

Decision-Making in the Enlarged Council of Ministers: Evaluating the Facts

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Many experts and practitioners expected the 2004 enlargement to affect both the efficiency and content of policy-making in the EU. Contrary to these expectations, most accounts of decision-making in the Council of Ministers have concluded that the EU's most important legislative body has functioned relatively smoothly following the enlargement 'big bang' in 2004. Yet many aspects of the enlargement of the EU institutions have not been adequately reported or evaluated. In order to give a more nuanced insight into the impact of enlargement, this Policy Brief presents and analyses data revealing some of the general changes that have occurred in the Council since May 2004. The analysis shows that this institution has indeed been challenged by the difficult task of getting 25 member states to come to agreement. One can then only wonder what the consequences are for an EU of 27. Furthermore, although the findings do not appear to reflect any immediate crisis in terms of the overall efficiency of the institution, the evidence is mixed with regard to individual policy areas. Lastly, the data indicate that the internal working processes in the Council have been influenced by the expansion. Each of these observed changes may in the long run have important implications for the nature and content of policy-making in the EU, and pose further challenges to the transparency of the institution and accountability of the government representatives.

Introduction

In its Communication on Enlargement Strategy and Main Challenges 2006-2007, released 8 November 2006, the European Commission concluded: "Overall, the fifth enlargement has been a considerable success" and "(t)he EU's institutions have continued to function effectively" (p. 4). In his speaking points to the press, Enlargement Commissioner Olli Rehn (2006) stressed two important criteria for evaluating the integration process:

- With respect to institutional matters, the EU's decision-making processes must remain effective and accountable, for the sake of current member states as well as in view of further enlargement.
- With respect to policy-making, the EU needs to be in a position, as it enlarges, to continue developing and implementing common policies in all areas. Accordingly, assessment of the impact of enlargement on EU policies is planned to take place at all key stages of the enlargement process.

Both the Commission's report and the wider debate on how well the EU's institutions have been able to continue with 'business as usual' – which interestingly seems to be the underlying criteria for success in most of the existing evaluations – appear somewhat remiss on one account in particular: namely, presenting in quantitative terms how the fifth enlargement has influenced decision-making.

We acknowledge that not all aspects of the institutions' integration capacity can be evaluated based on aggregate facts and figures. Nevertheless, we wish to argue in this Policy Brief that enough time has passed since the May 2004 enlargement for the evaluations to include more quantitative analysis when assessing such factors as efficiency, accountability (e.g. in terms of voting) and the degree of both the 'deepening' and 'widening' of adopted policies.

This paper presents selected findings from our larger evaluation project on the impact of the 2004 enlargement on decision-making in the Council of Ministers. The full study will be published in early 2007, but it seems relevant to present in summary form some of the general findings here in relation to the current debates on the EU's institutional challenges, the Constitution and possible future enlargement processes. Our research suggests that efficiency cannot be simply understood as the mere continuation of business as usual and the ability to pass legislation. Rather, a closer look at the procedures behind decision-making, as well as one that differentiates among different policy areas is needed to give a more comprehensive view of the effects of enlargement.

The findings presented in the study are based on a large dataset covering all legislation adopted by the Council in the first 30 months that have passed since May 2004 as well as data from the same number of months prior to the enlargement. Hence, all legislation from a total of 60 months – ranging from December 2001 to October 2006 – is covered by the analysis. In more detailed terms, the dataset consists of a long list of variables with information on the policies adopted as well as the Council members' positions as recorded in the minutes of individual Council meetings. Therefore, the data allow for a comparison of the processes and policies adopted in these two periods leading up to and following the 2004 enlargement and the findings are elaborated upon by in-depth interviews with 39 officials and political representatives.

An initial observation is that, considering the scale of the expansion of the institutions, an impressive quantity of legislation has indeed been adopted since the 2004 enlargement. The data therefore seem to support the conventional view that the addition of the 10 new member states has not slowed down Council policy-making. Also the level of recorded disagreement in Council meetings has not risen in voting situations, although an increase in the level of opposition as expressed in recorded formal statements in the minutes has emerged in the second part of the period studied. When breaking down the figures and looking into the different policy areas, however, two findings are striking: first, important procedural changes have occurred in the Council meetings and second, a great variation across the different policy fields appears in terms of quantity and the level of detail in the legislation passed. These changes deserve further scrutiny in the continued debate on the institutional set-up.

General findings

To begin with, the most general finding from the study – as also mentioned above – the quantity of legislation adopted by the Council has decreased since the enlargement. To be specific, in the almost 30 months (December 2001 to April 2004) leading up to the May 2004 enlargement, the Council adopted a total of 474 individual acts. A large number of these – 139 acts – were passed in the very last few months before enlargement, suggesting that much legislative 'preparation' had to be done before the new member states could exercise legal rights. Conversely, the period after enlargement (May 2004–October 2006) saw a decrease in the amount of legislation passed: 328 proposals were adopted in this period, 29 of which entailed the reintroduction of existing legislation that needed to be re-adopted in order to accommodate the new member states. A reduction in the adoption rate of legislation by 146 pieces (31%) can hence be observed between the 30 months before and the 30 months after May 2004.

Whether this reduction in the amount of adopted legislation also can serve as a valid indication of a decreased level of efficiency is difficult to conclude at this point, particularly in light of the European Commission's recent strategy of introducing less legislation with the intention of dedicating more rigorous attention to the individual proposals. Nevertheless, what is interesting in relation to these figures is that although the amount of legislation has in fact declined since enlargement, all of the practitioners interviewed from the old member states agreed that the workload has increased. And it was stressed that this holds true for both the working group level of the decision-making process all the way to the ministerial negotiations. For example, it was explained by an official from a country that then held the presidency that the construction of either a majority or a blocking minority has become harder simply because negotiations need to include more member states. Furthermore, several interviewees stated that finding a common position in a more heterogeneous Council has led to a lower common denominator in terms of the level of regulation.¹ Such assertions are of course quite controversial and difficult to support by quantitative material; still, it was explained that although the adoption rate has declined, even the current level would not have been possible had there not been a general change in the degree of regulation in proposed policies.²

Both the Council meetings and those of the preparatory bodies tend to last considerably longer than before enlargement. This observation is confirmed by the data from Council minutes as well as by a large number of the interviewees. These latter sources also mention that an important atmospheric change has occurred. Negotiations are no longer held in a 'familiar' environment. Instead, a tendency towards reading out statements and keeping to the formal procedures of negotiations has prevailed. As shown below, these changes to the procedural 'codes' are also evident in the quantitative figures for the Council members' voting behaviour and the recorded levels of disagreement, to name a couple of examples. Before evaluating these aggregate results, however, two other relevant implications highlighted by the interviewees should be noted: first, since compromise agreements are difficult to achieve in the formalised rounds, more pre-negotiation talks take place and have further moved the agenda to the informal settings of luncheon tables and Council corridors. Second, the facilitators of the negotiations – the European Commission, Council Secretariat or the presidency – are commonly known to have increased their influence in

¹ This information stems from the interviews conducted for the forthcoming CEPS Report, Hagemann & De Clerk-Sachsse (2007), interviews 2, 3, 5, 6, 9, 15, 16, 17, 20 and 22.

² Ibid., interviews 1, 2, 5, 6, 9, 11, 15, 16 and 22.

the brokering of agreements. Such findings certainly suggest that the impact of the enlargement on Council decision-making deserves more scrutiny than merely the evaluation of whether the institution is able to pass a sufficiently high number of new pieces of legislation per year.

Although the Council is famously known for its ‘culture of consensus’, the difficulties of getting a 25-member Council to come to agreement would suggest that this may have changed since May 2004. Yet when looking at the level of recorded disagreement before and after the enlargement, it is interesting to observe that the governments have actually recorded their opposition to proposals less frequently since enlargement than in the period beforehand. Table 1 presents the figures for the level of contest in the years prior to and after May 2004 and shows the amount of legislation adopted as either ‘A’ or ‘B’ agenda points. The former are commonly regarded as uncontroversial policy proposals to be adopted without much discussion at the ministerial level, whereas B agenda points tend to require closer discussion by the government representatives.

*Table 1. Number of pieces of legislation adopted**

	Dec 2001	Jan-Dec 2002	Jan-Dec 2003	Jan-April 2004	May-Dec 2004	Jan-Dec 2005	Jan-Oct 2006
All	33	164	163	139	86	121	98
Contested 1 ^{a)}	4	29	36	11	9	13	16
% ^{b)}	12.1	17.7	22.1	7.9	10.5	10.7	16.3
Contested 2 ^{c)}	12	53	69	46	19	52	39
% ^{b)}	36.4	32.3	42.3	33.1	22.1	43.0	39.8
A points	29	147	152	137	84	117	87
%	87.9	89.6	93.3	98.6	97.7	96.7	88.8
B points	4	17	11	2	2	4	11
%	12.1	10.4	6.7	1.4	2.3	3.3	11.2

Note: Data for the year 2004 are divided between the periods Jan-April and May-December. Data for the single month of December 2001 are provided to enable a comparison of an equal amount of months prior to and following the enlargement.

^{a)} Disagreement voiced through voting.

^{b)} Percentage of legislation per year.

^{c)} Disagreement voiced through voting and formal statements; formal statements are included in the minutes following the adoption of a proposal.

Source: Hagemann & De Clerk-Sachsse (forthcoming, 2007).

Table 1 indicates an overall decline in legislation adopted since the 2004 enlargement by approximately 40 acts per year.³ Furthermore, the table shows that whereas most of the periods prior to enlargement experienced a level of contested decisions of 12%, 18% and 22% respectively, since the enlargement these figures have fallen to 10%, 11% and 16% of the annual adoption rate (reported under ‘Contested 1’). Therefore, the data support the frequently heard statement that the enlarged Council has not experienced an elevated level of disagreement in the Council meetings, and that in these terms it has successfully avoided decision gridlock.

Still, one recurring and important issue arising from the data, which was also elaborated upon by most of the interviewees, involves the possibility of Council members to make a formal statement following the adoption of a proposal. These formal statements often consist of a country’s explicit disagreement or reservation with regard to a policy. Formal statements are included in the minutes of the Council meetings and allow the member states to make clear to internal and external actors any possible opposition to either a small aspect of or the full proposal, even in cases in which the country has supported the measure. These formal statements are taken into account in the row ‘Contested 2’. The figures suggest that the low levels of opposition in voting after the enlargement may be attributable to an increased reliance on recorded positions in the minutes in the form of formal statements as a means to voice disagreement. This interpretation of the data is confirmed by many interviewees, who see the origins of these changes in the more formalised tone and structure that characterise the meetings and work culture. By relying on formal statements to register their opposition instead of voting ‘no’, governments are able to affect a sense of the old culture of consensus without at the same time sending a political signal of deviating from their initial policy preferences. While this may be a way to avoid policy gridlock through contested voting, using formal statements also raises some important issues concerning the transparency of the decision-making process as it becomes harder to identify where individual states stand on each issue.

Another significant result from the data is related to the use of the A and B agenda point procedures. Based on several recent evaluations along with the statements of a number of practitioners, one noticeable change in the Council meetings is a perceived difference in the use of the (allegedly) uncontroversial A points and the more politically difficult B points after the

³ This assessment assumes an adoption rate for November and December 2006 that is similar to that for the same months in each of the previous years.

2004 enlargement. It has been argued that in order to avoid too much discussion and instead ensure an efficient policy agenda, the A point procedure is now used more often than prior to the enlargement; B points are largely kept off the agenda, according to some observers. It is clear from Table 1, however, that although these changes can indeed be seen to have occurred in the period immediately following enlargement, the subsequent periods studied here have seen an increase in the use of B agenda points. Excluding the months of November and December, 2006 has already exceeded the level of B agenda points in both 2002 and 2003. Furthermore, a repeated comment in the interviews regarding the use of A and B agenda points is that there is great uncertainty with regard to which policy proposals require the most scrutiny at the ministerial level. Several interviewees highlighted the emergence of the phenomenon of ‘false’ A and B points. They suggested that this may eventually be counter-effective: items in the A point category are in certain cases no less the basis for discussions at the ministerial level than are the B agenda items.

New vs. old, North vs. South or...?

Besides the descriptive statistics on the quantity of legislation passed, the issues of voting behaviour and coalition formation are also important to consider when evaluating both the efficiency and transparency of the enlarged Council, as is the intention stated by Enlargement Commissioner Olli Rehn. But for political reasons most evaluations so far have touched only lightly on these sensitive issues.⁴

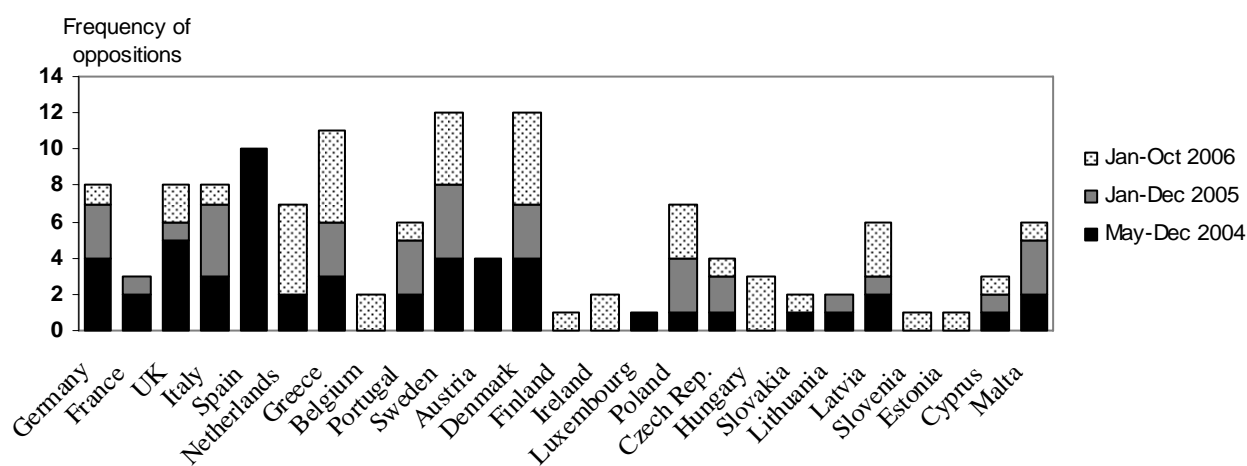
Voting behaviour and the formation of coalition indicate something about both the transaction costs included in the bargaining and the ability of the national constituencies to hold their governments accountable. For example, if coalitions are not stable over time and across a number of policy areas,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

Such argumentation is also relevant in the EU context, as the level of integration – even in the enlarged EU – requires the member governments to take a stand on regulatory and distributional policy issues. The mere scope of cooperation in many of the policy areas is evidence that the EU member states are not just negotiating within an intergovernmental construction. Hence, voting behaviour and coalition formations are issues that must be adequately addressed and reported upon. Yet, as previously mentioned, these issues are not always politically innocent and the relatively sparse insights into the Council meetings pose a problem for outsiders attempting to investigate the topic. So far no final conclusion has been drawn on the Council’s coalition-formation processes. Even the various accounts provided by practitioners over the last decade do not appear altogether aligned with regard to whether the governments form stable coalitions over time and across policy areas or if negotiations are characterised by ad hoc groupings and more volatile preference configurations. Nevertheless, a few trends are still commonly acknowledged as revealing the basic characteristics of how different groups in the Council behave: large member states and northern countries have been found to be those most likely to oppose or abstain when voting occurs (Mattila, 2004; Hayes-Renshaw & Wallace, 2006). A redistributive cleavage and a grouping of free-market vs. regulatory members have also been identified in certain periods (Zimmer et al., 2005; Thomson et al., 2004). Lately, and in the four-year period leading up to the 2004 enlargement, patterns of party political influence have been detected, suggesting that the Council’s composition of centre-left and centre-right governments may additionally play a role in the overall legislative output (Hagemann, 2007).

As a first step towards investigating the voting behaviour and coalition formations, Figure 1 presents the behaviour of the individual governments represented in the Council after the 2004 enlargement in terms of the frequency of opposing the majority. To easily compare the behaviour of new and old member states, the old member states are shown on the left-hand side of the figure and the new member states are found on the right. The first immediate observation from the figure is that the old member states more frequently record their opposition to a proposal than do the new member states. Yet when disaggregating the figures into the three periods May–December 2004, January–December 2005 and January–October 2006, it becomes clear that such differences were more apparent in 2004 and 2005 than in 2006. The new member states were generally more willing to voice their disagreement in the most recent period studied, and although the frequency is still not entirely at the level of the old member states, this may soon be the case if the figures continue to increase.

⁴ At least a partial explanation in this respect could be the time-consuming exercise of data collection and analysis of the magnitude that is necessary to draw firm conclusions regarding voting behaviour and possible coalitions.

Figure 1. Oppositions per country, May 2004 – October 2006



In the period leading up to the 2004 enlargement, 65% of the coalitions contesting the majority consisted of one to three member states. With the inclusion of a large number of new countries, this figure may have changed. Table 2 reports the size of the contesting coalitions in the post-May 2004 Council. From these results it appears that the vast majority of opposing coalitions also included between one and three Council members in this period. At the same time, it should also be noted that more than 15% of the coalitions consisted of four to five member states, demonstrating that larger opposing coalitions do form in the current Council compared with the period prior to May 2004.

Table 2. Size of contesting coalitions, May 2004 – October 2006

Size of coalition	Number of cases
1	26
2	37
3	10
4	9
5	6
6	1
More than 7	3
Total	92

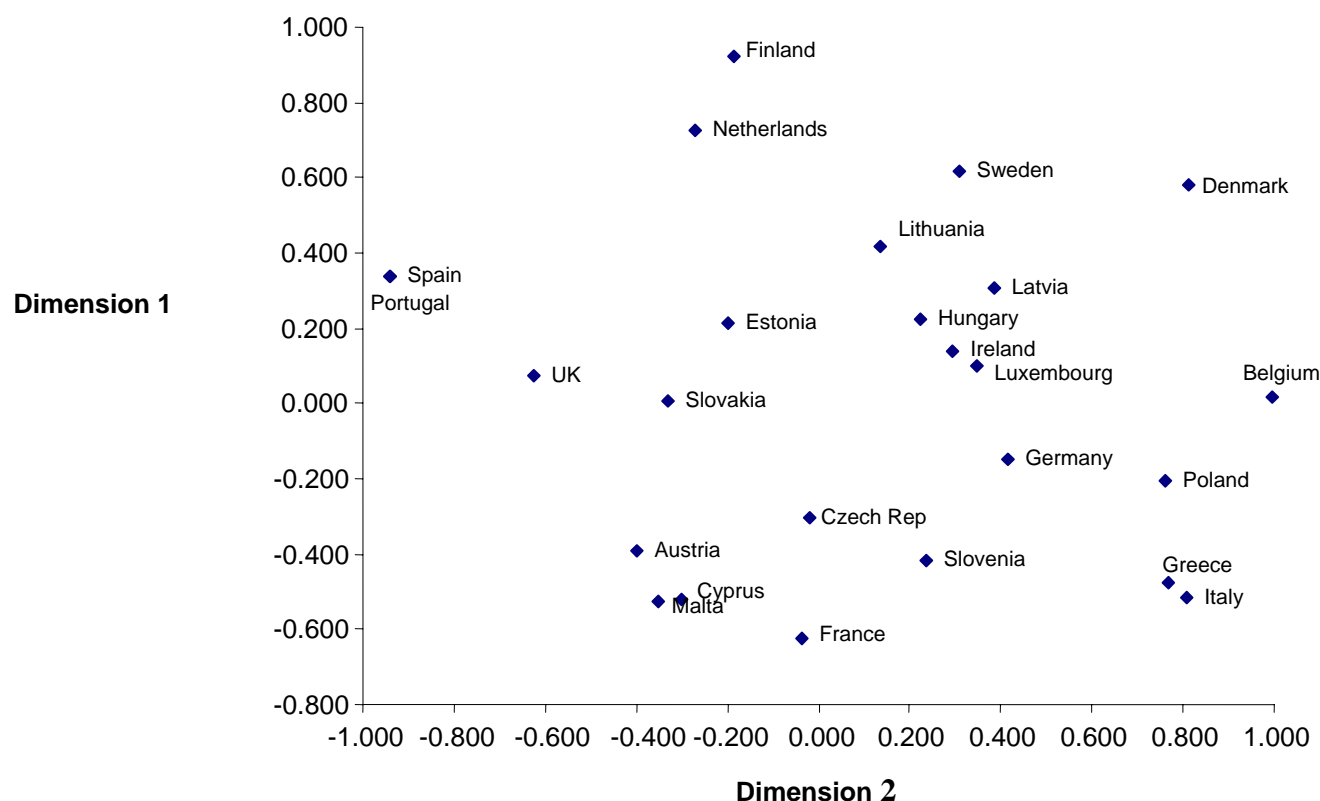
Source: Hagemann & De Clerk-Sachsse (forthcoming, 2007).

In order to investigate whether these opposing coalitions reflect a stable pattern in the voting behaviour or if there is much less regularity with regard to which member states vote together, Figure 2 presents a spatial picture of the coalitions in the current Council. The positioning of the countries in the figure is based on the probabilistic, geometrical scaling method NOMINATE, which is a popular analytical tool for analysing voting behaviour in parliaments (Poole, 2005).⁵ The NOMINATE picture indicates how often governments vote together (or not) across the full range of policy proposals analysed. The distance between two Council members in Figure 2 shows how similar their preferences are in terms of either supporting or opposing the majority on the each of the adopted acts. For example, Finland and Italy almost never voted together, whereas Italy and Greece voted the same way on most occasions.

The distribution of the Council members in Figure 2 shows some indication of a geographical clustering, although a strict North–South or North–South–East division is not apparent. The countries located in the top part of the figure are indeed the Nordic member states accompanied by the Netherlands. Yet Spain and Portugal are also placed in the upper part of the figure, followed by a group of the new member states that are clustered around the middle, together with Ireland and Luxembourg. The UK and Belgium are both placed centrally on the axis of ‘Dimension 1’, whereas they are found at opposite ends in ‘Dimension 2’. Austria, Malta and Cyprus seem to form another small group just left of the centre in the bottom part of the figure, while most of the remaining countries are scattered around in the centre-right corner of the lower section. Greece and Italy are located very closely together, however, and must have voted similarly on most proposals.

⁵ For similar analyses of behaviour in the European Parliament, see also Hix et al. (2007).

Figure 2. Coalitions in the Council, May 2004 – October 2006



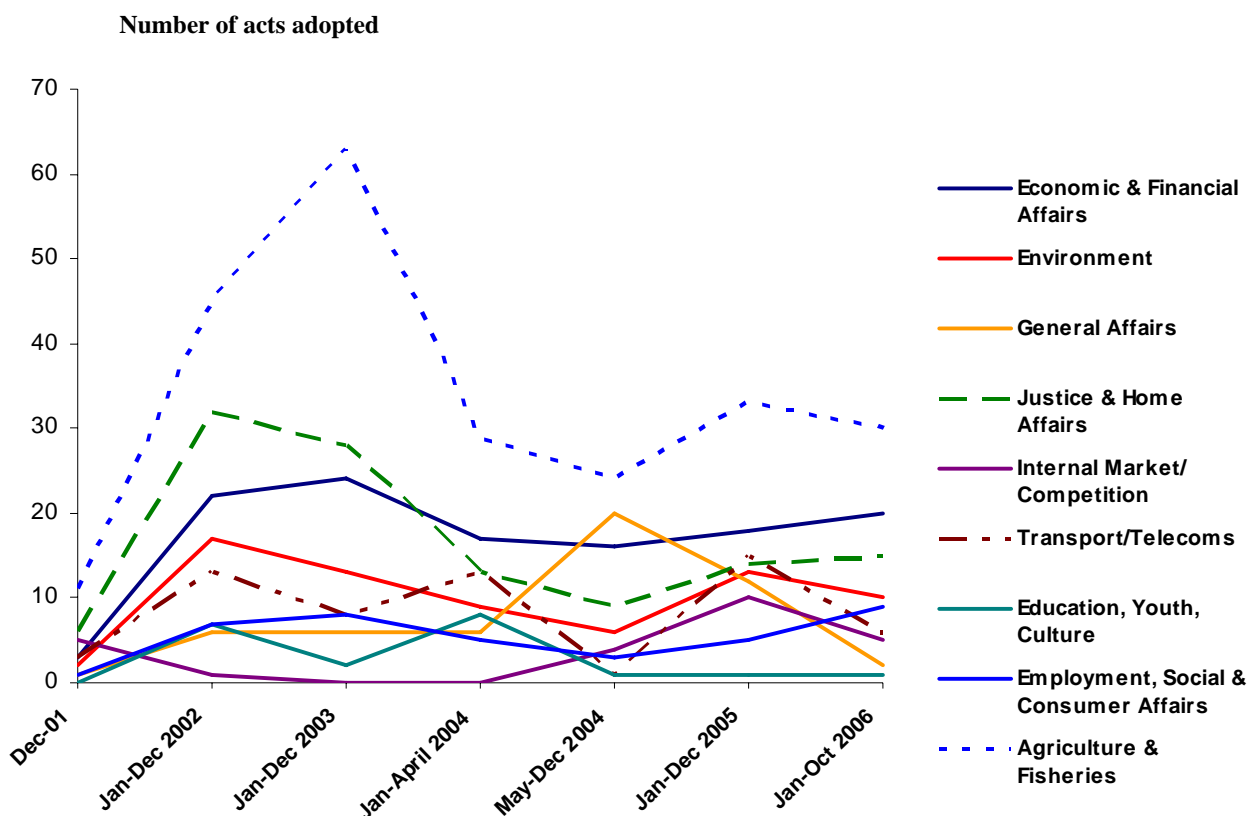
Note: The categorisations ‘Dimension 1’ and ‘Dimension 2’ are merely arbitrary indices ranging from -1 to 1 without any specific content. The NOMINATE scaling method that is used to produce the picture in Figure 2 represents the relative positions of the governments. Hence, the interpretation of the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

On the whole, it seems as if the inclusion of the 10 new member states has brought about considerable changes in the Council in terms of voting behaviour and coalition formation of both the old and new member states. Although there is some resemblance to a map of Europe in Figure 2 – and therefore the appearance that governments do act somewhat according to a geographical pattern – the positioning of the countries is not as clearly defined as in the time prior to the 2004 enlargement by the accounts of any existing research. On the other hand, it would have been surprising if the old member states had been left unaffected in their voting behaviour and if the new governments had simply taken up positions according to a North–South divide, a North–South–East cleavage or even a party political configuration as identified in the period preceding the enlargement. More time and a more established system may be needed in order for such patterns to emerge, if at all. Yet, together with the above findings regarding the individual governments’ level of recorded disagreement, it can be concluded that no ‘old vs. new’ blocs are apparent; at the same time, the new member states seem to be learning ‘the game’ and increasingly record their positions in formal statements and through voting.

Changes across policy areas

The information that forms the basis for this evaluation makes it possible to investigate more detailed areas of interest in addition to the aggregate figures presented above. For example, moving only one level down to a description of how the above findings vary across policy areas, several important observations can be made. As a first example it can be noted that great changes have occurred in several of the key policy fields with regard to the amount of legislation adopted. Figure 3 breaks down the variation in the adoption rates across the different policy fields before and after enlargement.

Figure 3. Legislation adopted per policy field



If statements on the Council’s continued efficiency (like those presented in the Commission’s report) are correct, and if the fall in the overall adoption rate reported above cannot be interpreted as reflecting a similar decline in the Council’s overall efficiency, then Figure 3 indicates that such statements should be qualified in terms of changes in the respective policy fields. For example, why should the drop in the adoption rate of legislation concerning agriculture and fisheries not be interpreted as the consequence of policy gridlock? Similarly, is the major increase in the area of general affairs related to the fact that certain policies had to be re-introduced and passed through the Council to accommodate the new member states? Each of these observations as well as some of the other apparent changes in Figure 3 could suggest that although policy gridlock may not exist in terms of the total volume of adopted legislation in the period after the 2004 enlargement, another type of policy gridlock may have occurred with regard to the actual content of the policies. It appears that the policy areas that traditionally include a larger amount of legislation falling under the unanimity rule, such as justice and home affairs and general affairs, have seen bigger drops in adoption rates after enlargement than those policy areas predominantly governed by qualified majority rule, e.g. environment. Although it is still relatively early to draw any strong conclusions on these issues, the figures seem to suggest that the different policy areas have been affected to various degrees. It would be useful if future evaluations and political debates could also include the reporting, elaboration and analysis of the aggregate figures for each of the policy fields.

Conclusions

Existing evaluations of the integration of the new member states into the respective EU institutions have concluded that the decision-making processes are running relatively smoothly. The expansion of the main legislative body – the Council of Ministers – has by and large been a success. The results presented in this Policy Brief do not dispute this interpretation as such. After all, a criterion of ‘success’ is a normative definition requiring elaboration in order to serve as a valid baseline measure. But what has been argued is that enough time has passed since May 2004 for any analysis of the enlargement process to include the quantitative facts and figures for the changes that have occurred in the expanded Council. And such aggregate data may help to provide a more objective and nuanced evaluation of the enlargement process than merely a conclusion of either success or failure.

The results reported above give mixed evidence as to whether the Council’s efficiency level has really been left unaffected. A decrease in the overall adoption rate of legislation can be observed, yet this may partly result from the Commission’s decision to table fewer policies. At the same time, however, the quantity of policies passed within the respective policy areas certainly vary, and the figures and interviews used in this study could indicate that a policy gridlock – not so much in quantitative terms but perhaps more in terms of policy substance – may be presenting a challenge to the institution. More specifically, the content of individual proposals must accommodate a more diverse set of interests. Hence, those areas falling under the unanimity rule particularly seem to have experienced a change in the adoption rate, a point echoed by practitioners who have characterised the transition as reflecting a lowering of the common denominator.

Although a large number of acts are still adopted by the Council each year, official disagreement in voting situations has not been found to increase at all. Thus other measures must be in place to ensure a smooth legislative process, since the representation of more divergent preferences surely cannot have led to a decrease in the level of contest in the meetings. One finding that may help to explain this point is that many pieces of legislation appear to have been passed even in cases where several Council members voiced serious concerns in the formal statements following the adoption of a decision. The use of formal statements, which are included in the official minutes of the Council meetings, has risen since enlargement. It therefore appears as if the Council records now show an even greater emphasis on the culture of consensus, while at the same time the governments have been able to ensure the recording of their true political positions. Hence, when adopting legislation in the Council a two-sided political game increasingly seems to be accepted even in the official records.

Several points for discussion arise from the results presented in this Policy Brief. Firstly, what do these observations about the level of contest and coalition patterns mean for the Council, as both an intergovernmental institution and a politically elected legislative body? As explained above, problems with the general efficiency of the institution are likely to appear. When coalitions are of an ad hoc nature and certain patterns in behaviour cannot be assumed from one policy proposal to another, the negotiation process is rather costly. Secondly in a related vein, Council representatives may continue to be accused of evading accountability if voting behaviour and coalition formation are not transparent or carried out according to a defined set of preferences that their constituencies can recognise and about which the latter can form opinions. Such preferences can be anything from national interests and party political ambitions to single issue objectives, but they should at least be made explicit and the public should be informed of them.

There is no doubt that these changes in negotiation style and atmosphere also reflect the fact that to a certain degree member states must become accustomed to a new logic in decision-making. Such adjustments will be increasingly the case as the figures show that the new member states are beginning to assert their positions more clearly as the initial period of membership comes to a close. Yet, while our research shows that there is (as such) no deadlock in terms of general policy-making, the findings also support the often-heard call for reform. Institutional reform will not only be important for the smoother integration of possible new member states, but also for easing the process of decision-making for the current EU structure. The larger drop in adopted legislation in those policy areas where unanimity is needed suggests that the extension of qualified majority voting should be welcomed. And while we do not see double-majority voting as an essential reform in terms of efficiency, it might nevertheless contribute to greater transparency in decision-making.

Information about the dataset collected as well as reports of the interviews conducted for the study will be available upon publication of the report *Decision-making in the Council of Ministers before and after May 2004*, by Sara Hagemann and Julia De Clerk-Sachsse, CEPS, Brussels, forthcoming, 2007.

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