	6	100.0%	8	9	12.5%
Competition	0	2		3	1	-66.7%	2	0	-100.0%	5	3	-40.0%
Development	0	0		4	2	-50.0%	34	40	17.7%	38	42	10.5%
Economic & Financial Affairs	1	0	-100.0%	5	11	120.0%	19	17	-10.5%	25	28	12.0%
Education & Culture	0	0		0	2		31	8	-74.2%	31	10	-67.7%
Employment	7	6	-14.3%	4	7	75.0%	12	6	-50.0%	23	19	-17.4%
Energy	3	1	-66.7%	3	4	33.3%	12	10	-16.67%	18	15	-16.67%
Enlargement	0	15		3	5	66.7%	72	22	-69.4%	75	42	-44.0%
Enterprise	20	8	-60.0%	9	8	-11.1%	17	13	-23.5%	46	29	-37.0%
Environment	13	17	30.87%	6	8	33.3%	38	27	-29%	57	52	-8.8%
External Relations	0	0		37	23	-37.8%	40	61	52.5%	77	84	9.1%
Fisheries	0	1		48	57	18.8%	26	16	-38.5%	74	74	0.0%
Health, Consumer Affairs	20	27	35.0%	14	11	-21.4%	14	21	50.0%	48	59	22.9%
Information Society	6	3	-50.0%	3	3	0.0%	6	2	-66.7%	15	8	-46.7%
Internal Market	21	21	0.0%	5	3	-40.0%	1	2	100.0%	27	26	-3.7%
Institutions, Administration	1	0	-100.0%	26	57	119.2%	5	4	-20.0%	32	61	90.6%
JHA	10	8	-20.0%	12	21	75.0%	13	51	292.3%	42*	87*	128.6%
Regional Policy	0	0		7	3	-57.1%	0	2		7	5	-28.6%
Research	0	0		0	4		17	25	47.2%	17	29	70.6%
Taxation	10	13	30.0%	42	21	-50.0%	55	35	-36.4%	107	69	-35.5%
Trade	0	0		148	125	-15.5%	73	40	-45.2%	221	165	-25.5%
Transport	25	26	4.0%	27	17	-37.0%	10	69	590.00%	62	112	80.6%
Total	137	152	10.9%	491	453	-7.7%	517	508	-1.7%	1152	1120	-2.8%

* including 7 framework decisions for each Commission (see table 2)

b) Soft law

As table 1 above shows there has been an overall increase in soft law. This is also reflected in a number of specific policy areas in table 5 below. Trade, energy and JHA stand out especially.

The increase of output in the area of *trade policy* (+125%) can partly be explained by a higher number of Reports linked to anti-dumping matters (from 2 under Prodi to 8 under Barroso) and a general increase in Communications (from 3 to 9).

The total amount of soft law regarding *energy* rose by 107.7 %, mostly owing to Communications (from 5 to 22). The development illustrates the increased political attention that this policy area has received over recent years. When the Barroso Commission took office energy was still regarded as a relatively unimportant portfolio, but in the meantime it has become one of the key dossiers. In several interviews energy and climate change were the two topics mentioned by which the success (or failure) of the present Commission would be judged in the end. A ‘nascent’ policy like energy tends to first result in more soft law in order to test and prepare the ground for subsequent legislation (see explanation on the ‘policy cycle’, p. 5/6). As the time span covered by this study only includes the first 30 months of the Barroso Commission, Green Papers and Communications on energy have already been included while the two legislative packages on energy from September 2007 and January 2008 were not. It also has to be stressed that the Commission currently only has the competence to propose legislation on energy, if it can be linked in some way to the internal market. This may also have contributed to the discrepancy between soft and hard law. The situation will only change with a special legal base for energy policy in the Treaty of Lisbon.

JHA saw a similar increase on soft law (+100%) to that already observed for hard law. It underlines the claim that the policy is still relatively new and is considered a clear political priority. An increase across all instruments (Communications, Green Papers, Reports) can be observed, a perusal of the content of proposals shows that they cover the entire policy area from the future of the Common European Asylum System¹⁹ to the applicable law and jurisdiction in divorce matters.²⁰

The increase in *taxation* matters (+70.6%) stems to a large extent from 10 Communications related to the Council Directive on restructuring the community framework for the taxation of energy products and electricity.²¹

The higher output on *information society* under Barroso (+57.7%) can partly be explained by more specific issues (e.g. eContent, eContentplus, eSafety programmes) that require a higher number of different Communications than under Prodi. A second factor appears to be a stronger focus on security issues (internet security and security in the digital era in general).

Soft law on *environmental policy* has gone up (+52.6%), partly due to a greater number of so-called ‘Thematic Strategies’ on a variety of issues²² and partly because of more Communications on climate change.

As regards the increase on *consumer and health policy* (+53.9%), a closer look shows that it is of a rather general nature. In interviews we were pointed to the Commission’s promotion of a “Europe of results” after the French and Dutch no-votes to the Constitutional Treaty. During the

¹⁹ COM(2007)301.

²⁰ COM(2005)82.

²¹ For example Council Directive 2003/96/EC.

²² On soil protection, urban environment, sustainable use of pesticides, sustainable use of natural resources, protection and conservation of the maritime environment, air pollution.

second semester of 2006 and first semester of 2007 the Commission has apparently started to test a number of fields for legislative action where it can show 'concrete results' and 'added value' for citizens (e.g. fighting obesity, organ donation, smoking bans, general review of the consumer *acquis*).²³

The decrease in soft law is particularly marked in the fields of competition and research. As regards *competition* absolute numbers are rather low, however, which puts the strong relative decrease (-40.9%) into perspective. Under Prodi the Commission had presented a number of reports on steel aid (8 out of 17), whereas Barroso did not focus on any one aspect of competition policy in a similar way. Concerning *research policy* (-42.9%) the decline is due to fewer Communications, as the Prodi Commission had produced a particularly high number related to the European Research Area (7 out of 17).

²³ White Paper, A Strategy for Europe on Nutrition, Overweight and Obesity related health issues, COM(2007) 279; Communication from the Commission to the European Parliament and the Council: Organ Donation and Transplantation: Policy Actions at EU Level, COM(2007) 275; Green Paper, Towards a Europe free from tobacco smoke: policy options at EU level, COM(2007) 27; Green Paper, The Review of the Consumer Acquis, COM(2006) 744.

Table 5. Changes in soft law according to policy areas

SOFT LAW	Communications			Reports			Other (White Papers, Green Papers, Opinions)			TOTAL SOFT LAW		
	Prodi	Barroso	Change	Prodi	Barroso	Change	Prodi	Barroso	Change	Prodi	Barroso	Change
Agriculture	4	11	175.0%	25	24	-4.0%	0	0		29	35	20.7%
Budget	15	15	0.0%	10	14	40.0%	0	0		25	29	16.0%
Competition	4	5	25.0%	17	7	-58.8%	1	1	0.0%	22	13	-40.9%
Development	28	44	57.1%	9	3	-66.7%	0	0		37	47	27.0%
Economic & Financial Affairs	30	22	-26.7%	23	22	-4.3%	0	0		53	44	-17.0%
Education & Culture	8	22	175.0%	16	3	-81.3%	1	1	0.0%	25	26	4.0%
Employment	32	25	-21.9%	18	10	-44.4%	1	2	100.0%	51	37	-27.5%
Energy	5	22	340.0%	7	3	-57.1%	1	2	100.0%	13	27	107.7%
Enlargement	4	17	325.0%	17	9	-47.1%	0	1		21	27	28.6%
Enterprise	14	24	71.4%	16	9	-43.8%	0	0		30	33	10.0%
Environment	21	36	71.4%	13	20	53.9%	4	2	-50.0%	38	58	52.6%
External Relations	20	26	30.0%	19	8	-57.9%	0	0		39	34	-12.8%
Fisheries	8	15	87.5%	7	8	14.3%	1	0	-100.0%	16	23	43.8%
Health, Consumer Affairs	12	17	41.7%	13	18	38.5%	1	5	400.0%	26	40	53.9%
Information Society	24	38	58.3%	2	3	50.0%	0	0		26	41	57.7%
Internal Market	20	12	-40.0%	19	11	-42.1%	0	5		39	28	-28.2%
Institutions, Administration	25	26	4.0%	20	24	20.0%	5	3	-40.0%	50	53	6.0%
JHA	23	43	87.0%	9	17	88.9%	5	14	180.0%	37	74	100.0%
Regional Policy	6	6	0.0%	8	9	12.5%	0	0		14	15	7.1%
Research	17	8	-52.9%	4	3	-25.0%	0	1		21	12	-42.9%
Taxation	12	26	116.7%	5	2	-60.0%	0	1		17	29	70.6%
Trade	3	9	200.0%	5	9	80.0%	0	0		8	18	125.0%
Transport	19	34	79.0%	12	11	-8.3%	1	2	100.0%	32	47	46.9%
TOTAL	354	503	42.1%	294	247	-16.7%	21	40	90.5%	669	790	18.1%

1.3 New and amending legislation

Besides a look at the different instruments and policy areas, the number of acts adopted by the Commission can also be analysed according to their innovative potential. A rough proxy for the Commission's innovative strength is the relation between acts that are to be qualified as 'new' and those that are to be qualified as 'amending' legislation. The relation between new and amending legislation is just a *rough proxy*, because innovations and controversial ideas can sometimes also come in the form of amending acts.²⁴ The amount of 'new' legislation overall is still, however, a telling indicator of the degree to which the Commission tackles new policy fields.

In the context of this study, 'amending legislation' is defined in broad terms as any legislative act that aims at amending, following-up on, terminating, repealing, extending or modifying a piece of previously adopted legislation.²⁵ By default legislative acts are considered 'new' if they do not fall into these categories.

Table 6 shows a significant decrease of new proposals by -34.5 % (from 426 to 279) when comparing the output of the first 2 ½ years of the Prodi and the Barroso Commission. This trend applies to all major types of legislative proposals (regulations, directives and decisions).

Table 6. New versus amending legislation (by type of legal act)

	Prodi			Barroso			Change in number of new proposals
	New	Amending	% New	New	Amending	% New	
Regulations	180	311	36.7%	121	332	26.1%	-32.8%
Directives	56	81	40.9%	40	112	26.3%	-28.6%
Framework-decisions	7	0	100%	7	0	100%	0%
Decisions	183	334	35.4%	111	397	21.9%	-39.3%
TOTAL	426	726	37.0%	279	841	24.9%	-34.5%

As table 7 below illustrates, not all policy areas have been affected equally. Six have even experienced an increase in new proposals, albeit none of them by more than 4 in total numbers. The policy areas with the strongest shifts in total numbers have all seen a decrease and are highlighted in the table:

²⁴ For example some of the directives in the recently proposed package on renewable energy are amending acts.

²⁵ Including codification of existing laws and signing and concluding of international agreements.

Table 7. New versus amending legislation (by policy area)

	Prodi			Barroso			Change in number (and %) of new proposals
	New	Amending	% new	New	Amending	% new	
Agriculture	17	80	17.5%	21	71	22.8%	+ 4 (+23.5%)
Budget	5	3	62.5%	1	8	11.1%	-4 (-80.0%)
Competition	3	2	60.0%	0	3	0.0%	-3 (-100.0%)
Development	18	20	47.4%	13	29	31.0%	-5 (-27.8%)
EcoFin	11	14	44.0%	5	23	17.9%	-6 (-54.5%)
Education & Culture	1	30	3.2%	2	8	20.0%	+1 (100.0%)
Employment & Social Affairs	6	17	26.1%	8	11	42.1%	+2 (33.3%)
Energy	8	10	44.4%	7	8	46.7%	-1 (-12.5%)
Enlargement	70	5	93.3%	11	31	26.2%	-59 (-84.3%)
Enterprise	19	27	41.3%	12	17	41.4%	-7 (-36.8%)
Environment	21	36	36.8%	11	41	21.2%	-10 (-47.6%)
External Relations	30	47	39.0%	26	58	31.0%	-4 (-13.3%)
Fisheries	8	66	10.8%	10	64	13.5%	+2 (25.0%)
Health, Consumer Protection	18	30	37.5%	17	42	28.8%	-1 (-5.6%)
Information Society	10	5	66.7%	2	6	25.0%	-8 (-80.0%)
Internal Market	14	13	51.9%	3	23	11.5%	-11 (-78.6%)
Institutions, Administration	14	18	43.8%	17	44	27.9%	+3 (21.4%)
JHA	28	14	66.7%	31	56	35.6%	+3 (10.7%)
Regional Policy	0	7	0.00%	2	3	40.0%	+2 (NA)
Research	0	17	0.00%	2	27	6.9%	+2 (NA)
Taxation	17	90	15.9%	14	55	20.3%	-3 (-17.6%)
Trade	79	142	35.7%	44	121	26.7%	-35 (-44.3%)
Transport	29	33	46.8%	20	92	17.9%	-9 (-31.0%)
TOTAL	426	726	37.0%	279	841	24.9%	-147 (-34.5%)

The most notable decrease can be seen in *enlargement* (from 70 to 11 legislative acts), which already accounts for 40% of the overall decrease in 'new' legislation. This development is again unsurprising and can be explained by the preparations for the acceptance of the 10 new member states in 2004. The Barroso Commission only had to adopt acts concerning a much lower number of accession countries.

The area of *trade* had a minus sum of 35 new acts adopted by the Barroso College. However, a closer analysis shows that under Prodi 25 new legislative proposals were directly related to the 2004 and 2007 enlargements, while there were none under Barroso.²⁶

Besides enlargement and trade, all other policy areas were only affected by minor shifts in total numbers, although change in percentages was sometimes rather dramatic. Results for the area of *internal market* (from 14 to 3 new acts) can be explained by a decrease across the board. This is in line with the declared goal of the respective Commissioner, Charlie McCreevy, to legislate less. As such he stated publicly: “Twenty years on, more legislation from Brussels will rarely be the answer.”²⁷

The area of *environment* has apparently also been affected by the conviction that ‘less is more’ (decrease from 21 to 11 acts). The environmental *acquis* has grown over recent years, which means that there are fewer new aspects to be taken into consideration and a relatively large *acquis* to be maintained. It should be mentioned, however, that due to the limited time period of our database (until June 2007), recent proposals (regarding climate change, emissions etc.) have not been included in the research data. The same is true for the area of *energy*, as the two energy packages passed the College in September 2007 and January 2008 respectively.

1.4 Summary

‘Continuity’ is the defining trend when comparing the overall legislative output of the Prodi and Barroso Commissions during their first 2½ years. The Barroso Commission has adopted less ‘new’ legislation, however, even when enlargement-related acts are excluded from the comparison. Finally, a certain trend towards more ‘soft law’ can also be detected. Our results have largely been confirmed in the 29 interviews conducted for this study. An impression of reduced activity could not be sustained by our figures. Some interviewees stated that in their policy area there had still been a considerable amount of legislation from Prodi’s time ‘in the pipeline’ of the services, which only reached the College level at the beginning of the Barroso Commission. Graph 3 indeed showed a certain peak in hard law activity in April 2005, but in view of the general development it is far from outstanding and therefore only a minor factor.

Given the enormous administrative and political challenge that inevitably results from the enlargement of the Union from 15 to 27 member states, ‘continuity’ is actually a rather spectacular result. Our view was shared by many of our interviewees – all of them experienced ‘Brussels insiders’ – told us that they had also been rather surprised by the relative smoothness of the process. Some even admitted that if we had asked them the same questions in 2003 they would have predicted a rather different outcome.

Departing from these results, we took a closer look at what actually had to change to ensure continuity of output. We were able to identify two major trends: *internally*, a more streamlined and centralised management of the Commission and *externally* an effort to avoid controversy and to concentrate on the role of ‘consensus seeker’ between different national positions. The following two chapters will look at these trends in greater detail.

²⁶ For example, Proposal for a Council Decision on the position to be taken by the Community within the Association Council established by the Europe Agreement between the European Communities and their Member States, of the one part, and Romania, of the other part, concerning the export of certain steel products from Romania to the European Communities, COM(2002)188.

²⁷ Speech by Commissioner McCreevy at the European Parliament’s Internal Market Committee (IMCO), SPEECH/07/739, Brussels, 21.11.2007.

2. Avoiding controversy: The Commission as ‘consensus-seeker’

The tendency of the Barroso Commission to manoeuvre carefully in order to bring member states and other stakeholders on board to the greatest possible extent is not a new phenomenon. In fact even during the ‘glory days’ of Jacques Delors, the Commission needed the support of key players for important proposals. In these times the European Parliament was of less importance, but the Delors Commission would not have succeeded with the Single Market project, if it had not had strong support from key national leaders, such as Mitterrand, Kohl and Thatcher. Since the time of Delors every Commission has been accused of being too low profile and too soft against vested (national) interests. The Commission’s precarious situation between formal independence and the need for political support is thus not new, and neither are its efforts to explore what is acceptable for member states.

It can be argued, however, that the Barroso Commission has concentrated even more intensively on its role as ‘consensus-seeker’ than its predecessors. Generally speaking, it prefers to establish common ground over moving member states towards new positions, especially on matters where national support appears limited. In interviews we came across two main lines of argumentation:

- A first group claimed that a more consensual style is unavoidable to find acceptance in the Council and the EP. If the Commission were to be more assertive, its proposals would be bound to fail in an EU27, while ‘moving softly’ opens up doors for legislation, even in new and very sensitive areas like JHA or energy.
- A second (smaller) group was of the opposite view. They were convinced that the consensual style would actually hamper the Commission’s potential to push things through the legislative process. Firstly, they argued, it would undermine the coherence and therefore the credibility of the respective proposal. Secondly, by limiting itself already from the start, the Commission would never find out how far it could actually have gone. In many cases it would be necessary to start with an ambitious proposal, because member states and parliamentarians would ‘water down’ the initial proposal with their amendments anyway.

No matter which view one takes, however, it was interesting to see that the vast majority of interviewees *did* actually confirm that there had been a move towards a more consensual style. Since the Commission’s general approach appears to be an important explanatory factor for the smooth adaptation to enlargement, we will look at a number of indicators supporting this claim in the following section.

2.1 Fewer new proposals and more soft law

One indicator of Barroso’s careful approach is the results of the PreLex-search as presented above. Firstly, the number of ‘new’ proposals decreased, which means that the Commission has been more hesitant to apply hard law measures in ‘unknown territory’. Secondly, the Commission has produced more ‘soft’ measures, which suggests that the Commission has tested the waters at some depth before taking legislative action (if legislative action was then taken at all). Six aspects will be discussed as possible explanations for these trends.

a) A broader range of national socio-economic backgrounds

The 2004 enlargement has certainly contributed to a widening of the economic gap between member states. Table 8 shows that in 2006 the top 14 member states in terms of GDP per capita in purchasing power standards were from the old EU15, the only exception being Portugal (ranking 19). Even the wealthiest new member state (Cyprus) ranked well below the EU27 average and some of the new member states – especially the largest (Poland) – lie at just above

50%. The enlargement in 2007 (Romania, Bulgaria) has further broadened the range and while general developments between 2003 and 2006 do suggest a certain narrowing of the gap, achieving a similar cohesion to that of the old EU15 will take many more years.

Table 8. GDP per capita in purchasing power standards (%); EU-27 average = 100%

Member State	2003	2006
Luxembourg	247.6	279.7
Ireland	141.1	145.7
Netherlands	129.9	130.8
Austria	129.0	127.8
Denmark	124.7	126.1
Sweden	123.2	124.8
Belgium	123.5	120.0
United Kingdom	120.0	118.2
Finland	113.5	117.2
Germany	117.0	114.4
France	112.3	111.1
Spain	101.4	105.2
Italy	111.2	103.3
Greece	92.4	97.8(f)
Cyprus	89.3	92.5
Slovenia	82.5	88.0
Czech Republic	73.7	78.8
Malta	78.7	77.2
Portugal	77.0	74.6
Estonia	54.6	68.5
Hungary	63.5	65.0
Slovakia	55.7	63.8
Lithuania	49.1	56.3
Latvia	43.5	54.2
Poland	49.1	52.4
Romania	31.5	38.9 (f)
Bulgaria	32.6	36.7

Source: Eurostat; (f) = forecast

Faced with the context of a broader range of economic development, Commission proposals might have become less ambitious. The widened gap was mentioned in several interviews as a challenge for legislative action, however less so at the stage of the proposal than rather later when negotiations start in the Council and the European Parliament. None of our interviews supported the view that enlargement had *generally* led to ‘watered down’ proposals from the College, but answers depended very much on the policy concerned, the concrete rules in application and the political context of individual initiatives.

For example, in areas where unanimity applies in the Council, a tendency to make concessions at the proposal stage was in some cases confirmed. Third pillar issues (i.e. police cooperation and criminal justice) or minimum standards in employment and social affairs were cited as examples. This consequence appears to be a logical one, as enlargement has increased the

number of potential veto players considerably.²⁸ In areas where majority voting applies this problem was perceived as much less common. For example, we were told that ambitions on proposals dealing with environmental standards had not generally been lowered, just because poorer countries had joined the EU. Instead alternative solutions were sometimes used during negotiations, if a country indicated having major problems with a proposal: temporary derogations, transitional periods or targeted aid from structural funds could then be offered. Interestingly, however, our search on PreLex has shown that at least the number of proposals for derogations has not markedly increased after enlargement.

As concerns Council negotiations, we cannot generalise about the impact of new member states either – not even within the same policy area. Concerning environment policy, for example, we were told that the directive on air quality²⁹ had been an instance where new member states had indeed argued successfully in favour of a less ambitious directive. In contrast, they took the opposite line in the negotiations on the soil protection directive.³⁰

The Commission is facing an indirect effect of the broader socio-economic diversity however: according to some interviewees *old* member states have at times become less open to Commission proposals due to the presence of new member states, especially on very sensitive issues. The service directive was mentioned as an obvious case, where due to greater differences in standards, a number of old member states were not willing to accept certain elements of the legislative proposal (i.e. the ‘country-of-origin’-principle) that would have been easier for them if it was only to be applied to the old EU15. Police cooperation was mentioned as another example where greater differences and a lack of trust in the legal systems of some of the new member states has apparently resulted in diminished acceptance for proposals among old member states. In quantitative terms we have not found evidence for this claim, however, as at least the *number* of framework decisions (one of the main legislative tools for initiatives in the third pillar) has remained stable (see table 2 above).

The overview thus shows that the broader range of national contexts has not been a *general* cause of fewer new legislative proposals and more soft law. In certain cases it has been a factor however, especially if the issue was very sensitive and unanimity in the Council applied.

b) ‘Less is more’ and saturation in ‘old’ policy areas

‘Better regulation’ is certainly not a new subject for the EU. It has been on the agenda since the Edinburgh summit in 1992, when European leaders worried about the quality of community legislation. Jacques Santer had already stated that his Commission would do “less, but better”.³¹ However, relatively little was achieved throughout the 1990s and after the fall of the Santer

²⁸ See also Pierpaolo Settembri, *The surgery succeeded. Has the patient died? The impact of enlargement on the European Union*, Jean Monnet Working Paper 04/07. pp. 28-29. According to his findings, after enlargement community legislation adopted by the Council under unanimity declined much more strongly compared to that adopted under qualified majority voting.

²⁹ COM(2005)447.

³⁰ COM(2006)232. The latter can be explained by the fact that some new member states did not have a national regulation and hoped for this issue to be solved at the European level. In contrast, some of the old member states wanted to keep their national rules.

³¹ Michelle Cini, “Norms, Culture and the Kinnock White Paper – The theory and practice of cultural change in the reform of the European Commission”, in Dionyssis Dimitrakopoulos (ed.), *The Changing European Commission*, Manchester: Manchester University Press, 2004, p. 66. Santer’s aim stood in some contrast to the Delors Commission that had taken on ever more responsibilities.

Commission, the Prodi Commission gave the issue new prominence with a White Paper on ‘European Governance’ and a subsequent Action Plan.³²

At the beginning of his mandate Barroso could therefore build on the groundwork already laid by his predecessor. He linked the ‘better regulation’-agenda to the re-launch of the Lisbon Strategy (“*Better regulation for Growth and Jobs in the European Union*”³³) and presented it in a new light: cutting red tape and ‘less is more’. In this context it was proudly announced that the Commission had scrapped a number of pending proposals: “The Commission has screened the proposals which were pending when it took office in 2004 and has withdrawn 68, with a further 10 withdrawals foreseen for 2007”.³⁴ The Commission had already withdrawn proposals in the past, but had never especially announced it. Withdrawing legislation had hitherto been regarded as an administrative act or – in the worst case – as a sign of weakness. Barroso (and his Vice-President Verheugen) managed to turn the exercise into an almost heroic act.³⁵

Besides calls for less legislation, Barroso has also been keen to push *simplification* and *modernisation* of legislation. One element of this is the so-called codification, which can roughly be described as merging pieces of existing legislation and their respective amending acts into a more readable consolidated text. The Commission states that it aims to merge 2,000 pieces of legislation into 500 in this way.³⁶ Other tools are to recast, repeal and revise existing legislation. The Commission has also boosted the number of impact assessments of legislative proposals, which will be discussed in the second part of this study (see point 3.2 c).

Several interviews reflected the view that the Barroso Commission did not stand as firm on the ‘less is more’-motto as it did at the beginning of its term, however. While the focus then was firmly on competitiveness, certain environmental issues (i.e. primarily climate change) have received a lot more attention from the President.

Additionally, in several interviews a certain ‘saturation’ of the need for legislative activity was mentioned as a possible reason for the decrease in new acts proposed by the College. New provisions in these areas would be less evident, which would reinforce the Barroso Commission’s pledge of cutting ‘red tape’.

³² European Governance – A White Paper, COM(2001)428 final, 25.7.2001 (retrievable at http://eur-lex.europa.eu/LexUriServ/site/en/com/2001/com2001_0428en01.pdf);

Communication from the Commission: Action Plan “Simplifying and improving the regulatory environment”, COM(2002) 278 final, 5.6.2002 (retrievable at <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2002:0278:FIN:EN:PDF>).

³³ Communication from the Commission to the Council and the European Parliament: Better Regulation for Growth and Jobs in the European Union, COM(2005) 97 16.3.2005 (retrievable at http://eur-lex.europa.eu/LexUriServ/site/en/com/2005/com2005_0097en01.pdf).

³⁴ Communication for the Commission to the Council, The European Parliament, the European Economic and Social Committee and the Committee of the Regions: A strategic review of Better Regulation in the European Union, COM(2006)689 final, 14.11.2006, p. 2.

³⁵ Barroso has furthermore showed his interest in deregulation by presenting a ‘High Level Expert Group on Administrative Burdens’ chaired by the former PM of Bavaria Edmund Stoiber. The aim of the group is to evaluate EU legislation and advise the EC on how to ease the life of businesses in Europe. See for more details: European Commission, *Launch of High Level Expert Group on Administrative Burdens chaired by Mr Stoiber*, Memo/07/471, Brussels, 19.11.2007 and European Commission, *Commission Decision of 31 August 2007 Setting up the High Level Group of Independent Stakeholders on Administrative Burdens*, C(2007)4063, Brussels, 31.08.2007.

³⁶ Communication for the Commission to the Council, The European Parliament, the European Economic and Social Committee and the Committee of the Regions: A strategic review of Better Regulation in the European Union, COM(2006)689 final, Brussels, 14.11.2006, p. 7.

Interestingly however, a closer analysis of the results obtained from the PreLex-database showed that only in one policy area could a clear link between the ‘better regulation’-agenda (and potential saturation) and a significant overall decrease of legislative output be established: that of the internal market. The decrease from 21 to 11 new initiatives cuts across the whole policy area and is not linked to enlargement or other ‘external’ factors.

As stated above, the Commissioner for Internal Market, Charlie McCreevy, openly promotes a less ‘legislative’ approach. The following quote illustrates this:

We are not proposing an extensive legislative programme. Less is more in that area, so there is no long list of Directives as was the case for the "Single Market Programme" of the eighties. [...] of course, we will pursue breaches of Internal Market and competition rules vigorously. In other words, we will enforce what is already in place to ensure fair play.³⁷

The same message is reflected in the Commission Communication on the Review of the Internal Market:

The Review sets out a new approach to the single market. It does not include a classic legislative action programme. Its aim is rather to foster flexibility and adaptability while maintaining the legal and regulatory certainty necessary to preserve a well-functioning single market.³⁸

Both statements underline an enhanced focus on the implementation of what is already in place. This does not only mean infringement procedures against member states, but explicitly includes elements stressing cooperation, such as working with national authorities in a more ‘up-stream’ manner to explain legislation and help them implement it.

With the exception of the internal market, neither the ‘better regulation’-agenda nor ‘saturation’ in traditional policy areas appear to have had a major effect on the quantity of Commission output so far. However, both offer a more general illustration of the Commission’s understanding of its own role, which is not without consequence.

c) Self-restriction

Another factor that may explain the decrease in new legislation and the trend towards soft law could be a possible ‘self-restriction’ of the Barroso Commission. Statements that the current Commission takes a more cautious approach and does not want ‘to rock the boat’ with proposals provoking resistance from member states were made in numerous interviews. Despite insisting on being “adamant” when it comes to the application of community law, Barroso himself stressed a consensual understanding of the Commission’s role in a recent interview with the German daily *Frankfurter Allgemeine Zeitung*. Confronted with the reproach of not wanting to be “inconvenient” for large member states, he stated diplomatically: “Our job is not to make life difficult for the governments. Our job is to make life easier for citizens.”³⁹

It is difficult to prove what the Commission is *not* doing, and it is impossible to establish a general causal link between the overall decrease of new proposals given by the Prelex-database

³⁷ Speech by Commissioner McCreevy at the European Parliament’s Internal Market Committee (IMCO), SPEECH/07/739, Brussels, 21.11.2007.

³⁸ Communication from the Commission to the Council, the European Parliament, the European Economic and Social Committee and the committee of the Regions: A single market for 21st century Europe, COM(2007)724 final, Brussels, 20.11.2007, p. 4 (retrievable at <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2007:0724:FIN:EN:PDF>).

³⁹ “Bei der Anwendung des Gemeinschaftsrechts sind wir unerbittlich”, interview with José Manuel Barroso, *Frankfurter Allgemeine Zeitung*, 23.07.2007, p. 6 (retrievable at http://ec.europa.eu/commission_barroso/president/pdf/interview_20070723_de.pdf).

and a possible ‘self-restriction’ of the Barroso Commission. It should also be stressed once more that the Commission *always* had to pick its fights carefully and depended on member state support. With the increasing legislative competences of the European Parliament, the Commission also had to make concessions to parliamentarians. Rather than being a completely new phenomenon, possible ‘self-restriction’ must therefore be understood as a question of degree.

Having said this, the Barroso Commission is indeed widely perceived as being particularly considerate when it comes to national concerns. Quite a number of potentially controversial proposals have been taken off the Commission’s agenda lately, while hardly any case comes to mind where the Commission insisted in the face of strong national opposition. Its cautiousness is certainly also due to the ratification phase of the Lisbon Treaty and the experience with the directive on services during the French referendum in 2005. This directive had been ‘inherited’ from the Prodi Commission and had a significant negative impact on the referendum campaign in France. It provoked an unfortunate polemic against ‘Polish plumbers’ which contributed to the ‘no’-vote against the Constitutional Treaty.

In an effort to avoid such consequences this time round, the Barroso Commission appears determined to stay away from any initiative that could arouse public controversy. For example, in December 2007 the adoption of a proposal for a controversial health service directive (‘application of patients’ rights in cross-border healthcare’) was taken off the agenda just days before it was supposed to be discussed by the College. The proposal would have turned an ECJ ruling into Community law to strengthen patients’ rights on medical treatment in another member state with reimbursement in their home country. Following the first signs of protest from Northern member states and MEPs the proposal is currently being redrafted. A new date for discussion in the College has not yet been determined.⁴⁰

In a similar vein, the Commission has delayed the adoption of a proposal for a common consolidated corporate tax base (CCCTB) until after the Irish referendum.⁴¹ Although the proposal would only aim at common standards for raising and calculating corporate taxes, there are fears that it would give the impression of a first step towards actual tax harmonisation. Since the Irish public is very much opposed to such a move, the initiative has been put on hold and will not be presented before the autumn.

A third prominent example does not concern legislative activity, but illustrates the ‘soft’ attitude of the Barroso Commission very well. In the run-up to the informal summit on the Lisbon Treaty on 18 October 2007, the Austrian government linked its approval of the treaty to a completely unrelated issue: the Commission should suspend infringement proceedings against Austria for discrimination against foreign students at Austrian universities. The Commission was quick to react and offered to suspend the procedure for a 5-year period during which Austria could prove its case. Although the suspension may be justified on factual grounds, the timing strongly suggested that the Commission had given in to ‘blackmail’ by a member state.⁴²

⁴⁰ See “Brussels postpones landmark bill on EU cross-border health care until 2008”, *Euobserver*, 19.12.2007; “EU health bill pulled amid national and MEP criticism”, *Euobserver*, 10.1.2008; “EU få kolde fodder I sundhedssag”, *Politiken*, 19.12.2007, Thomas Lauritzen and Martin Aagaard, “Nyrup advarer nyt EU-kaos”, *Politiken*, 10.1.2007

⁴¹ See for example Lorraine Mallinder, “Barroso caved in to Irish threat on tax, claim MEPs”, *European Voice*, 13-19.12.2007, p. 1.

⁴² See “EU will Uni-Verfahren auf Eis legen”, *Wiener Zeitung*, 18 October 2007 (<http://eu.wienerzeitung.at/DesktopDefault.aspx?TabID=4498&Alias=eu&cob=308018¤tpage=9>).

The wine sector reform was cited several times as an example of where the Commission had initially presented a rather ambitious proposal, but then gave in on almost all major points.⁴³ According to the agreement reached, less than half of the wine-growing area initially proposed will now be scrapped, northern winegrowers can continue to add sugar, surplus will still be distilled into industrial alcohol for another four years and plans for common labelling practices were abandoned.⁴⁴

Certainly, these cases can only be taken as an indication. But they contrast with the very few high-profile cases where the Barroso Commission has openly hazarded the cost of public controversy and stood firm against strong member state opposition. One such case was the Commission's insistence on financing the Galileo satellite project with public money, another was the directive on CO₂ emissions from cars. In the first case, the Commission threatened to put an end to Galileo if member states did not provide public funding, which ultimately led to an agreement.⁴⁵ Concerning the CO₂ emissions from cars, the Commission insisted on ambitious reductions despite great pressure from the German government, opposition parties, the car industry and public opinion. Internal splits within the College became visible, however, and the German Commissioner (together with four of his colleagues) made no secret of the fact that his personal position differed strongly from the official proposal. Most of our interviewees regarded this case as rather exceptional and some even suggested it to be an 'accident de parcours' due to an underestimation of the German resistance. How the Commission will behave during the actual negotiations remains to be seen.

It is also still too early for a verdict on a number of other important proposals. The Commission has identified climate change and energy as key areas for initiative. The overall success of this Commission is likely to be judged by achievements in these policy fields. By announcing an ambitious agenda Barroso seemed to risk little, as a need for action in these fields was obvious, support from member states was strong and public opinion called for a common European approach. With things moving into legislative mode, however, national resistance to concrete proposals is growing. Whether it is 'ownership unbundling' between energy networks and providers, the trading scheme for renewable energy or the concrete national contributions towards the CO₂ reduction targets – it remains to be seen whether the Commission will stand firm against strong national interests. The outcome will show whether the examples cited before are only exceptions owing to the particularly sensitive phase of treaty ratification or whether they are a preview of a fundamentally changed understanding of itself on the part of the Commission.

Summary: The decrease in new proposals as an indicator of the Commission's less controversial attitude cannot be substantiated by one explanation only. The broader range of wealth levels has been a factor, especially on very sensitive issues and/or if unanimity was required in the Council. The political aim to 'cut red tape' and 'legislative saturation' in traditional policy areas only had a measurable effect in the area of the internal market during the first 2 ½ years of the Barroso Commission. The conviction that 'less is more' does however reflect a change in the Commission's understanding of its role. A *general* link between the decrease of new proposals and the 'self-restriction' of the Commission cannot be established,

⁴³ "EU agrees to tone down plan on opening the wine industry", *International Herald Tribune*, 19.12.2007 (<http://www.iht.com/articles/2007/12/19/business/wine.php>); "Vorsichtige Reform des Europäischen Weinmarkts vereinbart", *faz.net*, 19.12.2007 (<http://www.faz.net/d/invest/meldung.aspx?id=65367930>).

⁴⁴ Ministers agree on diluted wine reform, *euractiv*, 20.12.2007 (retrievable at <http://www.euractiv.com/en/cap/ministers-agree-diluted-wine-reform/article-169298>).

⁴⁵ See Simon Taylor, "Galileo satellite system gets off the ground...just", *European Voice*, 6.12.2007.

but a tendency towards greater hesitance on certain dossiers can be observed. There are very few prominent cases where the Barroso Commission fought openly with member states about a concrete proposal, but key dossiers in the area of climate change and energy are still under negotiation.

2.2 A larger and more diverse College

The fact that the College has grown since 2004 was also among the explanations for the more consensual style of the Commission. The following section will look at a number of aspects that may support this link.

a) *No voting in the college*

An important indicator for the Commission's intention to avoid controversy is the fact that the current College does not vote anymore. This is a clear change from former Commissions. While the Prodi Commission still voted on approximately 20 occasions, the Barroso Commission has not done so at all.⁴⁶ Barroso confirmed this in a recent interview, stating: "So far, we have not had a single vote during the present Commission".⁴⁷ The legal possibility of voting does of course continue to exist, including that of a secret ballot as laid down in a Commission Communication from 2004:

*As a general rule, agreement will be established by consensus or a vote by a show of hands. Nevertheless, in very exceptional circumstances, there could be a secret ballot, decided by the President on a case by case basis.*⁴⁸

What may be perceived as a deliberate choice is likely to be an inevitable consequence of the new composition of the College. Since November 2004 the five largest countries (France, German, Italy, Spain, the UK) had to give up their second commissioner with the result that there is now just one commissioner per member state. This means that under Prodi, 10 out of 20 commissioners still came from the 'big five' (i.e. 50%) whereas now there are only 5 out of 27 (i.e. 18.5%). Although commissioners are not representatives of their home country and are supposed to defend the 'community interest', a large member state would probably raise concerns about the representativeness of a College vote if the commissioner 'who knows the country best' were to be outvoted under such conditions.

In a number of interviews it was mentioned that since voting was not a political option anymore, it had become more difficult to get controversial proposals through the College. In the past even the possibility of voting (the 'shadow of the vote') had contributed to the College being a more deliberative body. Now the political 'feasibility' of an initiative was generally checked before it reached the College. Controversial proposals would need a stronger backing from the president than in the past, and even in these (exceptional) cases the College does not vote. On the

⁴⁶ European Commission, *Communication from the Commission: A constitution for the Union. Opinion of the Commission, pursuant to Article 48 of the Treaty on European Union, on the Conference of representatives of the Member States' governments convened to revise the Treaties*, COM(2003)548 final, 17.9.2003, Brussels, p. 16 (<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2003:0548:FIN:EN:PDF>). According to this Commission Communication the Prodi Commission voted 11 times between 2000 and September 2003. This corresponds to the answers we received in interviews where "approximately 20" occasions for the entire period of the Prodi Commission were mentioned.

⁴⁷ Barroso quoted in John Peterson, *José Manuel Barroso = Political Scientist, John Peterson interviews the European Commission President*, 17.7.2007, transcript, 2007, p. 4.

⁴⁸ European Commission, *Communication to the members of the Commission: Functioning of the Commission and internal coordination*, SEC(2004)1617/4, p. 7.

proposed directive on car emissions, for example, several Commissioners made known later that they had not supported the initiative in the College (most prominently the Commissioner for Enterprise, Günter Verheugen),⁴⁹ but the College as such had not voted.⁵⁰

b) Less collegiality

The principle of ‘collegiality’ means that the College takes joint responsibility for all decisions it adopts and that once a decision is adopted, it will be supported by all members of the College.⁵¹ The Vice-President of the Commission Margot Wallström underlined the importance of collegiality with the following words:

*With a larger number of Commissioners, the principle of collegiality is more important than ever. With the multi-national, multi-lingual, cross-party nature of the Commission it naturally takes time to gel. It is also normal that different Commissioners have different views. But, on the main issues, full debate must take place in the College and then the agreed position must be defended by all Commissioners.*⁵²

Interestingly, however, the vast majority of interviewees stated that the College had actually become a less ‘collegial’ body since enlargement, although no one put it in the same harsh words as an unnamed Commissioner in the Financial Times who stated: “There is no collegiality – we hardly see each other.”⁵³ In the following section we will look at three aspects that may have had an effect on collegiality.

(1) A more intergovernmental College?

According to article 213 of the EC treaty, Commissioners are meant to “neither seek nor take instructions from any government or from any other body.” Unlike national representatives in the Council, they are expected to work with the community interest in mind, and not defend national interests.⁵⁴ The fact that there is currently one commissioner per member state makes it more difficult to fight the perception on the part of the public in different member states that the respective person is ‘our man or woman’ in the Commission. At least commissioners from large member states could ‘take the heat’ out of critical reactions from the national level more easily, as they shared this task with a colleague. There was normally one commissioner from the centre-left and one from the centre-right, which made it easier to ‘balance off’ party-political competition and present a decision as a consensual issue to the national public in large member states.

⁴⁹ See for example “Verheugen maintains distance from EU car emissions plans”, *EUobserver*, 10.1.2008, “Trickreiches Spiel und laute Töne”, *Sueddeutsche.de*, 19.12.2007.

⁵⁰ European Commission, *Minutes of the 1813th meeting of the Commission held in Brussels (Berlaymont) on Wednesday 19 December 2007 (morning)*, PV(2007)1813 final, 15.1.2008, Strasbourg.

⁵¹ See also Morten Egeberg, *The European Commission – the evolving European executive*, ARENA Working Papers, WP02/30 (http://www.arena.uio.no/publications/wp02_30.htm). Article 213 of the EC Treaty speaks of shared power and authority vested among colleagues.

⁵² Wallström quoted in David Spence, “The President, the College and the cabinets”, in David Spence and Geoffrey Edwards (eds), *The European Commission*, 3rd edition, London: John Harper Publishing, 2006, p. 47.

⁵³ “Barroso accused of currying favor with biggest states Commission Leadership: The President’s apparent willingness to cave in to Paris and Berlin worries some commissioners”, *Financial Times*, 22.12.2006..

⁵⁴ Morten Egeberg (2003), “The European Commission”, in Michelle Cini (ed.), *European Union Politics*, Oxford: Oxford University Press, 2003, p. 138.

One example of such a case dates from the Constitutional Convention in 2003. The Commission had spoken out in favour of introducing qualified majority voting in the Council as a general rule. Since this rule would have meant the abolition of the veto on trade in culture-related matters (so-called “exception culturelle”), it put the Commission at odds with almost the entire French political establishment. However, both French Commissioners at the time, Pascal Lamy and Michel Barnier, did support the Commission’s stance on this issue.⁵⁵ For one person it would have been much more difficult to ‘stand firm’ on this occasion and the potential of party-political arguments entering the debate would also have been much greater.

The current internal problems with the CO₂ directive for cars have given an indication of where the limits lie for the current Commission. The insistence on a rather ambitious proposal despite strong opposition from a large member state has led to open divisions within the College and the German Commissioner openly distancing himself from the proposal. Similarly, the Italian Commissioner Franco Frattini (JLS) used very strong words to defend a controversial Italian decree on the deportation of criminals from other member states, which led to criticism in the European Parliament and calls for his resignation from the Roma community.⁵⁶ It is impossible to tell whether Commissioners would have taken a different position in these cases, had there still been a second colleague from the same member state. However, it is safe to say that being the only one “who knows the respective country best” has not made it easier to take an unpopular position.

(2) *Less mutual observation?*

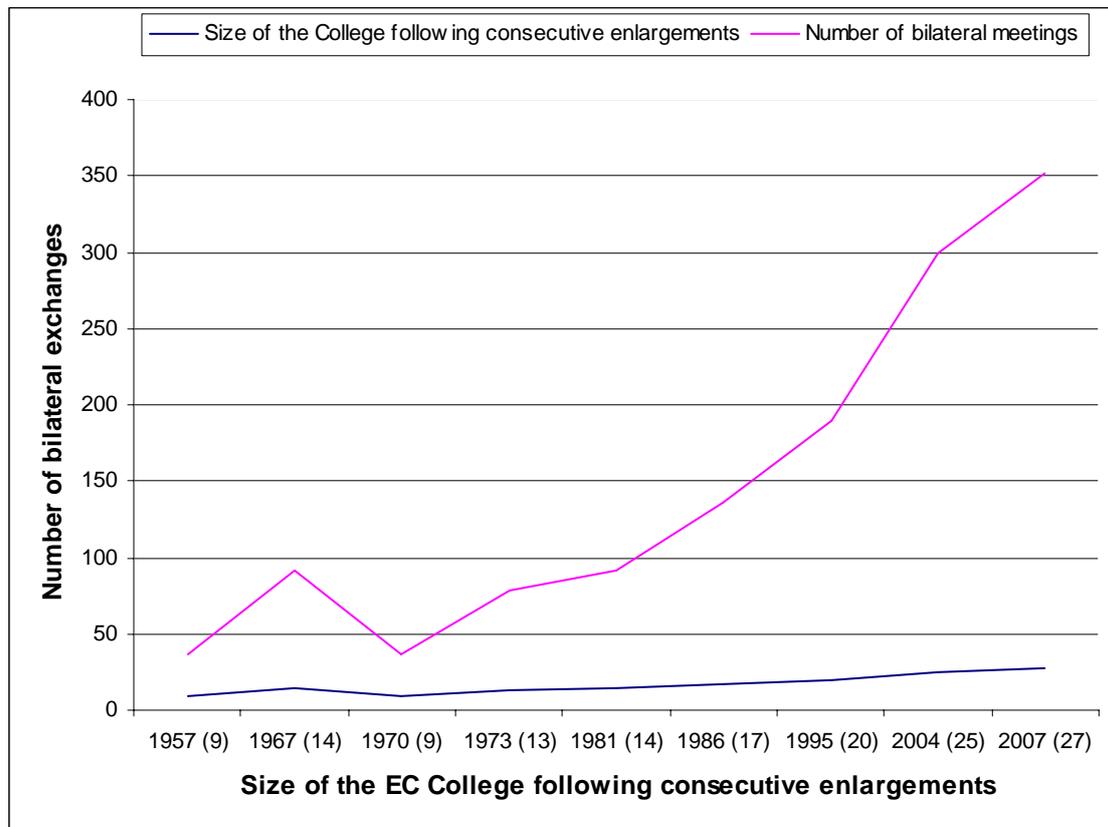
Two other aspects that were frequently mentioned as playing against collegiality were the capacity to meet each other in the enlarged College and the willingness to take an interest in each others’ portfolios.

To start with the first point, it has undoubtedly become more difficult for commissioners to speak to all of their colleagues bilaterally. As the graph below illustrates, bilateral exchanges among all commissioners required 36 contacts in a College of 9, whereas 351 such contacts are needed in the present College of 27. But the enlargement in 2004 has only contributed to a long-term trend. The enlargement in 1995 (Austria, Finland, Sweden) – which already brought the size of the College from 17 to 20 members – increased the number of required bi-lateral contacts from 136 to 190. These are figures that support the claim that even then sub-groups of closer cooperation had been forming. By bringing the required number of bilateral meetings from 190 to 351, the 2004 enlargement can be assumed to have further boosted this trend.

⁵⁵ “Paris préserve in extremis ‘l’exception culturelle’”, *Le Monde*, 10.7.2003, (http://www.lemonde.fr/europe/article/2003/07/10/paris-preserve-in-extremis-l-exception-culturelle_327255_3214.html).

⁵⁶ “Frattini under fire for defending Italy’s handling of Roma”, *euractiv*, 16.11.2007 (<http://www.euractiv.com/en/migration+mobility/frattini-fire-defending-italy-handling-roma/article-168478>).

Graph 5. Number of meetings necessary for bilateral contacts between all Commissioners



Besides this objective difficulty, we were also told in a number of interviews that commissioners were taking less of an interest in other portfolios than before, if an issue did not directly concern them. In the Prodi Commission there had apparently been a greater number of commissioners who held strong views on all kinds of matters, with Mario Monti, Pascal Lamy and Chris Patten cited as cases in point. In the Barroso Commission there seems to be a stronger tendency towards non-interference in each other's business, at least as long as there is no particular reason related to national sensitivities or portfolios. This change in attitude challenges the idea of collegiality, but contributes to the efficient management of the Barroso Commission. We were also told that the non-interference is actively encouraged by the President, if no portfolio-related interest exists. This point will be discussed in greater detail in section 3.1 b).

2.3 Trend towards output legitimacy ('Europe of Results')

Another indicator for a more consensual stance of the Commission is its call for a 'Europe of Results'. Rather than having (potentially controversial) discussions with the public about the future of Europe, the legitimacy of the Union shall be strengthened by highlighting direct benefits of EU actions to European citizens and consumers. This change in strategy came after the 'no'-votes to the Constitutional Treaty. The referenda in France and the Netherlands had triggered public debate, but not the kind European decision-makers had wished for, as it had not resulted in more support for the EU. In May 2004 the Barroso Commission put forward a communication to the European Council with the title "A Citizens' Agenda – Delivering Results

for Europe”.⁵⁷ The paper presented the Commission’s opinion on the way forward for the Constitutional Treaty, but mostly concentrated on the identification of areas where the added value of the Union could be demonstrated to citizens. For example, the Commission announced the removal of remaining barriers to the single market, developing an ‘entitlement card’ to raise awareness about citizens’ rights in the EU and improving decision-taking under the existing treaties (e.g. in police and judicial cooperation). The Commission Legislative and Work Programme (CLWP) 2007 makes explicit reference to the ‘Citizens’ Agenda’ outlining a “twin-tracked approach”:

*The institutional and constitutional issues facing Europe cannot be put aside – but they can only be tackled in parallel to delivery of an active policy agenda focusing on citizens’ expectations and needs. Concrete results will boost citizens’ confidence in the European project and create the right conditions for an ambitious institutional agreement.*⁵⁸

Our research shows that so far a ‘Europe of Results’ has not led to any significant increase in legislative initiatives. For example regarding the area of consumer and health policy, the Commission seems to have concentrated on soft law (Green Papers, etc.) to identify measures that could demonstrate direct benefits for citizens (see page 11). So far the only highly visible legislative proposal aiming at broad popular support has been on price caps for roaming charges. The proposal was adopted by the College just two months after the ‘Citizens’ Agenda’ had been presented. It was agreed by oral procedure in the College and had been controversial within the College. According to interviews, several Commissioners had pointed to the fact that it was a rather interventionist move, with the possible consequence that the Commission may be faced with similar demands in the future.

2.4 A change in the institutional balance?

In order to get a full picture of the European Commission, one also has to take a closer look at its interactions with the two other main institutions. As stated above, a large majority of interviewees confirmed the impression that the Barroso Commission has become more sensitive to views held in both the Council of Ministers and in the European Parliament (EP).

In the following section we will look at three elements that may explain the shift of the institutional balance and the less controversial stance of the Barroso Commission:

- Firstly, we will look at developments within the Council and the European Parliament;
- Secondly, we will analyse changes in the legislative procedure and
- Finally, the general political context will be addressed.

a) *Changes within the Council and the European Parliament*

In numerous interviews we were told that the extent to which the Commission can table ‘controversial’ proposals also depends on developments within the other two poles of the institutional triangle.

(1) The **European Parliament** has gained in power with every treaty reform since the Single European Act (SEA) in 1986 and today it is an equal ‘co-legislator’ in most policy fields. With the Treaty of Lisbon, the EP is set to receive even more formal powers and it already disposes

⁵⁷ Communication from the Commission to the European Council: A Citizens’ Agenda – Delivering Results for Europe, COM(2006) 211 final (retrievable at <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2006:0211:FIN:EN:PDF>); The paper was the product of a two-day brainstorming of the College in the Belgian town of Lanaken in May 2006.

⁵⁸ Commission Legislative and Work Programme 2007, COM(2006)629 final, p. 2.

of many informal channels of influence in areas where the treaty does not yet grant it formal powers.

Two key events that illustrated the growing power of the European Parliament (and its determination to use it) already occurred at the very beginning of Barroso's term: Parliament's approval of the Commission President and the approval of the College as a whole.

Following the EP elections in May 2004, the European People's Party demanded the Commission president come from their political family since they had gained most seats. This demand was not contested by anybody and thus linked the new president directly to the outcome of the election. It contributed to the public perception of Barroso being a president of the centre-right – an aspect that initially created some tension with the Commission's role as a neutral 'guardian of the treaties' and defender of the 'community interest'.

An even stronger indication of the power shift towards Parliament could be observed a few weeks later during EP hearings. In October 2004 Commissioner-designates had to learn that parliamentary approval of the proposed College could not just be taken for granted, as a majority of MEPs threatened to reject it.⁵⁹ Criticism focused especially on the Italian candidate Rocco Buttiglione.⁶⁰ The EP does not have the power to censure individual commissioners, but in a move to appease MEPs, Barroso said in an address to the European Parliament: "If a Commissioner clearly underperforms or fails in his or her duties under the Treaty, I will not hesitate to ask them to resign."⁶¹ The difficult start of the Commission was taken by many as proof of an increasingly self-assured Parliament and a Commission with limited room for manoeuvre. There was concern that the Commission would become annihilated between national interests in the Council on the one side and party-political demands from the EP on the other. Interviews confirmed that the Commission has reacted with increased attention for the European Parliament. This trend started long before 2004 and was not primarily motivated by enlargement, but it appears that particular efforts have been made since Barroso took office. This was confirmed for the level of DGs, cabinets, and individual commissioners.

Another instance where the growing influence of the Parliament could be seen was the 2006 reform of the comitology system. While the EP had become an influential co-legislator, its role in the implementation of acts had been rather limited. In 2006 Parliament successfully demanded a reform that substantially strengthened its position. It was granted stronger control

⁵⁹ "Looming crisis over the new Commission", *euractiv*, 12.10.2004 (<http://www.euractiv.com/en/elections/looming-crisis-new-commission/article-130837>);

"EU in crisis as Parliament rejects new Commission", *The Times*, 28.10.2004 (<http://www.timesonline.co.uk/tol/news/world/article499940.ece>).

⁶⁰ During his hearing Buttiglione had made controversial comments about the role of women in society and about homosexuality being a 'sin', which made centre-left and liberal MEPs signal their refusal of the Barroso College. Other candidates for Commissioner were also evaluated critically by Parliament due to fraud allegations (Ingrida Udre), a perceived lack of knowledge of the portfolio (Laszlo Kovacs – who was initially foreseen to be Commissioner for energy) or doubts about vested interests that could potentially collide with the portfolio (Neelie Kroes). For further reading see John Peterson, "The College of Commissioners", in John Peterson and Michael Shackleton, *The Institutions of the European Union*, Oxford: Oxford University Press, 2006, p. 93.

⁶¹ Address given by Jose Manuel Barroso, President-Designate of the European Commission, "Building a Partnership for Europe: Prosperity, Solidarity, Security", Strasbourg, 21 July 2004.

over committees that decide on the implementation of legislative acts agreed under co-decision.⁶²

(2) The change in the institutional balance between the *Council of Ministers* and the Commission has been described as more complex and less clear-cut. According to the following quote Barroso claims that enlargement has led to an increase in the relative power of the Commission vis-à-vis the Council:

*Today, together with the Council Presidency, the Commission really helps to set the agenda. And the conclusion is that it has a much greater say in the shaping of the outcome, because with 27 Member States and the Commission around the table, honestly, you cannot follow with the same degree of attention 28 speakers. You cannot. So you have to concentrate on what comes as an initiative from the Presidency and the Commission. The central role of the Commission is, indeed, reinforced. And it is reinforced also because of the new member states: they look at the Commission as the honest broker and the fair partner.*⁶³

Barroso's positive stance was put into perspective in the great majority of our interviews. The general attitude among governments was seen to have shifted towards a more intergovernmental approach over the last years, which would grant the Commission less room. There was, however, almost total unanimity among interviewees in their belief that this shift had not been a result of enlargement (or at least not predominantly). It was attributed more to the general 'malaise' following the no-votes on the Constitutional Treaty and broader fears linked to globalisation (see point 2.4 c) below). Only in a few interviews was the perceived move towards intergovernmentalism explained as a consequence of new member states being 'less federally-minded' than (some) old ones.

The Barroso Commission also kept a low profile in a number of negotiations with a potential for public controversy. As examples, the final stages of the agreement on the services directive and on the directive on chemicals (REACH) can be cited. In both cases the Commission made little effort to play a major role in the final negotiations while the Council and the EP dominated the scene. It would be premature to call these two cases 'typical', but they did feature among the most high-profile projects in recent years.

In some policy areas a more marginal role of the Commission can – at least partly – be explained by the current political majorities in the Council and the EP. For example, on environmental issues, the EP has traditionally been more ambitious than the Council: Parliament would usually push for higher standards and stricter norms, while the Council has been more concerned with the economic impact of legislation. In the past this has left more room for the Commission to 'broker' a compromise between the two other institutions. In some cases the Commission would even try to convince the EP first and with this support then turn to the Council. According to interviews, the current EP and Council are often politically not as far apart anymore due to a majority of the centre-right in both institutions. With the two 'co-legislators' being more cohesive, the role for the Commission becomes more marginal. This case is illustrated when the final deal on the REACH directive was made: the directive was amended in reaction to concerns from businesses, which found support in both the Council and the European Parliament.

⁶² For further reading see Thomas Christiansen and Beatrice Vaccari, "The 2006 Reform of Comitology – Problem solved or dispute postponed?", *Eipascope* 2006/3, pp. 9-17 (http://www.eipa.eu/files/repository/eipascope/Scop06_3_2.pdf);

"José Manuel Barroso = Political Scientist, John Peterson interviews the European Commission President", interview transcript, 17.7.2007 (<http://www.eu-consent.net/library/BARROSO-transcript.pdf>).

An important factor explaining the Commission's continued influence is its technical expertise. Interviewees often mentioned that when this expertise was needed, the Commission still had occasion to occupy the 'driver's seat'. MEPs were usually more dependent on external knowledge than national administrations, but even Council presidencies of large member states would be interested to cooperate with the Commission for its know-how on specific issues.

b) Changes concerning the legislative process

A major change since enlargement is the general trend towards the conclusion of first reading agreements. The figures in the table below illustrate the scope of this development:

Table 9. Agreements under co-decision compared (in % and absolute numbers)

	1999-2004 (Entire last EP term)	2004-2007 (First 3 years of current EP term)
1st reading	28% (115)	64% (125)
2nd reading	50% (200)	28% (55)
3rd reading (conciliation)	22% (84)	8% (16)

Source: European Parliament⁶⁴

A paper that was recently approved by the EP's working group on institutional reform even confirms that 80% of all laws adopted since July 2004 were either agreed during first reading or in an early second reading based on informal negotiations with resulting amendments directly integrated into the Council's common position.

This trend has serious consequences for the legislative process. The first reading does not have a time limit and is typically less formal. So-called 'trilogues' between representatives of the three institutions during first or early second reading help to identify common ground, but they also 'de-politicise' the debate. Normally trilogues involve the rapporteur and shadow rapporteur on the side of the EP, representatives of the Council presidency and a small number of Commission officials,⁶⁵ although over the last years more actors have become involved. Trilogues speed up the process, but there are increasingly concerns about a lack of transparency, democratic legitimacy and clarity on the procedural steps.⁶⁶ The EP criticises the fact that

[t]he time pressure to conclude within the six months of the respective Presidency puts too much focus on fast-track negotiations, at the expense of an open political debate within and between the institutions, with the involvement of the public.⁶⁷

An EP working group on internal reform is currently dealing with the issue.⁶⁸

As regards the Commission, the increasing shift towards first-reading agreements has led it to become more pro-active at the earlier stages of the legislative process. According to our

⁶⁴ Conciliations and codecisions. A Guide to how the Parliament co-legislates, July 2007, Brussels, p. 9 (http://www.europarl.europa.eu/code/information/guide_en.pdf).

⁶⁵ European Commission, Codecision procedure – Article 251 EC. Guide to internal procedures, SPI(2007)73, Brussels, pp. 9-10 (retrieved from www.statwatch.org).

⁶⁶ Conciliations and codecisions. A Guide to how the Parliament co-legislates. July 2007, Brussels, page 9. (http://www.europarl.europa.eu/code/information/guide_en.pdf).

⁶⁷ Conciliations and codecisions. A Guide to how the Parliament co-legislates, July 2007, Brussels, p. 9 (http://www.europarl.europa.eu/code/information/guide_en.pdf).

⁶⁸ Simon Taylor, "MEPs quick-deal concerns. Deputies fear that co-decision deals with the Council could lead to poorer quality legislation", *European Voice*, 17-23 January 2008, p. 4.

interviews, the Commission now ‘lobbies’ the Parliament and the Council more strongly from the beginning, as it cannot afford to ‘sit back and wait’ for the outcome of the first reading anymore. The fact that the Council takes the European Parliament very seriously as a co-legislator has not helped the Commission’s position. There have been cases where the two other institutions have agreed on a compromise while the Commission was kept ‘out of the loop’. It was also argued that the changed situation would force the Commission to make more compromises on its proposals. The Commission certainly continues to have the possibility of withdrawing a proposal, but this option has always been a last resort. It becomes even more difficult to use it nowadays, as the other two institutions are politically closer and thus more willing to agree on a common solution.

Generally it can be said that the whole legislative process has become more complex and less predictable, due to the greater number of actors involved. It is harder to identify all preferences and seek a compromise for the Commission, which might also have contributed to a more careful approach.

c) Changes in the political context

A last point linked to the institutional balance that might explain the more cautious behaviour of the Commission, is the political context in which the Barroso Commission has to operate. Two main factors have contributed to a stronger intergovernmental approach towards the EU, which potentially weakens the Commission: the effects of the no-votes to the Constitutional Treaty and general fears linked to globalisation.

The immediate effects of the **rejection of the Constitutional Treaty** have already been illustrated with concrete examples (see point 2.1c above). The Commission has become very reticent to make controversial proposals – at least as long as the Treaty of Lisbon awaits ratification. This seems to be the ‘lesson learnt’ from the experience with the services directive. Whether the Commission will become more daring once the Treaty is in force remains to be seen. The no votes have also resulted in the call for a ‘Europe of Results’, which implies a high level of public support for initiatives (see above).

Beyond this, however, the ‘no-votes’ are also likely to contribute to a more long-term change. The scrapping of all EU symbols in the Treaty of Lisbon has underlined the fact that the EU may be a union of citizens, but that it will first and foremost remain a union of member states. If this is the long-term message from the failure of the Constitutional Treaty, it will not remain without consequence for the institutional balance – to the potential detriment of the Commission and to the advantage of the Council as the intergovernmental institution.

The **fears linked to globalisation** form a second important aspect to be mentioned in the wider context. These fears are stronger in the old member states and among those who are less skilled and less mobile. Since much of what the EU does (not least the internal market) follows a logic of opening-up to competition, while solidarity mechanisms remain at the national level, the EU is often perceived not so much as an instrument against the challenges of globalisation, but rather as an agent that reinforces it. In recent years national actors have increasingly attempted to resist the logic of the internal market and to protect existing structures. This has even led one of our interviewees to state that “under the current circumstances we could not have succeeded with the common market project.” In other interviews, however, the link between the EU’s ‘growing’ policy areas and globalisation was emphasised. Energy security, climate change, migration and fighting terrorism were mentioned as examples of where the Commission could provide leadership in the future.

3. More streamlined management in a more presidential Commission

A second set of explanations for the continuity in the Commission's output are *internal* adaptations: a strengthened role for the Commission President, a move towards the centralisation of the services and a rather efficient management of the increased internal diversity. It should be stressed that the 2004 enlargement was not a watershed for the internal organisation of the Commission. Although the prospect of 10 new countries joining the Union created its own momentum and helped to justify reform measures, many of the administrative changes came about in the wake of the Santer Commission and had been under discussion well before 2004. Other changes can be best explained by the personalities of key actors – a factor often neglected in academic studies, but highlighted in many of our interviews. The following section will give an overview and explain these internal changes in greater detail.

3.1 A more presidential Commission

a) *The changing role of the President: A 'primus super pares'*

There was almost unanimous agreement among the persons we interviewed that the Commission President had gained in importance within the College since the 2004 enlargement. The president of the Commission has traditionally been a 'primus inter pares', but successive treaty reforms have increased his powers.⁶⁹ As a consequence of the fall of the Santer Commission, the Nice Treaty included the right of the Commission President to demand individual commissioners for their resignation. The President now also has a greater say in allocating portfolio items between commissioners. Although Barroso has not made use of these instruments so far, they nevertheless strengthen his position within the College. Besides these legal reinforcements, the position of the President has also gained in importance due to the higher number of Commissioners: as a group increases in size, the relative weight of an individual group member decreases and attention naturally shifts towards the leadership.

A shift can also be seen in the external attention granted to the Commission President. In interviews it was generally stressed that Barroso has a greater media presence than his predecessors Prodi and Santer. Barroso will tend to join the respective Commissioner for press conferences or similar events when initiatives with a wider public appeal are being presented. He has successfully managed to be personally linked to all major policy initiatives of the Commission, from roaming tariffs to the proposals on energy and climate change, from reducing bureaucracy to the Commission's actions for 'growth and jobs'.

In the beginning of its term the Barroso Commission adopted a 'Communication to the members of the Commission' which stressed the special role of the President: "The President is the guardian of the collegiate interest and the Treaty makes clear that the Commission works under the political guidance of the President".⁷⁰ The way things have evolved since then reflects Barroso's determination to provide this 'political guidance' to the institution. He gets more directly involved and takes responsibility for a greater number of dossiers. An indicator is provided in table 10, which compares the number of proposals prepared under the direct responsibility of Prodi and of Barroso.

⁶⁹ John Peterson, "The College of Commissioners", in John Peterson and Micheal Shackleton, *The Institutions of the European Union*, Oxford: Oxford University Press, 2006, p. 92.

⁷⁰ European Commission, *Communication to the members of the Commission: Functioning of the Commission and internal coordination*, SEC(2004)1617/4, Brussels, p. 2

Table 10. *Proposals for which the Commission President is named as ‘responsible Commissioner’ (first 2½ years of tenure)*

	Prodi	Barroso
Directives	1	50
Regulations	11	20
Decisions	4	5
Total Hard Law	16	75
Communications	27	45
Reports	10	15
White Papers	1	1
Green Papers	0	2
Total Soft Law	38	63
TOTAL	54	138

Source: Own calculations on the basis of data from PreLex.

The figures show that Barroso was directly responsible for a significantly higher number of acts than Prodi. The difference on directives is particularly striking, but can largely be explained by implementing acts (22 directives) and ‘codification’ (20 directives). Apparently there has been an increased effort under Barroso to ‘codify’ existing law within the framework of the ‘better regulation’ agenda.⁷¹ The remaining difference can be explained by the more central role of the Secretariat General (SG), which will be addressed at length in the following section. When the SG takes on a dossier, the president is always listed as the responsible Commissioner.

As regards ‘soft law’, the increase of acts under direct responsibility of the Commission President is greatest on Communications. This increase can partly be explained by the fact that Prodi did not take on issue-specific responsibilities,⁷² while Barroso is directly in charge of certain policy issues, for example the revamped Lisbon agenda, with its particular focus on “growth and jobs.”⁷³ Many Communications are on high-profile issues, like the Single Market Review, Social Reality Stocktaking, external energy relations or “Europe in the World”.⁷⁴

⁷¹ Codification is meant to make existing provisions more readable and accessible by integrating the original act and the often numerous amendments into one coherent text. As this is done by the Commission’s legal service, Barroso is mentioned as ‘responsible Commissioner’.

⁷² John Peterson, “The College of Commissioners”, in John Peterson and Michael Schackleton, *The Institutions of the European Union*, Oxford: Oxford University Press, 2006, p. 92.

⁷³ See for example European Commission, *Communication from the Commission to the European Council: Time to move up a gear – The new partnership for growth and jobs*, COM(2006)30.

⁷⁴ European Commission, *Communication from the Commission to the Council, the European Parliament, the European Economic and Social Committee and the committee of the Regions: A single market for 21st century Europe*, COM(2007)724 final;

European Commission, *Communication from the Commission to the Council, the European Parliament, the European Economic and Social Committee and the committee of the Regions: Social Reality Stocktaking - Interim report to the 2007 Spring European Council*, COM(2007) 63;

European Commission, *Communication from the Commission to the European Council: External energy relations – from principles to action*, COM(2006)590;

European Commission, *Communication from the Commission to the European Council: Europe in the World – Some practical proposals for greater coherence, effectiveness and visibility*, COM(2006)278.

b) Ensuring coherence in a larger College

In the 2004 Communication on its internal functioning, the Commission stressed the continued importance of collegiality and highlighted the need for a change in attitude: “New rules are less important than a change of culture: a new attitude to coordination, a full respect of agreed disciplines and a common determination to meet the highest standards of performance.”⁷⁵

The quote illustrates that there had been a general awareness in the Commission of the need for change to ensure the proper functioning of the College after enlargement. Emphasis was given to more coordination and loyalty among Commissioners on an agreed political line.

Some interviewees stated that they had expected a less coherent College and more public disagreements at the outset of the Barroso Commission. In 2004 many observers had pointed to the great number of political ‘heavyweights’ in the College – strong personalities that had been expected to speak their minds and seek media attention, even if this came at the expense of collegiality. These predictions have not materialised so far, however, as can be illustrated by an analysis of the *Financial Times*’ press coverage. We looked at articles from a two-year period for both the Prodi and the Barroso College. Results indicate that the latter has been rather successful in presenting itself as a coherent body.⁷⁶

Table 11. Number of reported disagreements between Commissioners (Financial Times)

	Prodi (May 2001-May 2003)	Barroso (May 2005-May 2007)
Reported Disagreements	36	23

Source: Own calculations based on data from Factiva.

Contrary to what many had expected before enlargement, the 27 Commissioners in the current college have not sparked more reported disagreements than the 20 Commissioners in the previous one over the two-year period. An analysis of the time since May 2007 has also confirmed that public disagreements have not significantly increased in recent months.⁷⁷

Policy specific results have to be read carefully, as numbers are very small. They can however give a rough indication of those policies that have been particularly contested under Prodi (Internal Market, Competition, Institutional Reform, EcoFin, External Relations) and Barroso (Environment, Enlargement, Taxation).

⁷⁵ European Commission, *Communication to the members of the Commission: Functioning of the Commission and internal coordination*, SEC(2004)1617/4, Brussels, p. 2

⁷⁶ We are grateful to the research provided by Chris Sadler, Carleton University, Ottawa.

⁷⁷ A search of the on-line archives of the *Financial Times* has provided the following five cases for the period between May and December 2007:

- “Common tax base plan to prompt EU clash”, 1 May 2007 (McCreevy vs. Kovacs)
- “Fruitless discussion”, 7 June 2007 (Fischer Boel vs. unnamed ‘colleagues’)
- “Kroes to hold tough line on competition”, 24 June 2007 (Kroes vs. Barroso)
- “Brussels split over telecoms”, 24 September 2007 (Kroes and Verheugen vs. Reding)
- “Carmakers face up to €13bn in fines under CO2 targets”, 13 Dec. 2007, (Verheugen vs. Dimas)

Table 12. Issues of reported disagreements

	Prodi	Barroso
Internal Market	9	4
Competition	4	0
Institutional Reform	4	2
Economic & Financial Affairs	3	0
External Relations	3	0
Trade	2	0
Enterprise	3	2
Environment	0	6
Enlargement	0	3
Taxation and Customs Union	1	3
Other	7	3

Source: Own calculations based on data from Factiva.

The figures retrieved from the FT also suggest that the number of disagreements between just two Commissioners was significantly higher under Prodi, whereas more profound disagreements that typically involve a greater number of Commissioners occurred just about as often in both Colleges.

Table 13. Number of Commissioners involved in reported disagreements

	Prodi	Barroso
Arguments with 2 Commissioners	25	11
Arguments with 3 or more Commissioners	11	12

Source: Own calculations based on data from Factiva.

When it comes to individual Commissioners, table 14 below shows that in both Colleges the President as well as the Commissioners for Internal Market and for Enterprise were among those most often involved in public disagreements. When Günter Verheugen still held the portfolio of Enlargement only three reported disputes could be identified for the given time period. However, the fact that the Commissioner for Competition was involved in 4 times as many reported disputes under Prodi than under Barroso (i.e. Monti: 17 times; Kroes: 4 times) also demonstrates the importance of other factors: personality, the policy agenda and other aspects that might give a portfolio a particular weight at a certain time.

Table 14. Commissioners most engaged in reported disagreements

Prodi Commission	Barroso Commission
Mario Monti, Competition (17)	Charlie McCreevy, Internal Market (11)
Romano Prodi, President (12)	Jose Manuel Barroso, President (10)
Frits Bolkestein, Internal Market (11)	Günter Verheugen, Enterprise (10)
Erkki Liikanen, Enterprise (10)	Stavros Dimas, Environment (6)
Loyola de Palacio, Transport & Energy (8)	Peter Mandelson, Trade (5)

Source: Own calculations based on data from Factiva.

The relatively strong public coherence can at least partly be explained by the internal organisation of the College. A comparison between the minutes of College meetings indicates that they have not become unmanageable ‘talking shops’ – on the contrary.⁷⁸ As table 15 shows, the Barroso Commission continues a long-term trend of meetings becoming shorter, although the greatest decrease already took place under Santer and Prodi.

Table 15. Comparison of College meetings

	Delors II	Santer	Prodi	Barroso
Average length of meetings (hours:minutes)	4:15	3:38	2:59	2:51
Average number of agenda items	16.8	18.3	16.3	13.3
Average time per agenda item (hours:minutes)	0:15	0:12	0:11	0:13
Number of Commissioners	17	20	20	25
Average number of all participants in meetings	24.5	26.9	31.8	40.3
Persons present not substituting Commissioners	7.5	6.9	11.8	15.3

Source: Own calculations based on a sample of 40 College minutes.

The table also illustrates that slightly fewer agenda items are discussed in the Barroso College, while significantly more people attend the meetings. The number of Commissioners has of course increased, but there are also generally more people present in the room. Due to the greater size of the College it is no longer possible for everyone at the table to see each other, which was still the case during the Prodi Commission. The two pictures below give an illustration of College meetings during the previous and current Commissions.

⁷⁸ The comparison is based on 10 minutes for each of the four Colleges. Minutes were selected from two comparable time periods: 5 consecutive minutes from the spring and 5 from the autumn of the second year of the respective tenure.

Picture 1. College Meeting, Prodi Commission



Credit © European Community

Picture 2. College Meeting, Barroso Commission



Credit © European Community

In interviews it was mentioned that the atmosphere in College meetings had changed, as there was now considerably less interaction and deliberation than under Prodi. Commissioners had become more focused on their own business and would normally only raise concerns if their portfolio was concerned or if it was an especially sensitive issue in their home country. To keep the machine running more issues would have to be ‘pre-cooked’ at lower levels, but also at these levels meetings had become less deliberative and discussions would increasingly take place before in informal, bi-lateral talks (see section 3.1 c) below).

In the cases where an agreement cannot be reached beforehand, the College discusses an issue following the so-called ‘oral procedure’ (see Box 2 below). In a recent study, Settembri found that the use of the oral procedure had gone down by one third after enlargement.⁷⁹ However, his results should be seen in a broader context, as a Commission Communication from 2003 confirms that both the percentage as well as the number of Commission decisions agreed by oral procedure had already declined from 5.8% (572 decisions) in 2000 to 2.4% (221 decisions) in 2002.⁸⁰ The same Communication also notes an enormous increase in the use of the ‘delegation’ procedure between 2000 and 2002: while there were no reported cases in 2000 and only 8 cases in 2001, the number of acts agreed under the delegation procedure went up to a sizeable 2946 in 2002.⁸¹

Box 2. Commission decision-making procedures

Oral Procedure: Meetings are convened by the President at least once a week (usually on Wednesdays) and whenever necessary. They are not public and discussions are confidential. The Commissioners and the Secretary-General attend the meetings. In the absence of a Commissioner, their chef de cabinet may sit in and, at the invitation of the President, state the views of the absent member. The Commission may decide to hear any other person. The President adopts the agenda of each Commission meeting. Commissioners may propose the inclusion of an item on the agenda that they think requires discussion, provided they notify the President and adhere to certain conditions laid down by the Commission. Where a Commissioner requests that an item be withdrawn from the agenda, the item will, provided the President agrees, be held over for the next meeting. The Commission may, on a proposal from the President, discuss any question which is not on the agenda or for which the necessary working documents have been distributed late. The Commission takes decisions on the basis of proposals from one or more of its members. Decisions are normally adopted by consensus. However, a vote may be taken if any member so requests. In this case, decisions are adopted if a majority (quorum) of the Members vote in favour. The results of deliberations are recorded in the meeting's minutes.

Written procedure: The agreement of the Commission to a proposal by one or more of its members may be obtained by means of a written procedure, provided each of the members, the Directorates-General directly involved, the Legal Service and the chefs de cabinet are in agreement. In this case, the text of the proposal is circulated in writing to all members, with a time limit within which they must make known any reservations or amendments they wish to make. At any point during the procedure, any member may request that the proposal be discussed. They then have to send a reasoned request to the President. If none of the members put forward a reservation within the time limit set, the proposal stands adopted by the Commission.

⁷⁹ Pierpaolo Settembri, *The surgery succeeded. Has the patient died? The impact of enlargement on the European Union*, Jean Monnet Working Paper 04/07.

⁸⁰ European Commission, *Communication from the Commission: A constitution for the Union. Opinion of the Commission, pursuant to Article 48 of the Treaty on European Union, on the Conference of representatives of the Member States' governments convened to revise the Treaties*, COM(2003)548 final, 17.9.2003, Brussels, p. 16 (<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2003:0548:FIN:EN:PDF>).

⁸¹ Ibid.

Empowerment: The Commission may empower one or more of its members to take management or administrative measures on its behalf or even adopt the definitive text of any instrument or proposal to be presented to the other institutions, the substance of which has already been determined in discussion. These powers may be sub-delegated to the directors-general and heads of department unless this is expressly prohibited.

Delegation and sub-delegation: The Commission may delegate the adoption of management or administrative measures to the directors-general, acting on its behalf, who may sub-delegate to their heads of department subject to very specific conditions.

Source: Rules of Procedure of the European Commission (retrievable at <http://europa.eu/scadplus/leg/en/lvb/o10004.htm>).

In 2004 already the Communication ‘on the Functioning of the Commission’ stressed: “During the discussion on particular proposals, the Chair may limit speaking time and interventions should be short, to the point and not repeat the arguments of others.”⁸² Interview sources strongly confirmed a development towards a more streamlined process. Several centrally placed EU-officials stated that a sense of self-discipline among Commissioners could be observed, which had resulted in fewer ‘real discussions’ during College meetings. Commissioners with a substantial interest in a dossier are consulted before meetings, as will be explained in greater detail in the next section. Finally, the proliferation of portfolios was mentioned as a factor behind the change in dynamics within the College. Some portfolios would simply not call for controversial debates – or as one interviewee put it: “Who would want to argue about multilingualism?”

c) Use of working groups and informal coordination mechanisms

Informal and formal groups of Commissioners already existed in previous Colleges. Prodi introduced groups that were initially even meant to take decisions (“fast track”).⁸³ According to our interviews this did not work in practice, however. The Barroso Commission has introduced ‘working groups’ that are not meant to take decisions on behalf of the College, but their tasks and working conditions are more clearly defined than under Prodi. The ‘Communication on the Functioning of the Commission’ from 2004 states:

*New momentum needs to be given to the use of Groups of Members of the Commission [...] to prepare the work of the College and to provide policy input and guidance. Although they are not empowered to take decisions on behalf of the College, they will assume greater importance in an enlarged Commission, providing they operate within a defined framework, meet regularly and assume clear tasks.*⁸⁴

As under Prodi, five groups were established at the beginning of the Barroso Commission’s tenure (Lisbon agenda, competitiveness, external relations, fundamental rights, anti-discrimination and equal opportunities, communication and programming).⁸⁵ For each group

⁸² European Commission, *Communication to the members of the Commission: Functioning of the Commission and internal coordination*, SEC(2004)1617/4, Brussels, p. 6

⁸³ European Commission, *Groups of Members of the Commission*, p. 2 (retrievable at http://ec.europa.eu/reform/pdf/groups_en.pdf). The two groups chaired by Prodi (Growth/Competitiveness and Equal opportunities) were open to everybody, while the three others – External Relations (Patten), Internal Reform (Kinnoek), Interinstitutional Relations (de Palacio) – had restricted membership.

⁸⁴ European Commission, *Communication to the members of the Commission: Functioning of the Commission and internal coordination*, SEC(2004)1617/4, Brussels, p. 10.

⁸⁵ European Commission, *Communication to the members of the Commission: Functioning of the Commission and internal coordination*, SEC(2004)1617/4, Brussels, pp. 13-16.

rules were established concerning participation, mandate, proposed frequency of meetings and their preparation.⁸⁶

Some interviewees suggested that the working groups no longer played a major role, however. It was mentioned that the competitiveness group had worked rather well in the beginning of the mandate, but that things had now moved into a more legislative mode where the group had a smaller role to play. The communication group had apparently hardly been operating at all. The set-up of the working group on external relations would potentially grant Barroso considerable influence over this important policy area, as it is chaired by the President and meetings are prepared by a group of high level civil servants led by the President's head of cabinet. However, a report by the UK House of Commons' Foreign Affairs Committee points to the practical limits of a more presidential system:

In the previous (1999-2004) Commission, th[e] coordinating role was taken informally by the then External Relations Commissioner, Chris Patten. In the current Commission, the role has been undertaken by the Commission President, José Manuel Barroso. However, Mr Avery [a former senior Commission official] told us that, given his other responsibilities, Mr Barroso "does not have enough time to handle foreign affairs".⁸⁷

In practice the President and his cabinet have apparently often favoured less formal means over working groups or discussions in the College: on matters regarded as politically important or particularly sensitive especially, the President and his cabinet would coordinate bi- or multi-laterally with a restricted number of Commissioners who are directly concerned with the respective dossier. As regards the relation between cabinets and DGs, it was generally confirmed that cabinets had gained in influence. On proposals that are considered important they would intervene more often and at an earlier stage. They would also consult other cabinets with a potential interest earlier to secure support and feed-back.

Box 3. Important official steps for a legislative proposal inside the Commission

Initiation: In the so-called 'first pillar' the Commission has the sole right of initiative. This includes all EU policies except for the Common Foreign and Security Policy ('second pillar') and police and judicial cooperation on criminal matters ('third pillar'). A proposal is developed by the respective DG, usually in close coordination with the Cabinet of the Commissioner, depending on how politically sensitive the file is considered to be.

Inter-service consultations: The responsible DG sends the draft proposal to other relevant DGs for comments and amendments. If disagreements between DGs remain, proposals under written procedure can be taken to oral procedure.

Impact Assessment: For all major pieces of legislation, the responsible DG has to carry out an impact assessment. It has to address the potential consequences of the proposal on economic, social and environmental matters, and it must be approved by an impact assessment board chaired by the Secretariat General (see below, 3.2 c)).

Special Chefs (oral procedure): Meeting of members from different cabinets who follow the respective proposal. The meeting normally only covers this particular dossier and takes place in the week before it is supposed to be on the agenda of the College.

⁸⁶ European Commission, *Communication to the members of the Commission: Functioning of the Commission and internal coordination*, SEC(2004)1617/4, Brussels, Annex: Groups of Commissioners.

⁸⁷ House of Commons Foreign Affairs Committee, *Foreign Policy Aspects of the Lisbon Treaty*, Third Report of Session 2007-2008, 16 January 2008, p. 53.

'Hebdo' (oral procedure): Weekly meeting of the heads of cabinets (usually on Mondays). Points on the agenda of the upcoming College meeting are addressed, especially those that are still controversial. Like the 'Special Chefs', the 'Hebdo' functions as a filter for the College meeting.

College: A proposal is approved in the weekly College meetings (usually on Wednesdays). Only items under 'oral procedure' that have not been agreed in the 'Special Chefs' or 'Hebdo' are discussed.

A growing importance of informal and more flexible ways of communication was observed at all levels. For example, senior cabinet members told us that informal negotiations before the so-called 'Special Chefs' meeting (see box 3 above) had become much more common (and necessary) after enlargement, as the actual meeting has become more formal since 2004. In many cases a 'tour de table' would take place, followed by a sum-up from the person chairing the meeting. If there seemed to be a consensus, it would be stated, otherwise the contentious issue would be passed on to the 'hebdo' meeting of heads of cabinet. To secure an early agreement, the member from the cabinet responsible for the dossier would therefore try to convince members from other cabinets with a potential interest during informal bi-lateral talks *before* the 'Special Chefs' meeting. Unlike with the Prodi Commission, one could no longer hope to convince others on major points during the actual meeting.

The increased informality has generally strengthened the position of the President, as it gives him the possibility to work with a restricted number of Commissioners outside the College and 'on demand'. It grants him privileged access to all major dossiers, while regular Commissioners are normally fully involved only on matters that somehow concern their respective portfolio.

Box 4. Transparency vs. Informality

In contrast to the greater informality of the internal decision-making process, there have been efforts by the Barroso Commission to enhance transparency. The 'European Transparency Initiative' was launched in November 2005,⁸⁸ followed by a Green Paper in May 2006.⁸⁹ The initiative started with debates on lobbying activities in the EU, consultation standards of the Commission and the disclosure of data on beneficiaries of EU funds. Later a debate on access to Commission documents was included. According to interviews, the drive towards more transparency has not had a major impact on the internal functioning of the Commission. Some believed the main consequences were that actual discussions would 'move to the corridors', thus further contributing to informality. Our research on the College minutes falls in line with this claim. While it was no problem to obtain access to the actual documents, their content proved to be largely without political relevance. For example, on the reportedly highly controversial College discussion on CO₂-emissions from cars,⁹⁰ no disagreement among Commissioners was mentioned in the official minutes of that meeting. At the end of the document it was only stated: "The Commission's other discussions on certain agenda items are recorded in the special minutes." The special minutes were not available to us.

⁸⁸ See http://ec.europa.eu/transparency/eti/index_en.htm.

⁸⁹ European Commission, *Green Paper on the European Transparency Initiative*, COM(2006)194 Final, 3 May 2006, Brussels (retrievable at http://ec.europa.eu/transparency/eti/docs/gp_en.pdf).

⁹⁰ See for example Martin Winter, „Der Kampf um die CO₂-Richtlinie – Trickreiches Spiel und laute Töne“, *sueddeutsche.de*, 12 December 2007 (retrievable at <http://www.sueddeutsche.de/automobil/artikel/543/149186>).

3.2 Centralisation

Whereas the previous section looked at the role of the president and changes in the College, this section deals with the changes in the administration of the Commission, primarily the changing role of the Secretariat General (SG) and the tools it uses. The trend towards a more streamlined and centralised administration of the Commission services is closely intertwined with the more presidential structure of the College. In many ways a stronger administrative centralisation is the basis for the more presidential system.

a) *A stronger Secretariat General*

An increased importance of the Secretariat General was mentioned in almost all interviews, especially by those working inside the Commission. The role of the SG has evolved considerably over recent years. As one interviewee put it, it had changed from being the guarantor of collegiality to becoming an executive power base of the president (“le bras séculier du président”).

In the ‘Communication on the Functioning of the Commission’ of 2004, the SG was described as a multifunctional body of central importance for the efficiency of the Commission’s internal decision making process. Its different tasks are:

- “[To] monitor and report regularly on the implementation of the Work Programme to both Directors General [...] and the College. Where necessary these reports will identify open issues and propose possible solutions
- [...] to act as an **“honest broker”** in cases of disagreement between different services and to help services to anticipate potential problems. It will provide early warning to the president and to the college of potential problems
- [to] follow the development of policy initiatives at all stages and, where required, [producing] an **assessment** to allow policy choices by Heads of Cabinet, a Commissioners’ Group or the College
- [to] **check** that proposals are in line with political priorities, coherent with other policies, [...] drawn up in full co-operation with all relevant departments [and that] the impact of proposals has been properly assessed. Where particular proposals fail to meet these criteria, their presentation for decision will be postponed.
- In certain circumstances, and at the request of the President, [to] take on the **lead role in steering particular initiatives**, for example, where they cut across a large number of portfolios within the College, are horizontal in nature, or show a particular sensitivity among various portfolios.”⁹¹

Similar provisions existed under the Prodi Commission,⁹² but the main difference lies with their application in practice. Interviewees stated that the SG would now put a much greater emphasis on strategic planning and impact assessments than before. (Both issues will be addressed in greater detail in the following sections). It was also mentioned that the SG had more frequently assumed the role of the ‘lead service’ on a number of high-level policy issues, and not just primarily on governance-related aspects as before. A number of prominent dossiers have been drafted fully or partly by the SG e.g. the revamped Lisbon strategy or the Internal Market

⁹¹ European Commission, *Communication to the members of the Commission: Functioning of the Commission and internal coordination*, SEC(2004)1617/4, Brussels, p. 9.

⁹² European Commission, *Closer internal coordination* (retrievable at http://ec.europa.eu/reform/pdf/coordin_en.pdf).

Review. On dossiers that are judged to be very important and/or controversial, the SG now gets involved at a very early stage. The lower number of public disagreements among Commissioners (see above) suggests that it has performed its role rather successfully.

A considerable number of measures aiming at a stronger SG actually originate from the Prodi Commission (see for example the aspect of “Strategic Planning and Programming” in the ‘White Paper on Reforming the Commission’).⁹³ However, many measures have only come to fruition during the last few years. According to our interviews Barroso and Catherine Day, the secretary general since 2005, have both promoted a more prominent role of the SG. Some interviewees described it as a necessary reaction to the administrative decentralisation of preceding years. Also the greater number of cabinets and a more limited capacity for mutual observation (as mentioned above, point 2.2b)) has made a stronger role of the SG necessary. Finally, to some degree it has certainly been a consequence of the Commission covering ever more policy fields.

b) Planning as a policy tool

“Strategic Planning and Programming” (SPP)⁹⁴ was introduced as part of the reform of the Commission after 1999, but its full effect has only come to bear under Barroso.

Box 5. The annual SPP-cycle⁹⁵

Following an orientation debate among Commissioners and proposals from the services, the Commission agrees on political priorities and key initiatives in an **Annual Policy Strategy (APS)**.⁹⁶ It is agreed in February of the year that precedes its application and provides the basis for the preliminary draft budget two months later. Following a ‘structured dialogue’ with Parliament and Council, the Commission ‘translates’ the APS into its **Legislative and Work Programme (CLWP)** until October of the preceding year.⁹⁷ The CWLP contains concrete actions and a set of deliverables. On the basis of the CWLP each DG develops a specific **Annual Management Plan (AMP)** until January.⁹⁸ AMPs

⁹³ European Commission, *Reforming the Commission. A White Paper – Part I & Part II (Action Plan)*, COM(2000)200 Final/2, 5.4.2000 (retrievable at [http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:52000DC0200\(01\):EN:HTML](http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:52000DC0200(01):EN:HTML) and [http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:52000DC0200\(02\):EN:HTML](http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:52000DC0200(02):EN:HTML));

European Commission, European Governance. A White Paper, COM(2001)428 final (retrievable at http://europa.eu/eur-lex/en/com/cnc/2001/com2001_0428en01.pdf).

⁹⁴ European Commission, *Reforming the Commission. A white paper, part II Action Plan*, COM(2000)200 Final, 1.3.2000, Brussels, pp. 13-16.

⁹⁵ The annual SPP-cycle has to be distinguished from the five-year strategic objectives agreed by the Commission when it takes office, see e.g. European Commission, *Strategic Objectives 2005 – 2009, Europe 2010: A Partnership for European Renewal, Prosperity, Solidarity and Security, Communication from the President, in agreement with Vice-President Wallström*, COM(2005)12 final, 26.1.2005, Brussels (http://eur-lex.europa.eu/LexUriServ/site/en/com/2005/com2005_0012en01.pdf).

⁹⁶ See e.g. the Annual Policy Strategy for 2008, European Commission, *Communication from the Commission to the Council, the European Parliament, the European Economic and Social Committee and the Committee of the Regions: Annual Policy Strategy 2008*, COM(2007)65 Final, 21.2.2007, Brussels (http://ec.europa.eu/atwork/synthesis/doc/aps_2008_en.pdf).

⁹⁷ The CLWP for 2008 can be found at European Commission, *Communication from the Commission to the Council, the European Parliament, the European Economic and Social Committee and the Committee of the Regions: Commission Legislative and Work Programme 2008*, COM(2007)640 final, 23.10.2007 (http://ec.europa.eu/atwork/programmes/docs/clwp2008_en.pdf).

⁹⁸ AMPs for individual DGs can be found at http://ec.europa.eu/atwork/synthesis/amp/index_en.htm.

describe how departments plan their activities and how they contribute to the Commission priorities. The operational implementation throughout the year is ensured through an ‘agenda planning system’ and all DGs have to present an **Annual Activity Report (AAP)** in March of the following year.⁹⁹ The AAPs show to what extent DGs have reached their objectives. Finally, the Commission presents a **synthesis report** of the main policy achievements for the entire institution to the European Parliament and the Council in June.¹⁰⁰

For greater detail, see http://ec.europa.eu/atwork/strategicplanning/index_en.htm.

The implementation of the SPP-cycle has had a number of consequences for the working of the Commission. Firstly it has focused Commission activities, as DGs can still promote other initiatives, but their performance is only measured on the basis of the initiatives mentioned in the AMP. Secondly, any initiative that is to be accepted for the APS and CWLP must be prepared well in advance by the DGs. For example, as the APS 2008 was presented in February 2007 and the CLWP 2008 in October 2007, a strategic objective for 2008 had to be ready more or less in January 2007 and the specific measures in September 2007.

Thirdly, as initiatives have to be announced well in advance, it gives the SG the opportunity to ‘bundle’ proposals. This forces DGs to coordinate from the beginning and thus helps prevent inter-service conflicts at later stages. It also gives the SG and the President a better opportunity to steer the agenda and avoid proposals on similar issues being put forward from different DGs without prior coordination.

Fourthly, the SG acts as a gatekeeper and tries to limit the number of policy priorities and initiatives. For 2008 the Commission has presented five priorities¹⁰¹ that cover 61 initiatives,¹⁰² while the 2006 working programme still included 96 initiatives.¹⁰³ According to our interviews, it has become harder to get initiatives into the CLWP. In the past DGs used to decide with the relevant Commissioner what should go in, now they have to make the case for their initiatives.

Generally speaking, planning and programming has put the SG in a key position for the priority-setting of the Commission and has granted it a supervising role in a process that has become more centralised and coordinated.

⁹⁹ See http://ec.europa.eu/atwork/synthesis/aar/index_en.htm.

¹⁰⁰ See for example European Commission, *Communication from the Commission to the Council, the European Parliament, the European Economic and Social Committee and the Committee of the Regions: Policy Achievements in 2006*, COM(2007)67 final, 28.2.2007, Brussels (<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2007:0067:FIN:EN:PDF>).

¹⁰¹ “Growth and Jobs”, “Sustainable Europe”, “An integrated approach to immigration”, “Putting citizens first” and “Europe as a world partner”.

¹⁰² An example of a package of initiatives could be the *air transport package* which includes: a) Communication “Developing the single European Sky”; b) Proposal to amend the Single European Sky Regulations, c) Extension of the competence of the European Aviation Safety Agency towards airports and ATM /ANS and d) Launch of the Development Phase of SESAR (2008-2013). European Commission, *Communication from the Commission to the Council, the European Parliament, the European Economic and Social Committee and the Committee of the Regions: Commission Legislative and Work Programme 2008*, COM(2007)640 final, 23.10.2007, p. 24 (http://ec.europa.eu/atwork/programmes/docs/clwp2008_en.pdf).

¹⁰³ European Commission, *Communication from the Commission to the Council, the European Parliament, the European Economic and Social Committee and the Committee of the Regions: Commission Unlocking Europe’s full potential. Commission legislative and work programme 2006*, COM(2005)531 final, 25.10.2005, pp. 12-29 (http://ec.europa.eu/atwork/programmes/docs/clwp2006_en.pdf).

c) *Impact assessments*

Impact assessments (IAs) are another control mechanism and potential filter for legislative proposals.¹⁰⁴ It demands from the individual DGs that they justify their draft proposals in view of a range of aspects. The Commission's impact assessment guidelines list 32 different aspects relating to economy, environment or social impacts.¹⁰⁵ Like the SPP, IAs were already introduced under Prodi and from 2003 onwards they have gradually been applied to all major legislative proposals.¹⁰⁶ From 2003 to June 2007 the Commission has carried out 230 IAs and procedures have been continuously revised.¹⁰⁷ The Barroso Commission formulated ambitious aims for IAs when it took office:

*A new culture of impact assessment should be developed. Our medium term objective should be to ensure that such assessments are available even before an item is accepted as part of the annual Work Programme. Prior public consultation on draft legislative proposals should become the norm.*¹⁰⁸

Since 2006 the quality of individual draft impact assessments can be checked by an 'Impact Assessment Board'.¹⁰⁹ It consists of directors from DG Economic and Financial Affairs, Employment, Enterprise and Environment. The IA-board is chaired by the Deputy Secretary General of the Commission and works under the direct authority of the Commission President. While it can only comment on the quality of an IA (and not on the content of the actual proposal), it still seems to hold a considerable 'gate keeper'-function for the College agenda. It thus gives the SG as chair of the IA-board another tool to monitor and influence the decision-making process.

Opinions on the effectiveness of IAs varied widely. In some policy areas they are taken very seriously, as it is not uncommon that the IA-board sends back an IA to demand improvements. In one DG we were even told that before an IA is presented to the board, an internal 'test-exam' is carried out with civil servants from the DG taking on the roles of the different members of the IA-board. Other interviewees however argued that if sufficient political support for a proposal exists, the IA is only a (time- and resource-consuming) formality. One source stated that depending on the policy area, an IA would add up to one year onto the time it takes to get a proposal on the College agenda.

¹⁰⁴ The Commission's own introduction to impact assessments can be found at http://ec.europa.eu/governance/impact/index_en.htm.

¹⁰⁵ European Commission, *Impact assessment guidelines with March2006 update*, SEC(2005)791, 15.6.2005, Brussels, pp. 29-32 (http://ec.europa.eu/governance/impact/docs/key_docs/sec_2005_0791_en.pdf).

¹⁰⁶ European Commission, *Communication from Commission on impact assessment*, COM(2002)276 Final, 5.6.2002, Brussels (<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2002:0276:FIN:EN:PDF>).

¹⁰⁷ European Commission, *Mieux Légiférer à l'aide d'analyses d'impact de meilleure qualité*, Note d'information de M. le Président, SEC(2007)926, 20.6.2007, Brussels, p. 2. See also for an overview of where the current practice holds room for improvement. (http://ec.europa.eu/governance/impact/docs/key_docs/sec_2007_0926_en.pdf).

¹⁰⁸ European Commission, *Communication to the members of the Commission: Functioning of the Commission and internal coordination*, SEC(2004)1617/4, Brussels, p. 3

¹⁰⁹ European Commission, *Mieux Légiférer à l'aide d'analyses d'impact de meilleure qualité*, Note d'information de M. le Président, SEC(2007)926, 20.6.2007, Brussels, p. 2. (http://ec.europa.eu/governance/impact/docs/key_docs/sec_2007_0926_en.pdf).

3.3 Managing diversity

Since 2004 almost 4,000 new civil servants from the 12 new member states have joined the Commission. This section looks at how this has affected the use of languages and the management of personnel, as well as at other factors that have come into play since 2004.

a) Language

English, French and German have remained the three working languages of the Commission after 2004. French is still dominant in some DGs, but generally enlargement has led to a shift from French and English being equally important, to a situation where English is becoming the Commission's de-facto primary working language.¹¹⁰ English had already gained in importance with the 1995 enlargement when Sweden, Finland and Austria joined the Union, as the nationals from these countries – just like the ones from the 12 that joined in 2004 and 2007 – generally had a better knowledge of English than French. This development is supported by figures: in 2006, 72% of original texts handed to the translation service were in English, whereas in 1997 it had been only 45.4%.¹¹¹ In interviews, however, it was stressed that this change has had no significant impact on the 'working culture' of the Commission.

Due to the greater number of official languages in the EU¹¹² the number of pages translated by DG Translation has also increased since 2004: from 1.12 million pages in 1997 to 1.54 million pages in 2006.¹¹³ After enlargement delays for translations were rather frequent and it was difficult to find a sufficient number of translators for some of the new official languages. Stricter rules for the length of texts and deadlines were applied, but when it came to dossiers of special political importance derogations could be obtained. On average, the length of a Commission Communication has been reduced from 37 pages before enlargement to only 15 pages after enlargement.¹¹⁴

b) Personnel

Interviews generally confirmed that the large number of new civil servants have been integrated well into the institution. On several occasions it was actually mentioned that they had contributed to "fresh thinking" in the Commission. Others pointed to the fact that the new officials had often already been working in or around the European institutions on a contractual basis or as stagiaires, so that many knew the internal functioning of the Commission well before they passed the concours. Apparently the Commission has been much slower to recruit officials for more senior levels, however.¹¹⁵ Figures from the Commission's website underpin this: so far only 6 out of 73 top posts ("Director Generals, Deputy Director Generals and equivalent") are

¹¹⁰ See also Giuseppe Ciavarini Azzi "La Commission Européenne à 25. Qu'est-ce qui a changé?", in Renaud Dehousse, Florence Deloche-Gaudez and Olivier Duhamel, *Elargissement. Comment l'Europe s'adapte*, Paris: Sciences Po Presse, 2006, p. 45.

¹¹¹ European Commission, *Translating for a Multilingual Community*, Brussels, p. 7 (http://ec.europa.eu/dgs/translation/bookshelf/brochure_en.pdf).

¹¹² The EU now has 23 official languages. Due to the 12 new member states 11 new languages were introduced (Greek had already been an official language since 1981.) Additionally Gaelic became an official language in 2007.

¹¹³ European Commission, *Translating for a Multilingual Community*, Brussels, p. 7 (http://ec.europa.eu/dgs/translation/bookshelf/brochure_en.pdf).

¹¹⁴ "Why is the language policy in the EU political dynamite?", presentation by Juhani Lönnroth, Director General of DG Translation, held at the Centre for European Policy Studies, Brussels, 22.2.2008.

¹¹⁵ Giuseppe Ciavarini Azzi, p. 43.

from the new Member States and there is not one Director General (AD16) from these countries.¹¹⁶ The great majority of new officials have been recruited at the lowest levels: According to Commission figures, currently 46.7% of AD5-AD8 officials and temporary agents come from the 12 new member states (1,781 out of 3,816), but only 2.1% (or 175 out of 8,152) are ranked Head of Unit or higher (AD9-AD16).¹¹⁷ In a long term perspective these figures will become more balanced, as the recently employed officials are subject to the ordinary Commission career path. The employment of new officials at a higher level was mentioned in some interviews as a sensitive issue. Apparently already the small number of recruitments at the top have in some cases caused frustration, as it blocked careers of existing officials.

However, internal problems mentioned in interviews were more often related to the introduction of the so-called 'Kinnock reforms' than to enlargement.¹¹⁸ The Kinnock reforms are an administrative reform process started by the Prodi Commission and named after former Vice-President and Commissioner for 'Administrative Reform' Neill Kinnock.

Box 6. Main elements of the Kinnock reforms¹¹⁹

- *Promoting a 'culture based on service' in the Commission.* Promotion of independence, responsibility, accountability, efficiency and transparency as important values, e.g. introduction of a code of good administrative behaviour and new rules to enhance access to Commission documents
- *Priority setting, efficient allocation and use of resources.* Programming (see above, section on SPP), outsourcing of certain tasks and a drive towards more performance-oriented working methods
- *Human resource development.* Stronger focus on management and career development, an overall focus on the working environment (e.g. concerning 'whistle-blowing')
- *Audit, financial management and control.* Strengthening of financial controls, decentralisation of certain competences

Although the Kinnock reforms have clearly been a reaction to the fall of the Santer Commission, some aspects received an additional impetus from the perspective of enlargement. Most frequently mentioned was the reform of the staff regulations that entered into force on 1st May 2004, the day of enlargement. With this date salaries for new officials were cut,¹²⁰ which has caused considerable frustration among some of the new officials.¹²¹ Some interviewees also

¹¹⁶ See http://ec.europa.eu/civil_service/about/who/dg_en.htm.

¹¹⁷ See http://ec.europa.eu/civil_service/docs/bs_sexe_nat_grade_en.pdf, p. 3.

¹¹⁸ See European Commission, *Reforming the Commission. A White Paper, Part I*, COM(2000)200 Final, 1 March 2000, Brussels and European Commission, *Reforming the Commission. A White Paper, Part II - Action plan*, COM(2000)200 Final/2, 5.4.2000. Together the two documents lay out the 'Kinnock reforms.'

¹¹⁹ Ibid.

¹²⁰ Until 30 April 2004 the basic monthly salary for an administrator (A-grade) at the lowest level was 5,182.46 Euro, after 1 May it was 3,578.05 Euro, see http://ec.europa.eu/reform/2002/chapter02_en.htm#5.

¹²¹ For example, officials hired after 1 May 2004 who passed the same concours and were put on the same shortlist as others hired before 1 May 2004 have gone to the European Court of Justice to demand equal pay.

pointed to greater difficulties in attracting candidates with top qualifications, and even more so to holding on to them after they had obtained experience in the Commission. These concerns were however put into perspective by other statements underlining the competitiveness of Commission wages compared to those in the new member states.

Other elements of the Kinnock reforms that were said to have had a significant impact on the Commission were a more performance-based promotion scheme and a stricter financial management system. Both were introduced before enlargement and elicited rather mixed reactions from Commission officials. They cannot be described in greater detail here, but it is remarkable that many officials felt that these reforms had had a much greater impact on the internal functioning of the Commission than the integration of the officials from new member states and other enlargement-related adaptations. Generally, interviews underpinned our impression that the fall of the Santer Commission had a more seismic impact on the development of the Commission than the 2004 enlargement. However, the changes introduced in the wake of the scandals in 1999 and their long-term effects were only felt when they were fully implemented – which was in many cases only in 2003 or 2004. The same should be borne in mind for enlargement, meaning that it may be still too early to appreciate the full consequences.

Conclusion

Less controversy and better management have been the two ‘leitmotifs’ of the Commission’s successful adaptation to enlargement up till now. As was illustrated in this paper, both factors are based on concrete elements that contribute to the larger picture: on the one hand better management due to the enhanced role of the President, a more dominant Secretariat General, the increased use of impact assessments and ‘Strategic Planning and Programming’ as well as a successful integration of the new staff. On the other hand, less controversy due to fewer legislative proposals, more ‘soft law’, an apparent reluctance to present proposals on sensitive matters, the move towards a ‘Europe of Results’, a larger College and a shift in the institutional balance.

The study has also made clear that 1 May 2004 was not the ‘watershed’ for the Commission, as was sometimes predicted. All the different elements mentioned above have to be understood as part of long-term process and must be seen in the wider political context. As regards internal reform measures, the perspective of enlargement has certainly helped to give some of them an additional impetus and their full impact often only came to bear after 2004. However many of these measures had been developed long before 2004 in response to a general need for reform, not least the 1999 scandals. In a similar vein, the Commission’s hesitance to present controversial proposals appears to be less a product of enlargement than of the general political context during recent years. Due to fears linked to globalisation, the Commission has often been put on the defensive and the difficult treaty reform process has added to the general cautiousness. It seems that a second ‘Bolkestein directive’ should be avoided at all cost. To what degree enlargement alone may be responsible for a more cautious Commission will only be seen after the Treaty of Lisbon is ratified. It is also still too early for a verdict, as the Commission still has to prove itself on a number of dossiers. It remains to be seen how it will position itself when its proposals on the ‘flagship dossiers’ climate change and energy may come under fire from member states and the EP. Tough negotiations on national contributions to the greenhouse gas reduction targets, on ‘ownership unbundling’ in the energy sector and on many other issues still lie ahead. As with the fall of the Santer Commission, we are only likely to see the full effects of enlargement in a few years down the line.

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Annex A. Sources and Methodology

1. PreLex

Hard law and soft law

The European Commission's PreLex database was searched for information on the quantity and quality of the acts adopted by the Commission ('output'). This included both 'hard law' (i.e. legally binding acts: Commission proposals for directives, regulations, framework decisions and decisions) and 'soft law' (i.e. non-binding acts: Communications, Reports, Opinions, Green Papers and White Papers). All acts have been classified by PreLex in the respective categories and have a COM series number.

Time period covered

For the purposes of comparison researchers extracted data for two periods:

- 1 January 2000 – 30 June 2002 (i.e. 30 months of the Prodi Commission) and
- 1 January 2005 – 30 June 2007 (i.e. 30 months of the Barroso Commission).

The second half of the Prodi Commission was not covered, as the corresponding period for the Barroso Commission is still ongoing.

Policy areas

Policy areas were determined by the activity of the respective DGs and services (e.g. Secretariat General, Legal Service). PreLex categorises them as *primarily responsible* bodies for each act. Where a DG covered two policy areas (DG Transport and Energy), acts were individually assessed and counted for the corresponding policy area. The same was done for acts of the services.

Commission President

Figures concerning the activity of the respective Commission President have been obtained by looking at the proposals for which the Commission Presidents are listed as the *responsible* Commissioner.

New vs. amending legislation

This comparison only covered hard law proposals. An act was qualified as 'amending' if it makes some reference to an older act, i.e. amending, following-up, terminating, repealing, extending or any other term indicating that previously adopted legislation was to be modified. This also includes 'codification' and changes to international agreements (both signature and conclusion process). 'New' pieces of legislation are those that do not fit into the 'amending' category, including the Community positions to be taken in external bodies (i.e. WTO, Association Councils, ACP-EC Council of Ministers).

As the PreLex database is constantly updated (and sometimes corrected), marginal mistakes are unavoidable. Figures were double-checked on 20 January 2008. Changes that may have taken place are estimated to modify results by not more than 2%.

2. Sample of College minutes

The sample of College minutes has been used as an indicator of the importance of College meetings in the Commission's internal decision-making process. 40 documents were included in the sample: 10 minutes of meetings from 4 different Commissions (5 in spring and 5 in autumn). The autumn meetings took place during the 1st year of the respective Commission, while the spring meetings took place during the 2nd year. Minutes covered the following meetings:

- Five consecutive College meetings between 18 September 1991 and 16 October 1991 (Delors II Commission: Meetings 1074, 1075, 1076, 1077, 1078);
- Five consecutive College meetings between 5 February 1992 and 4 March 1992 (Delors II Commission: Meetings 1092, 1093, 1094, 1095, 1096);
- Five consecutive College meetings between 2 and 30 October 1996 (Santer Commission: Meetings 1309, 1310, 1311, 1312, 1313);
- Five consecutive College meetings between 6 May 1997 and 4 June 1996 (Santer Commission: Meetings 1338, 1339, 1340, 1341, 1342);
- Five consecutive College meetings between 4 and 31 October 2000 (Prodi Commission: Meetings 1494, 1495, 1496, 1497, 1498);
- Five consecutive College meetings between 2 and 30 May 2001 (Prodi Commission: Meetings 1521, 1522, 1523, 1524, 1525);
- Five consecutive College meetings between 27 September and 25 October 2005 (Barroso Commission: Meetings 1716, 1717, 1718, 1719, 1720);
- Five consecutive College meetings between 3 and 31 May 2006 (Barroso Commission: meetings 1743, 1744, 1745, 1746, 1747).

On the basis of this sample, the duration of the meetings, the number of agenda items (and sub-items) and the participants were counted. Concerning participants we looked at three categories: Commissioners, persons substituting an absent Commissioner, other participants).

3. Sample of Press Coverage

On basis of the Factiva-database we counted the number of disagreements between Commissioners that were reported in the *Financial Times*, in order to assess the external coherence of the College. The search covered a period of 25 months for each of the Prodi and Barroso Commissions (i.e. May 2001 until May 2003 for the Prodi Commission and May 2005 until May 2007 for the Barroso Commission). As figures are relatively low, they have been taken as a proxy.

Annex B. List of interviews

(By category and in chronological order)

I. European Commission

1. Cabinet member of Vice-President Siim Kallas (Administrative Affairs, Audit and Anti-Fraud), 22 November 2007
2. Official, DG Communication, 11 December 2007
3. Official, Legal Service, 12 December 2007
4. Official, DG Health and Consumer Protection, 13 December 2007
5. Official, DG Enterprise, 14 December 2007
6. Official, DG Research, 14 December 2007
7. Official, DG Environment, 14 December 2007
8. Official, Secretariat General, 17 December 2007
9. Official, DG Energy, 18 December 2007
10. Official, DG Enterprise, 19 December 2007
11. Cabinet member of Commission President José Manuel Barroso, 19 December 2007
12. Official, DG Employment, 20 December 2007
13. Cabinet member of Commissioner Andris Piebalgs (Energy), 7 January 2008
14. Cabinet member of Commissioner Janez Potočnik (Science and Research), 7 January 2008
15. Official, DG JLS, 8 January 2008
16. Cabinet member of Commissioner Stavros Dimas (Environment), 8 January 2008
17. Official, Secretariat General, 9 January 2008
18. Cabinet member of Commissioner Jacques Barrot (Transport), 23 January 2008

II. Council of Ministers

19. Official, Council Secretariat (energy policy), 28 November 2007
20. Official, Council Secretariat (Justice and Home Affairs), 10 December 2007
21. Official, Council Secretariat (environment policy), 9 January 2008

III. Other

22. Philippe de Schoutheete, former Permanent Representative of Belgium to the EU, 28 November 2007
23. Alexander Stubb, Member of the European Parliament, 3 December 2007
24. Michael Stabenow, EU-correspondent, Frankfurter Allgemeine Zeitung, 5 December 2007
25. Artur Harazim, Counsellor, Permanent Representation of Poland to the EU, 10 December 2007
26. Wilhelm Schönfelder, former Permanent Representative of Germany to the EU, 13 December 2007
27. Ole Vigant Ryborg, EU-correspondent, Ugebrevet Mandag Morgen, 13 December 2007
28. Claus Grube, Permanent Representative of Denmark to the EU, 17 December 2007
29. H. Onno Ruding, former Minister of Finance of the Netherlands, Chairman of the CEPS Board of Directors, 10 January 2008

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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)
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