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The surgery succeeded. Has the patient died?
The impact of enlargement on the European Union

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The surgery succeeded. Has the patient died?

The impact of enlargement on the European Union

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Abstract

The recent enlargement of the European Union (EU) to 10 states, occurred on 1 May 2004, has been surrounded – both in academic and political circles – by two contrasting discourses. The first, prior to enlargement, foresaw dramatic consequences had the expansion not been accompanied by a serious, large-scale effort to reform its institutions. The second, subsequent to enlargement, tended on the contrary to downplay these predictions: despite the little ambition of the Treaty of Nice – so the argument goes – the entry of several new members has not altered the nature of the system, if not for some minimal logistic aspects. In fact, a serious, retrospective assessment of the EU after enlargement has not been performed by its own institutions; researchers who embarked on this exercise raise serious caveats about the significance of their data; political leaders complain that reform is badly needed in an enlarged EU and practitioners report a widespread tendency towards a more informal decision-making process. This study intends to contribute to this debate by developing standards and providing new evidence for a more comprehensive assessment. Results are surprising.

Introduction

The recent enlargement of the EU to 10 states, occurred on 1 May 2004, has been surrounded – both in academic and political circles – by two contrasting discourses. The first, prior to enlargement, foresaw dramatic consequences had the expansion not been accompanied by a serious, large-scale effort to reform its institutions. The second, subsequent to enlargement, tended on the contrary to downplay these predictions: despite the little ambition of the Treaty of Nice – so the argument goes – the entry of several new members has not altered the nature of the system, if not for some minimal logistic aspects.

The performance of the EU in a post-enlargement environment has been, in the first place, a concern for its own institutions. Among other reasons, the fate of two projects in the pipeline remains directly or indirectly conditional on this appraisal. On the one hand, the EU increasingly cares about “integration capacity”, i.e. its ability to integrate new members². Future enlargements will be consented on the condition that they will not compromise the efficiency of its institutions, the ambition of its policies and the sustainability of its finances. In other words, until the absorption of previous expansions is unfinished, the invitations for new accessions should not be sent out. On the other hand, enlargement has been the main driving force behind the European constitutional activism of the last decade. At the beginning of this century, Europeans were told that the institutions designed for six member states back in the 1950s would not work for a Union of 25 or more countries³; hence a new constitutional settlement was deemed necessary. As known, the enlargement has been accomplished without a constitutional settlement. More years than expected have elapsed without the constitutional issue being resolved. Some start raising or keep reiterating a legitimate question: is a new constitutional treaty necessary after all⁴?

Confronted with this inescapable appraisal, the responses provided by the EU institutions are

² European Commission, *Enlargement Strategy and Main Challenges 2006 – 2007, including annexed special report on the EU’s capacity to integrate new members*, COM (2006) 649 final (Nov. 8, 2006).

³ See, for example, the introduction of the Laeken Declaration on the future of the European Union (Dec. 15, 2001).

⁴ For this line of reasoning, see Andrew Moravcsik, *What Can We Learn from the Collapse of the European Constitutional Project?*, 47:2 *POLITISCHE VIERTELJAHRESSCHRIFT* 219-41 (2006); JOSEPH H. H. WEILER AND MARLENE WIND (eds.), *EUROPEAN CONSTITUTIONALISM BEYOND THE STATE* (2003).

intriguing. In the eyes of the Commission, in the two years after enlargement the “[i]nstitutions have continued to function and to take decisions”⁵; for future enlargements, it undertakes to watch that “its institutions and decision-making processes *remain* effective and accountable”⁶. The contribution of the European Parliament (EP) has the additional merit of establishing an explicit link between the notion of integration capacity and the constitutional debate. With the accession of Romania and Bulgaria in 2007, the Treaty of Nice has reached its limits. If past enlargements “have tended to strengthen the Union”⁷, its proper functioning in the future will be conditional on a number of institutional reforms. The constitutional treaty offers most of the improvements needed by the EU to embark on future enlargements⁸. Taken together, these documents allude to some interesting assumptions: that the accession of ten new member states has not hampered the functioning or the decision capacity of the EU; that its institutions and decision making processes are today effective and accountable; that a new constitutional settlement is nevertheless indispensable before the EU is prepared to welcome new countries.

And these ideas resulted in concrete political decisions: the Union considered itself sufficiently fit to give Bulgaria and Romania green light for accession in January 2007; on a longer term perspective, Croatia and Turkey were permitted to open accession negotiations in October 2005, Macedonia was recognised as a candidate country and the rest of the Western Balkans were given a clear membership perspective. At the same time, initiatives to ratify the constitutional treaty and preserve most of its current content were resumed and led to a compromise in June 2007. Yet, the confidence of the Union’s institutions in forecasting disastrous consequences in case of additional enlargements without institutional reform contrasts with the speedy, indirect and positive appraisal they make on the impact of the 2004 expansion. Whereas the basis for its prospective worries seems well captured by the notion of “integration capacity”, the grounds for its retrospective optimism appear quite underdeveloped⁹.

⁵ European Commission, *supra* note 2, at 19.

⁶ *Id.* at 20 (emphasis added).

⁷ European Parliament, *Report on the institutional aspects of the European Union's capacity to integrate new Member States*, 2006/2226(INI), Committee on Constitutional Affairs (Nov. 16 2006), P 5. Curiously, the first draft of the Report stated: “enlargements have strengthened the Union”.

⁸ *Id.* at 8.

⁹ A much more sophisticated appraisal has been conducted on the economic impact of enlargement: European Commission, *Enlargement, Two Years After – An Economic Success*, COM (2006) 200 final (May 3, 2006).

It is little surprise, given its magnitude, that the 2004 enlargement has attracted a large amount of scholarly work. The main findings appear *prima facie* to reassure on the overall continuity between pre- and post-enlargement Europe¹⁰. Among others, Dehousse *et al.* maintain that enlargement has not blocked the European machine and that, in certain respects, its decision-making process is even more expedited after 2004. The same holds generally true also for the performance of the single institutions¹¹. Hagemann and De Clerck-Sachsse report that, in terms of the total amount of legislation passed per year, the Council of the EU (Council) “seems to have almost fully ‘recovered’ from the significant increase in the number of actors”¹² and that, concerning voting behaviour, “official disagreement [...] has not been found to increase”¹³. Enlargement has not caused delays in the rate of initiatives adopted by the Commission¹⁴ and the number of legislative proposals put forward in 2006 is comparable to the levels of 2003¹⁵. Nor enlargement is found to have altered the functioning or the decision-making capacity of the EP¹⁶; not even the way politics works inside the EP seems to have significantly changed after 2004¹⁷. More member states (and more judges) have not harmed the working methods or the performance of the European Court of Justice (ECJ)¹⁸: in each of the three years after enlargement, statistics concerning the ECJ’s activity have revealed a considerable improvement, in particular with regards to the reduction in the duration of proceedings and the decrease in the number of cases pending¹⁹.

In most cases, however, the same scholars who deliver these analyses share words of caution and

¹⁰ Ulrich Sedelmeier and Alasdair R. Young, *Editorial: Crisis, What Crisis? Continuity and Normality in the European Union in 2005*, 44 JOURNAL OF COMMON MARKET STUDIES ANNUAL REVIEW 2 (2006).

¹¹ RENAUD DEHOUSSE, FLORENCE DELOCHE-GAUDEZ AND OLIVIER DUHAMEL (eds.), *ÉLARGISSEMENT: COMMENT L’EUROPE S’ADAPTE* 18 (Presses de Sciences Po 2006).

¹² 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 36 (March 2007).

¹³ *Id.* at 34.

¹⁴ Giuseppe Ciavarini Azzi, *La Commission Européenne à 25: Qu’est-ce qui a changé?*, in DEHOUSSE ET AL., *supra* note 11, at 56.

¹⁵ European Commission, *General Report on the Activities of the European Union in 2006* (Feb. 27, 2007). Accessible at: <http://europa.eu/generalreport/en/welcome.htm>

¹⁶ Olivier Costa, *Parlement européen et élargissement entre fantasme et réalité*, in DEHOUSSE ET AL., *supra* note 11, at 96.

¹⁷ Simon Hix and Abdul Noury, *After enlargement: Voting Behaviour in the Sixth European Parliament*, paper presented at the Federal Trust conference on “The European Parliament and the European Political Space” (London, March 30, 2006) P 2.

¹⁸ Florence Chaltier, *La Cour de Justice après l’élargissement*, in DEHOUSSE ET AL., *supra* note 11, at 105.

¹⁹ Vassilios Skouris, *The Court of Justice in 2006: changes and proceedings*, in THE ANNUAL REPORT 2006 2 (Provisional Version). Accessible at: <http://curia.europa.eu>

reservations on the interpretation of their findings. First of all, a couple of years after May 2004 seems too narrow a time frame for conclusive evaluations. Second, several methodological caveats are put forward: those who measure the efficiency of decision-making, for example, recognise that computing the *quantity* of policy output is a much more comfortable exercise than gauging or comparing over time its *quality*²⁰. Even when the amount of evidence collected is impressive, it remains impossible “to present any supportive data or objective observations for a strong conclusion [on the quality of passed legislation]”²¹. Equivalent caution is shown by accounts of the voting behaviour in the Council: scholars lament that crucial information on “failed decisions” or “implicit voting” is not available and therefore omitted in quantitative studies²². Finally, deeper political questions remain unanswered: although the legislative deadlock might have been overcome, are we sure that Europe has not lost the sense of its political mission²³? What do studies of the EU institutions after enlargement tell us about the capacity of the EU to meet citizens’ expectations²⁴? And what if this satisfactory delivery rate is attained at the cost of a poorer political input or weaker procedural safeguards?

Some of these caveats, moreover, are echoed by the reflections of observers and practitioners, who report a widespread trend towards a more informal policy process and more streamlined formal procedures. Some examples: in the Council, new internal rules prescribe that work be advanced between (rather than during) meetings²⁵; the EP cut the time available for discussion, imposed tighter limits on the length of documents and applied stricter rules on the presentation of amendments²⁶; the Commission halved its resort to the oral procedure as a mode of collegial decision²⁷; the ECJ made use of various instruments to handle more efficiently its workload, in

²⁰ Hagemann and De Clerck-Sachsse, *supra* note 12, at 35.

²¹ *Id.* at 36.

²² Fiona Hayes-Renshaw, Wim Van Aken and Helen Wallace, *When and Why the EU Council of Ministers Votes Explicitly*, 44:1 JOURNAL OF COMMON MARKET STUDIES 164 (2006).

²³ Sebastian Kurpas and Justus Schönlaue, *Deadlock avoided, but sense of mission lost? The Enlarged EU and its Uncertain Constitution*, 92 CEPS POLICY BRIEF (February 2006).

²⁴ DEHOUSSE *ET AL.*, *supra* note 11, at 113.

²⁵ Council of the European Union, *Annex V: Working Methods for an Enlarged Council*, in *Rules of Procedure* (Sept. 15, 2006).

²⁶ Presentation by María José Martínez Iglesias (European Parliament) to the second EU-CONSENT Plenary Conference (Brussels, Oct. 12-13, 2006); Olivier Costa, in DEHOUSSE *ET AL.*, *supra* note 11, at 85 and 95.

²⁷ On the basis of data provided by the Commission, Giuseppe Ciavarini Azzi (in DEHOUSSE *ET AL.*, *supra* note 11, at 41) reports that between May 2004 and August 2006 only 2% of Commission decisions have been adopted by oral procedure.

particular giving judgements without the opinion of the Advocate General²⁸. New simplified procedures seem to flourish or are envisaged in most institutions: the Commission implemented a new “finalisation written procedure”, whereby an agreement between the heads of cabinet can replace the prior approval of the legal service and/or the agreement of the departments consulted in the inter-service consultation²⁹; the Council adopted in 2006 a simplified written procedure (or “silence procedure”) to be applied in few specific circumstances³⁰; the ECJ proposed an “emergency preliminary ruling procedure”, in the area of freedom, security and justice³¹.

While the institutions cope – apparently successfully – with increased complexity, the European political leadership invokes a new constitutional settlement. Although opinions still diverge on the portion of the original text that should survive the French and Dutch rejections, the diagnosis is common. Countries that have already ratified the treaty militate for the widest possible preservation; others tailor their positions according to different visions of what Europe should accomplish and would need to this end. The most pessimists predict a Europe without constitution as “less confident, less capable, and less democratic”³². Some others speak out of direct experience: after six months as EU President, Tony Blair recognises that a Union of 25 “cannot function properly with today’s rules of governance”³³ and sees the constitution as necessary to effectively put forward a modern policy agenda. In a recent keynote address to Columbia University, Italian Minister of the Interior Giuliano Amato expressed his frustration, as a member of the Council, for the overwhelming amount of legislation rubber-stamped by ministers without real debate and pleaded the constitutional treaty as a remedy³⁴. More solemnly (but also more vaguely), the Berlin declaration for the 50th anniversary of the Treaties of Rome restated the unanimous aim to place the EU “on a renewed common basis before the European

²⁸ Skouris, *supra* note 19, at 2-3: this procedure is used in cases (about one-third of the total) that do not raise any new point of law. Other instruments include priority treatment and simplified procedure. In addition, 63% of the Court’s judgments were in 2006 dealt with by chambers of five Judges (vs. 54% in 2005).

²⁹ European Commission, *Rules of Procedure* (Nov. 15, 2005), art. 12.

³⁰ The text is deemed to be adopted at the end of a period laid down by the Presidency, except where a member of the Council objects: Council of the European Union, *supra* note 25, art. 12.

³¹ Skouris, *supra* note 19, at 2. The text of the proposal is accessible at: http://curia.europa.eu/fr/instit/txtdocfr/index_projet.htm

³² Andrew Duff, *Plan B: How to Rescue the European Constitution*, 52 STUDIES AND RESEARCHES (Notre Europe, Oct. 2006). Accessible at: <http://www.notre-europe.eu>

³³ Tony Blair, *The Future of Europe*, speech at Oxford (Feb. 2, 2006).

³⁴ Giuliano Amato, *Is there any future for the Constitutional Treaty?*, keynote address at Columbia University (Nov. 2 2006).

Parliament elections in 2009”.

In sum: both in its day-to-day statements and decisions, the Union, and in particular the Commission, acts *as if* the 2004 enlargement had been a success and the system as a whole were in good health. Yet, the hurried attention that the same EU institutions devoted to a retrospective assessment of enlargement, the serious caveats raised by researchers, the institutional dynamics described by practitioners and the open pleas of political leaders for new rules leave the reader puzzled, if not worried. This paper does not investigate whether the constitutional treaty will cure the many problems of which the EU supposedly suffers because of its absence. On the contrary, it intends to bring new yardsticks and evidence to evaluate the health of the system, a step that should take precedence over all other corrective proposals.

The rest of the article is organised as follows: the next section will provide an analytical framework for organising the assessment and interpreting the findings; the third section will present the methodology used, the operationalisation of the key variables and the data collected. The fourth section will present the findings and the conclusion will summarise the contribution of this paper.

1. Theoretical underpinning

Just like human beings, also political systems are transitory: they are created, they develop, they weaken and, inevitably, they pass away. Unlike for human beings, however, the symptoms of illness and the evidence of decline are in the case of political systems much harder to detect and difficult to cure. This might be so for various reasons, including the fact that political science as a discipline has historically had many less cases than medicine to test its hypotheses on the right diagnoses and therapies. Yet, periodically assessing the health of a political system is not a trivial exercise. When taking decisions, leaders routinely make assumptions about the fitness of the system in which they operate. They consider institutional reform or policy change necessary on the basis of an assessment they make of the situation they observe. So do citizens and other

stakeholders: their “voice” becomes noisy as their perception of reality contrast with their views, desires or ideal-types of how the system should function and what it should deliver to them. Periodic elections are only one among other ways in which this evaluation is performed.

The same applies to the relatively young political system of the EU. Its unnoticed birth back in the 1950s and its discrete (yet incremental) growth made many cast doubts, until very recently, about its inclusion in the circle of “proper” political systems. Yet, if we agree that a political system is such if it causes an authoritative allocation of values³⁵, then we can hardly refute that the decisions “Brussels” takes qualify the EU as a full-fledged political system. Coming to this conclusion has been a turning point in European studies and this acknowledgement is not without consequences for our purposes³⁶. The most striking is perhaps that we can easily identify, at the European level, the same dilemmas and paradoxes common to most political systems, in particular state-based democracies. The complexity of a system that combines the interests of the whole community, of its member states and of their peoples responds to notorious concerns about representation and its paradoxes³⁷. The careful equilibrium in the provision of unanimity rule for some landmark and sensitive choices and majority rule for the others stems from known preoccupations about collective decisions, and in particular over the optimal positioning along the continuum from the paralysis of unanimity requirements and the tyranny of the majority³⁸. Finally, it is increasingly the case that sophisticated notions of legitimacy are applied also to the European system and that various recipes to enhance it are regularly put forward³⁹.

These resemblances, however, do not make the tasks of the present study any easier. The evaluation proposed in this research meets with at least three challenges. First of all, there is a problematic relationship between the concepts of “political system” and “state”: although they often coincide, the terms are not synonymous and their empirical referents cannot be simply

³⁵ DAVID EASTON, *THE POLITICAL SYSTEM: AN INQUIRY INTO THE STATE OF POLITICAL SCIENCE* (Alfred A. Knopf 1953).

³⁶ Seminally: Simon Hix, *The Study of the European Community: The Challenge to Comparative Politics*, 17:1 WEST EUROPEAN POLITICS 1-30 (1994); Simon Hix, *The Study of the European Union II: The “New Governance” Agenda and Its Rival*, 5:1 JOURNAL OF EUROPEAN PUBLIC POLICY 38-65 (1998).

³⁷ See Thomas Schwartz, *The Paradox of Representation*, 57:2 THE JOURNAL OF POLITICS 309-23 (1995).

³⁸ See ROBERT DAHL, *DEMOCRACY AND ITS CRITICS* (Yale University Press 1988).

³⁹ For a problematic view on these attempts, see Marcus Höreth, *No way out for the beast? The unsolved legitimacy problem of European governance*, 6:2 JOURNAL OF EUROPEAN PUBLIC POLICY 249-68 (1999).

treated as equivalent, comparable cases. Actually, the notion of political system – as Markus Jachtenfuchs argues – only makes sense if it is not used synonymously with the notion of state, in a way that reminds us of the distinctiveness of the EU from the state⁴⁰. Conversely, one should avoid falling into a dichotomy trap and conclude that, because it is not a state, then the EU must be an international organisation. To do so would be unfortunate not only *per se* but especially for the corollaries this dichotomisation carries: democracy is by definition domestic and democratic standards only apply to states; world politics is inevitably non-democratic and international organisations are immune from these standards⁴¹. Third, the originality of the EU confronts us with even more dilemmas. As Ben Rosamond puts it, approaching the EU as an object of study implies taking position along this continuum: at one extreme is the idea of a Europe without historical precedent or contemporary parallel, thus requiring entirely new scientific tools; at the other is the idea that Europe can be treated with the toolkit of existing social scientific scholarship. But taking this position “cannot be separated from the scholar’s position on matters of epistemology and social scientific propriety”⁴². These caveats are acknowledged.

This difficulty, however, has not discouraged scholars from paying attention to the democratic properties of the EU. Some went even further and performed a democratic audit of the Union⁴³. Where the so-called democratic deficit is not treated as a false problem⁴⁴, opinions diverge on what accounts for Europe’s democratic *lacunae* and what will remedy them⁴⁵. The desirability of a new constitutional settlement is very much part of this debate. Yet, discussing whether the EU suffers from a democratic deficit and debating, in case it does, how the system *should* change to narrow this gap is separate from evaluating its performance in the context of the existing institutional settlement. Within their institutional boundaries, all political systems evolve: the preferences of their members vary over time, the ways in which the rules of the game are

⁴⁰ Markus Jachtenfuchs, *The EU as a Polity (II)*, in KNUD ERIK JÖRGENSEN, MARK POLLACK AND BEN ROSAMOND (eds.) *HANDBOOK OF EUROPEAN UNION POLITICS* (Sage 2007).

⁴¹ For a critical view of this dichotomy, see Robert Keohane, *Accountability in World Politics*, 29:2 *SCANDINAVIAN POLITICAL STUDIES* 75-87 (2006).

⁴² Ben Rosamond, *European integration and the social science of EU studies: the disciplinary politics of a subfield*, 83:1 *INTERNATIONAL AFFAIRS* 231-52 (2007).

⁴³ CHRISTOPHER LORD, *A DEMOCRATIC AUDIT OF THE EUROPEAN UNION* (Palgrave 2004).

⁴⁴ See Andrew Moravcsik, *Reassessing Legitimacy in the European Union*, 40 *JOURNAL OF COMMON MARKET STUDIES* 603-624 (2002).

⁴⁵ For a “capsule version” of the democratic deficit, see Joseph H. H. Weiler, *The State “über alles”. Demos, Telos and the German Maastricht Decision*, 6 *JEAN MONNET WORKING PAPERS* (1995).

interpreted continuously changes as do their political cultures and the global context. However, for how agnostic one could be about the democratic status the EU should aspire to, its performance-based assessment requires a term of comparison and a reference framework.

Let us take the latter first. What are the dimensions along which change should be looked for? A possible starting point in this direction is to conceptualise the EU with a vocabulary and an analytical toolkit that do not necessarily impose on this system requirements and standards derived from domestic analogies. While attempting at lessening and reconciling the dichotomy between domestic and world politics, Keohane⁴⁶ suggests to look at power relationships as a manifestation of accountability connections. In his deconstruction of the concept, accountability can be internal or external. In the case of internal accountability, which most commonly occurs through delegation, “people or groups create organizations that depend on those who created them for financial support, legitimacy or other resources”⁴⁷. Conversely, accountability is external when “organizations are held accountable not to those who delegated power to them, but to those affected by their actions”. In addition to electoral-accountability, which is proper of domestic politics, there exist various other accountability mechanisms that are relevant in world politics. These mechanisms could be placed on a continuum depending on how much leverage the accountability holder can have on the power-wielder⁴⁸.

The EU is a striking example of what Keohane calls a “pluralistic accountability system”⁴⁹: multiple power relationships of different nature coexist, internally, between the overall system and those who have put (and keep) it in place and, externally, between the institutions of the system and those affected by their decisions⁵⁰. In fact, the EU defies this model, because in addition to all the mechanisms considered relevant to contemporary global institutions, it

⁴⁶ Keohane, *supra* note 41, at 79.

⁴⁷ *Id.* at 79.

⁴⁸ In particular: hierarchical, supervisory, fiscal, legal, market, peer and public reputational accountability. These mechanisms are not mutually exclusive and, while some of them rely on delegation (the first four) and others on forms of participation (the others), the separation is not net and they coexist in many situations. See Ruth Grant and Robert Keohane, *Accountability and Abuses of Power in World Politics*, 99 AMERICAN POLITICAL SCIENCE REVIEW 35–36 (2005).

⁴⁹ Keohane, *supra* note 41, at 79.

⁵⁰ The latter category obviously includes also the same member states that hold the system accountable internally, mainly through supervisory or fiscal mechanisms.

encompasses also electoral accountability, which is usually omitted in the international context⁵¹. Solely on the basis of some delegation-based accountability mechanisms, one could already recreate a rather dense web of power relationships. Internally – *à la* Keohane – member states periodically review the system in connection with the output it produces or with requests for further delivery⁵². The most common mechanisms are episodic treaty revisions and control over the resources available to the EU. Within the system, the same member states are accountable to the ECJ for complying with EU law, which is a manifestation of legal accountability. The Commission is accountable to the EP⁵³. The members of the Council are accountable to their respective national parliaments. The members of the EP are accountable to their electorates. At the EU level, in sum, electoral accountability mechanisms coexist with other control mechanisms⁵⁴.

This makes the question as to whether the system is democratic not misplaced but posed in different terms. Those who predominantly see the EU as an initiative of the member states and as a project mainly concerned with depoliticised issues will tend to emphasise the internal accountability dimension between the states themselves and the system they created. This would lead them to conclude that political leaders should not be preoccupied by, for example, how to boost popular participation or to foster politicized debates on EU policies: they should rather concentrate on designing “institutions that politicize and depoliticize politics functions in a way that generates more accountability, more desirable outcomes, and more long-term popular support”⁵⁵. The performance assessment of the system is based on its global, long-term sustainability and results. The internal procedures by which this is accomplished remain secondary.

On the other hand, those who refute the premises of depoliticized politics and understand the EU as any other political system will also care about the additional mechanisms of accountability, internal to the system, that operate between its institutions and those affected by its outcomes.

⁵¹ Grant and Keohane, *supra* note 48, at 35.

⁵² So far European integration has mainly been a tale of incremental allocation of responsibilities to the EU level and streamlining of procedures for better decision-making; yet nothing would prevent a reverse trend.

⁵³ The EP can force the entire College to resign by a supermajority of two-thirds, representing a half of its members.

⁵⁴ This overview should also include those areas where EU competencies are limited but decisions are taken and enforced mainly through mechanisms of reputational accountability, such as, for example, employment and health.

⁵⁵ Moravcsik, *supra* note 4, at 222.

These scholars are troubled, for example, by the lack of politicization in European politics and would consider this development as both necessary and desirable for proper accountability to function. “Democratic politics [should] play a more central role in the way the EU works”, for this would increase efficiency, ensure coordination and foster a more open debate on EU policy options⁵⁶. This would in particular entail an accountability connection between European party leaders and a European electorate.

These different views are not in contradiction; they just show a profound difference in identifying the actors to which the institutions of the EU should be accountable. The first group of scholar will mainly identify them in the member states, while the second will consider as important also other actors, including the electorate, the national parliaments and the political parties at the European level. This paper does not pretend to adjudicate between them. They project fundamentally different understandings of what the EU is and should be. Yet, the language of accountability helps to treat these positions jointly. To this end, this paper embraces a thick notion of accountability and takes account of its various dimensions, internally and externally. This will probably make part of the following assessment irrelevant for those who see the EU as a matter of internal accountability between the system itself and the masters of the treaties. But it will be important for the others, whose preoccupation stretches to its internal mechanisms of operation.

Three prior specifications are necessary: first, the above description of the main EU accountability mechanisms is not intended to demonstrate or argue that the EU is accountable and that its current institutional design is the optimal (or even an acceptable) combination of accountability mechanisms. On the contrary, certain accountability arrangements are disputable. For example: due to a six-year renewable mandate, the judges of the ECJ are inevitably accountable to their government until retirement age, when it would be desirable otherwise; despite the duty of independence from national interests, the members of the Commission are *de*

⁵⁶ Simon Hix, *Why the EU needs (Left-Right) politics? policy reform and accountability are impossible without it*, 19 STUDIES AND RESEARCHES (Notre Europe, March 2006). Accessible at: <http://www.notre-europe.eu>

facto accountable also to their government for reappointment⁵⁷; the EP as a whole is not accountable to any other body, which is unusual outside presidential systems.

Second, the actual operation of accountability mechanisms rests on a number of prerequisites. One is information on both the processes and the accomplishments of the body held accountable. Without timely, full and reliable information any accountability effort is vain. Another is the existence of actors able to observe, investigate and criticise the power-wielder: informed citizens, alerted civil society, independent media are the obvious examples. At the European level this is particularly pertinent, given its remoteness from the scrutiny of the public. Oversight responsibility goes beyond the centralised mechanism whereby one institution examines the activities of another and remedies violations, as well documented in American political science⁵⁸. A European equivalent would be the oversight of the EP on the activities of the Commission. But there is also another mechanism, a diffuse one, whereby “Congress establishes a system of rules, procedures, and informal practices that enable individual citizens and organized interest groups to examine administrative decisions [...]”⁵⁹. These rules include access to information and forms of participation in the administrative decision-making processes. In sum, a public able to “sound the alarm” is presented as a desirable feature of contemporary democracies. The relevance of this approach goes beyond the tight boundaries of the relationship between legislative and executive powers. At the European level, a distinctive manifestation of this diffuse mechanism is also the case law of the ECJ⁶⁰.

Third, there is a crucial difference between the theory and the practice of accountability: for how well a system of accountable institutions can be designed and for how vigorously the presence of all necessary prerequisites can be encouraged, the extent to which principals will actually hold their agents accountable will inevitably remain conditional on a number of uncontrollable

⁵⁷ This remains so despite the rule of qualified majority among the member states with the agreement of the Commission President for their designation.

⁵⁸ Groundbreaking: Mathew McCubbins and Thomas Schwartz, *Congressional Oversight Overlooked: Police Patrols versus Fire Alarms*, 28:1 AMERICAN JOURNAL OF POLITICAL SCIENCE 165-79 (1984). In their work, they point in particular at the scrutiny of Congress on the executive in the United States, but the implications of their contribution are certainly wider.

⁵⁹ McCubbins and Schwartz, *supra* note 58, at 166.

⁶⁰ For a European perspective on this aspect, see SIMON HIX, *THE POLITICAL SYSTEM OF THE EUROPEAN UNION* (Palgrave, 2005), in particular chapter 2.

factors. It is no mystery, for example, that the system of parliamentary scrutiny on European matters operates quite inconsistently across Europe and that national electorates hardly know their European deputies, not to mention their political platforms (when they exist)⁶¹. And these differences do matter in the ways in which the EU and its bodies are held accountable.

The emphasis placed on accountability, however, is not intended to limit the assessment of the EU performance to this specific dimension. There are additional aspects that are essential in this evaluation: the legitimacy, the efficiency, the effectiveness and the democratic properties of the system are just some examples. In the case of the EU one could identify even additional dimensions, such as the degree of deliberation and the interinstitutional balance. Yet, the concept of accountability, as presented in this context, has the merit of providing a framework that helps organising the evaluation also along the other dimensions. This framework comprises three levels and, at each level, several dimensions are taken into account as yardsticks of change.

The first level is the *output* for which the EU, as a whole, is to be held accountable. The main idea is that we evaluate the EU for what it does and, in the widest possible sense, this encompasses all the public goods produced by the EU, including the long-term consequences of its action. Second, we assess the quality of the *process* through which the output is obtained. The evaluation goes beyond the assessment of the accountability mechanisms in place and their operation in the decision-making process. It also comprises an investigation of the nature of these processes, including their democratic properties and the level of political conflict they stir. Third, the EU is assessed on the basis of its *potential* for more and better scrutiny depending on the presence or absence of accountability prerequisites. It goes without saying that these dimensions can be treated separately only on an analytical level, while in practice they are deeply interconnected: those who conceive the EU as a (to be) politicised political system will not be contented with a review of the output that is separate from an evaluation on the procedures that produced it⁶². Moreover, the treatment cannot be separated because each level of analysis

⁶¹ On the first aspect: among others, Tapio Raunio, *Holding governments accountable in European affairs: Explaining cross-national variation*, 11:3-4 JOURNAL OF LEGISLATIVE STUDIES 319-42 (2005); on the second aspect: among others, CEES VAN DER EIJK AND MARK FRANKLIN (eds.) CHOOSING EUROPE? THE EUROPEAN ELECTORATE AND NATIONAL POLITICS IN THE FACE OF UNION (The University of Michigan Press, 1996).

⁶² To some, in fact, the quality of collective decisions entirely depends the quality of its decision-making procedures. For an interesting discussion on substantive and procedural notions of quality in collective decisions, see Niels

influences the value of the higher level. The existence of certain accountability prerequisites, for example, has an impact on how accountability mechanisms will operate in practice.

Within this reference framework, one additional choice remains to be made: is this assessment to be carried out in abstract or against a term of comparison? And given the special nature of the EU, what would a comparable case look like? In the case of this paper, a choice in this direction is somewhat obliged: post-enlargement EU is contrasted with pre-enlargement EU and enlargement is taken as a tentative explanation for the difference between the two cases⁶³. The implications and the risks of this choice will be tackled in the next part.

2. Research design and methodology

“Before-after” research designs are common practice in political science. The choice is particularly convenient when it proves impossible, as in this case, to find different cases that are comparable in all ways but one: a single case is thus divided into two sub-cases⁶⁴. But this practice is subject to two stringent requirements: first, the values of the variable should not be observed only immediately before and after the change, but also well before and well after it⁶⁵. Second, only one variable must change at a given moment between “before” and “after”. The first caveat is addressed through reliance on data that stretch from one and a half years before enlargement to over two years afterwards. Information before 2003 would be misleading as it refers to an institutional environment prior to the entry into force of the Treaty of Nice: a decision to include it would be hardly defensible in the light of the second requirement.

Petersen, *Development, Democratization, and the Legitimacy of National Governments under International Law*, paper prepared for the Global Visitors Program at New York University 16-17 (Feb., 2007).

⁶³ This approach is described by Helga Nowotny, *The uses of typological procedures in qualitative macrosociological studies*, 6:1 QUALITY AND QUANTITY 3–37 (1971).

⁶⁴ ALEXANDER GEORGE AND ANDREW BENNETT, *CASE STUDIES AND THEORY DEVELOPMENT IN THE SOCIAL SCIENCES OF SCIENCE* 166 (MIT Press, 2005).

⁶⁵ DONALD CAMPBELL AND JULIAN STANLEY, *EXPERIMENTAL AND QUASI-EXPERIMENTAL DESIGNS FOR RESEARCH* (Rand McNally, 1966).

The second requirement is more problematic to meet. Enlargement is not the only change detectable in a complex system as the EU. Almost simultaneously, for example, European citizens renewed the EP and the Council, together with the EP, appointed a new Commission: enlargement, a new EP and a new Commission would be three equally legitimate candidates for explaining any change occurred at the European level after 2004. A frivolous way to escape the objection would be to consider the second and the third candidate independent variables (new EP and new Commission) as dependent on the first one (enlargement): if the EP and the Commission are different after 2004 – so the argument would go – it is because enlargement itself made them different. Hence, enlargement explains it all. But the objection, in its substance, would survive and could be labelled as the *post hoc, ergo propter hoc* fallacy⁶⁶. Having more variables to study than cases to observe is a recurrent and well-known problem in comparative politics⁶⁷. But let us have a “pragmatic” approach to it.

First of all, the problem only matters if the EU is found to have changed after enlargement: if there is no “before-after” change, there is no causal puzzle to solve. In fact, no change is hypothesised in post-enlargement EU. Doing otherwise would be evidence of our conformity with a “linear” paradigm of social sciences that is increasingly called into question. If the EU is conceptualised as a complex system and therefore composed of orderly, complex and disorderly phenomena, then

“[...] predicting its exact development in the long term is obviously an alinear exercise. [...] One can guess or pick a future that one would like to see, but it will have virtually no direct relationship to the one that will emerge.”⁶⁸

⁶⁶ For a first elaboration of the argument in this context, see José Ignacio Torreblanca, *To Enlarge or Not to Enlarge the Union: That is Not the Question Title*, 67 ARI, Real Instituto Elcano (July 4, 2006). Accessible at: <http://www.realinstitutoelcano.org>

⁶⁷ David Collier, *The Comparative Method: Two Decades of Change*, in DANKWART RUSTOW AND KENNETH PAUL (eds.), *COMPARATIVE POLITICAL DYNAMICS: GLOBAL RESEARCH PERSPECTIVES* 7-31 (Harper/Collins, 1991).

⁶⁸ Robert Geyer, *European Integration, the Problem of Complexity and the Revision of Theory*, 41:3 JOURNAL OF COMMON MARKET STUDIES 29 (2003).

If, unlike predictions, change happens in the EU, then the question of enlargement as an explanatory variable comes back. In this case, it can only be left to the rigour of the researcher to retrace the most convincing causal mechanisms against competitive explanations⁶⁹.

3.1 The data

An ideal account of pre- and post-enlargement Europe would be one where the researcher had the opportunity, in terms of both tools and resources, to study and comparatively assess all the *outputs* produced by the system, all the *processes* behind them and all the *potential* for accountability. Real-world researches, however, are constrained by limited time and resources, apart from the limits of science itself. Tough choices have to be made on what can be studied and one key step in this process is to select data that efficiently maximise the information for descriptive or causal purposes⁷⁰. The information used in this paper comes, unless otherwise indicated, from a new database on decision-making at the European level. It aims to study the EU by looking at its most visible and easily measurable outcome: the legislation it passes. Not only the analysis of the outcome is restricted to this specific aspect, but also the study of the other two dimensions is in various ways limited: first, the paper looks at the decision-making process from an inter-institutional perspective, with a special focus on the contribution of the Council; second, the potential for accountability is assessed on the basis of only one of its preconditions: the transparency of the process, i.e. the availability of information necessary to hold the power-wielder accountable⁷¹.

The dataset, which is described in greater detail in Annex I, has been conceived to contrast two comparable periods of decision-making, respectively before and after enlargement. These periods comprise two presidencies each, for a total of two years: the Greek and the Italian presidencies in 2003: the British and Austrian presidencies in the second half of 2005 and the

⁶⁹ On causal mechanisms, see George and Bennett 2005, *supra* note 64, in particular chapter 7.

⁷⁰ GARY KING, ROBERT KEOHANE, AND SIDNEY VERBA, *DESIGNING SOCIAL INQUIRY: SCIENTIFIC INFERENCE IN QUALITATIVE RESEARCH* 28 (Princeton University Press, 1996).

⁷¹ For a discussion on transparency as a precondition for effective accountability at the European level, see Pierpaolo Settembri, *Transparency and the EU Legislator: 'Let He Who is Without Sin Cast the First Stone'*, 43:3 *JOURNAL OF COMMON MARKET STUDIES* 637-54 (2005).

first half of 2006. The dataset excludes on purpose three semesters of decision-making: the whole of 2004 and the first half of 2005. As pointed out before, the months surrounding the accession of the 10 new member states, in May 2004, has been in many respects a period of extraordinary administration. The European elections of June 2004 caused a suspension of all the codecision files until after the summer. The troublesome appointment of a new Commission, which was finalised in late November 2004, made the European executive ready and operational not earlier than at the beginning of 2005. It took a few additional months until the bills introduced by the new Commission were discussed and adopted by the other institutions. Quantitative studies widely and unanimously document two trends: first, a dramatic, unsurprising drop in the amount of legislation adopted in the months after enlargement⁷²; second, an extraordinarily high number of acts passed in the few months preceding the entry of the new members: in the first four months of 2004, the EU adopted a number of bills equal to the 85% of bills adopted in the entire 2003. As practitioners report, this was due to additional legislation adopted in preparation for accession and also to a number of politically sensitive files concluded on purpose before enlargement took place⁷³.

The decision has thus been taken to exclude from the present account three semesters of extraordinary administration. The two selected periods are believed to be a more reliable proxy for “normal” politics in the EU. This temporal gap also allows a longer-term and more distanced evaluation of the complex system theory: the adaptive capacity of the EU cannot be tested with a strict comparison between the months that immediately preceded and followed its expansion. Two additional caveats, nevertheless. First: as it stands, this research design is unable to account for contingencies. The historic context, for example, can be said to have changed between the two years considered in this work. But how should these and other events be factored in? In the absence of convincing strategies assisting us in this task, the two periods are treated *as if* they were identical in all dimensions but the number of member states involved. Second: the fact that decision-making after enlargement is compared to decision-making in 2003 is not to suggest that 2003 is the “ideal year” in the ways in which the EU operates and that any departure from the 2003 “ideal-type” should be interpreted as a diminution in the quality of the EU performance.

⁷² For example, Hagemann and De Clerck-Sachsse, *supra* note 12, at 10; DEHOUSSE *ET AL.*, *supra* note 11, at 26.

⁷³ Presentation by Andrew George (Council General Secretariat) to the second EU-CONSENT Plenary Conference (Brussels, Oct. 12-13, 2006); Hagemann and De Clerck-Sachsse, *supra* note 12, at 11.

2003 is simply the year that, in our view, offers the best balance between quantity and quality in the information it provides. Departures from the representation of the EU offered by the year 2003 need to be normatively interpreted on a case-by-case basis and against the appropriate theoretical grounds.

3.2 Operationalisation

A common approach to monitor EU decision-making is to study the amount of legislation adopted, to analyse the operation of formal and informal processes, to measure the degree of political contestation variously expressed in its institutional fora and to chart the position of political actors in a multidimensional European political space. All studies, however, need at some point to address and somehow resolve a tension between quantity and quality. This is particularly apposite in the case of the EU, where catch phrases such as “doing less, but better” have been on the political agenda for many years. Some studies take this task particularly seriously and devise sophisticated strategies to think about different decision situations and perform large-scale comparative analyses⁷⁴. Accounts of the impact of the enlargement are consistent with this approach. The efforts to measure change in a post-enlargement EU have led to a remarkable number of contributions and to the collection of a large amount of new information. They range from major quantitative studies on the EU legislative activity to single case studies based on expert interviews⁷⁵. In some cases, holistic explanations have also the merit of palliating the rigidity of quantitative accounts with a large number of qualitative insights gathered through selected interviews.

As noted in the introduction, a common finding of these early efforts is the overall continuity between pre- and post-enlargement Europe. Yet, the reader often has the feeling that their accounts omit or fail to fully address some underlying questions regarding the quality of

⁷⁴ See, for example, Robert Thomson and Frans Stokman, *Research design: measuring actors' positions, saliences and capabilities*, in ROBERT THOMSON, FRANS STOKMAN, CHRISTOPHER ACHEN, AND THOMAS KOENIG (eds.), *THE EUROPEAN UNION DECIDES* (Cambridge University Press, 2006).

⁷⁵ For example, respectively: DEHOUSSE *ET AL.*, *supra* note 11; Jakob Lempp, ‘Coreper enlarged’: *How enlargement affected the functioning of Coreper*, paper presented at ECPR Third Pan-European Conference (Bilgi University, Istanbul, Sept. 21-23 2006). Accessible at: <http://www.jhubc.it/ecpr-istanbul/>

continuity or change. The main ones can be summarised as follows: besides global figures, is legislation adopted by EU25 as original and important as legislation adopted in EU15? If judged by its content, does the legislation adopted after enlargement jeopardise or exalt EU efforts at deepening? How do we know about legislation that did not happen? Besides efficiency in delivery, does the EU decision-making process contain the same level of political input as before? Is decision-making in the enlarged EU more or less amenable to public scrutiny than before enlargement?

This paper will not provide an answer to all of these questions, but will try to contribute complementary information for a broader understanding and interpretation of these phenomena. In translating some of these questions into variables and operational definitions, this study follows the proposed distinction between (1) output, (2) process and (3) transparency:

1) Output

The assessment of the outcome delivered by the EU is, in this context, performed by paying attention to three variables:

a. *Novelty of legislation*

The underlying hypothesis is that enlargement, in changing the distribution of preferences within the EU, might have also determined new conditions for the adoption of original legislation⁷⁶. Are considered as “new” all those acts that do not amend, implement or otherwise interfere with pre-existing legislation.

b. *Salience of legislation*

Enlargement might have had an impact on the amount of important legislation adopted. Global figures might for example overlook that acts adopted after 2004 are increasingly on marginal issue, whereas salient bills could have decreased in number. Novelty and salience of legislation

⁷⁶ Although limited to Commission proposals, this experiment is also pursued by Giuseppe Ciavarini Azzi in DEHOUSSE *ET AL.*, *supra* note 11, at 48.

are not coterminous. As Cameron puts it, “increases in the minimum wage involve no innovation but are nonetheless important”⁷⁷. Hence a measure of legislative significance is needed. Scholars who embarked on this exercise have usually combined two types of measures: annual summaries on the most important legislation drawn up by authoritative newspapers and retrospective evaluations of academic experts⁷⁸. A similar approach was also experimented at the European level: to measure the political importance of Commission proposals to be included in their sample, Thomson and Stochman decided to rely on references made by *Agence Europe*⁷⁹ and judgements from practitioners and key experts⁸⁰.

This paper proposes a different measure, based on five properties: the first three refer to the importance that the three main institutions attach to that specific piece of legislation, whilst the other two refer to characteristics of the act.

The first three are operationalised as follows:

- Has the Commission introduced the bill by oral procedure?
- Has the Council at least once discussed the bill as a “B point”⁸¹?
- Has any other committee of the EP, in addition to the responsible one, adopted at least one “opinion” on that bill?

Given the constraints of each institution in terms of time and resources, there is reason to believe that they will focus their attention on those bills that they consider more important.

The two other properties are determined as follows:

- Is the bill based on a treaty article (as opposed to secondary legislation)?
- Is the bill “new”, in the sense defined before?

Pieces of legislation that score positively on all five or four of these questions are considered as important (major acts) for the purposes of this research. Pieces that score positively on three or two questions are considered of average importance (ordinary acts). All the other pieces are

⁷⁷ CHARLES CAMERON, *VETO BARGAINING* 37 (Cambridge University Press, 2000).

⁷⁸ *Groundbreaking: DAVID MAYHEW, DIVIDED WE GOVERN* (Yale University Press, 1991).

⁷⁹ One of the most respected news services covering EU affairs.

⁸⁰ Thomson and Stochman, *supra* note 74, at 5-9, 37.

⁸¹ The Council agenda is divided in two parts: A and B. “A” items can be approved without discussion. “B” items are usually discussed and, under certain conditions, can be subject to a vote.

considered of marginal importance (minor acts).

c. Contribution of legislation to deepen EU integration

The tension between widening and deepening is one of the leitmotifs of enlargement studies⁸². The question here is tackled in two ways: a first, unsatisfactory approach to measure deepening would consist in evaluating the involvement of supranational institutions in the adoption of legislation. This would be based on the assumption – yet to be proven – that the more supranational institutions are involved, the more supranational (i.e. “deeper”) one can expect to be the output. The underlying hypothesis would be that enlargement has altered the balance of powers between supranational and intergovernmental institutions, hence (positively or adversely) affecting the pro-integration agenda. A similar, but even more risky approach would be to obtain the same information by looking at the type of act adopted, assuming, for example, that a “regulation” is more supranational than a “directive”⁸³.

The second method draws on a well-established research tradition based on the length of legislation. In their seminal work, Huber and Shipan⁸⁴ consider the length of legislation as a proxy for a principal’s effort to constrain the actions of the agent. They argue, in particular, that between two statutes addressing the same issue, “the longer one typically places greater limits on the actions of the other actors”⁸⁵. In their case, the length of legislation reveals the extent to which legislative majorities intend to control policy implementation. And in the EU? What does the length of EU acts represent? One interesting way to address this question is to look at the determinants of length. According to Huber and Shipan, this depends on the policy goals and preferences divergence (between politicians and bureaucrats), the technical complexity of policy issues and the legislative capacity of politicians (in terms of informational costs, time limits and bargaining environment)⁸⁶.

⁸² For a useful framework for analysis, see Anne Faber, *Theoretical approaches to EU widening and deepening*, paper presented at the second EU-CONSENT Plenary Conference (Brussels, Oct. 12-13, 2006). Accessible at: <http://www.eu-consent.net>

⁸³ The two logics could obviously be combined by considering at once the nature of the act adopted and the procedure.

⁸⁴ JOHN HUBER AND CHARLES SHIPAN, *DELIBERATE DISCRETION? THE INSTITUTIONAL FOUNDATIONS OF BUREAUCRATIC AUTONOMY* (Cambridge University Press, 2002).

⁸⁵ *Id.* at 45.

⁸⁶ *Id.* at 78-79.

Let us assume that the last two conditions are equal before and after enlargement⁸⁷. The remaining one – the policy goals and preferences divergence between politicians and bureaucrats – can hardly be answered as such, because the boundaries between legislative and administrative activities are too blurred at the European level to allow a clear identification of politicians and bureaucrats. This calls for two different adaptations. First, at a more general level, one can argue that enlargement entails a multiplication of policy goals and an amplification of preferences divergence among decision-makers. Longer legislation in EU25 would thus be proof that more interests need to be accommodated and that this is achieved through more tortuous and particularistic legislation. Yet, this alone would not help us in evaluating whether longer legislation also means less integration. The second adaptation requires the question raised in the previous paragraph to be rephrased as follows: which is, at the EU level, the principal that, adopting longer legislation, aims to constrain the actions of the agent? The specificities of the EU decision-making rules give some guidance in addressing the question. The Commission introduces the quasi-totality of proposals. Given its constitutional role, one can assume that the Commission proposals rank high on the pro/less integration continuum. Between two acts addressing the same issue – adapting from Huber and Shipan – the one that results longer at the end of the procedure is the act on which the decision-makers (the Council, alone or with the EP) have imposed the greatest constraints to limit the pro-integration agenda of the Commission. Hence, the longer the legislation, the weaker its contribution to deepening⁸⁸.

2) Process

One of the recurrent themes in support of a new constitutional settlement held that an enlarged but not reformed Europe would have been exposed to the risk of paralysis. A different approach

⁸⁷ First, there is no particular reason why the technical complexity of policy should become more or less pronounced after enlargement; second, there is no evidence that, because of enlargement, the legislative capacity of EU institution has changed. Taking aside the additional political differentiation that enlargement entails – which is covered by the first of the three determinants – the increased number of Commissioners, EP and Council members should cause an increase rather than a diminution of legislative capacity. For an example of confirmatory evidence in the EP, see Olivier Costa in DEHOUSSE *ET AL.*, *supra* note 11, at 89.

⁸⁸ One may want to add that a detailed legislation could also be seen as a constraint on the ECJ, and in particular as a safeguard against a militant interpretation of EC law.

would be to ask whether the reported decisional efficiency of the EU legislator has been attained at the cost of a weaker political input. This can be translated in the following hypotheses to test:

d. Deadlock, contestation and delay in EU policy process

To measure this compound variable, three indicators are proposed. First of all, the percentage of acts (out of the total) adopted under unanimity rule, which is taken as a proxy for the degree of decisional difficulty in the Council. A low percentage of acts adopted by unanimity would be evidence of potential deadlock, especially if this percentage were to be found decreasing as the importance of legislation increased. Secondly, the average number of votes against and abstentions in the adoption of acts under qualified majority rule: a mounting number of negative expressions of vote would be an indicator of stronger political animosity. Third, the average number of days necessary to adopt a proposal: longer negotiations for acts of equivalent importance suggest that the EU policy process has slowed down.

e. Political input

Three measures are proposed, one per institution. Concerning the Council, one may ask whether the balance between ministerial and diplomatic representation in the discussion of EU legislation has remained stable over time. This will be measured by reporting the percentage of bills adopted without discussion as a “B point” in the Council, the average number of discussions as a “B point” per act and the frequency of five different types of representation in the Council⁸⁹. As for the Commission, the proposed measure charts the percentage of Commission proposals that receive explicit endorsement at the highest political level, i.e. that are adopted according to the oral procedure. In the case of the EP, the political input is measured by computing the average number of “opinions”⁹⁰ adopted by its committees on each act.

⁸⁹ Depending on the exact number of ministers, deputy ministers or diplomats present when the Council reached political agreement on a proposal or when it discussed it for the last time as a “B point”, five different categories of representation in the Council have been created: “Plenum of ministers” (only ministers), “Full ministerial” (only ministers and deputy ministers or equivalent), “Over 90% ministerial” (ministers and deputy ministers account for at least 90% of the total representation), “Mixed ministerial – diplomatic” (the sum of ministers and deputy ministers is less than 90% of the total: the rest are diplomats) and “Full diplomatic” (only diplomats). In the case of an act never discussed as a “B point” in the Council, the act is considered as discussed only by diplomats (i.e. “Full diplomatic” representation).

⁹⁰ Not to be confused with the “report” adopted by the responsible committee and drafted by the “rapporteur”.

3) Transparency

The relevant question in this context is the following: is decision-making process in the enlarged EU more or less amenable to public scrutiny than before enlargement?

f. Amenability to public scrutiny

Three measures are suggested. The first one concerns the amount of acts that are partially removed from the traditional decision-making process by deferring portions of their content to the operation of comitology procedures. Comitology procedures, apart from excluding the EP, are governed by much weaker transparency rules than the traditional legislative process. The measure consists in the percentage of acts containing comitology provisions out of the total. The second measure estimates, before and after enlargement, the percentage of legislation subject to the highest transparency requirements in terms of publication by the Council of voting results, voting explanations and voting rules applicable. It measures, in particular, the percentage of acts published in Annex I of the monthly summary of Council's acts (out of the total)⁹¹. The third measure concerns the conclusion of the codecision procedure at 1st reading and considers that acts adopted at this stage are partially removed from the mechanisms of accountability: as firmly established elsewhere⁹², a 1st reading agreement compels the Council and the EP to develop informal contacts through intermediary actors and requires the two body to compromise on a common package of amendments, thus lessening the political responsibility of the respective institutions. The measure calculates the percentage of codecision files adopted at 1st reading (out of all codecision files)⁹³.

3. Findings⁹⁴

⁹¹ See Appendix I for a distinction between Annex I and III in the monthly summary of Council's acts.

⁹² See, for example, Hagemann and De Clerck-Sachsse, *supra* note 12, at 24.

⁹³ See Appendix III for an example of informal settlement of a codecision file at 1st reading.

⁹⁴ Throughout this section, reference will be made to the following types of act: "Community acts" include all acts adopted on the basis of a Commission proposal (or on an initiative of one or more Member States, under shared right of initiative). Within this category, a distinction is made between "Community legislation" (when the act has a treaty article as the legal basis) and "Community implementing acts" (when the act has a piece of secondary legislation as the legal basis). "Intergovernmental acts" are on the contrary adopted by the Council without a Commission proposal (outside the cases of Member States' initiatives under shared right) and without interaction with other institutions. Finally, the Council itself has established the category of acts that are "legally binding in or for the

A preliminary synopsis shows that even if the overall number of acts adopted at the European level seems to have remained fairly constant (from 479 to 455) – which is consistent with the findings of recent researches on the same phenomena – there have been some shifts in the nature of the output. First, the proportion of Community and intergovernmental acts has changed. Community legislation has significantly declined, to the benefit of Community implementing acts and intergovernmental acts (figure 1). Within the latter category, acts in the area of CFSP have significantly increased in number: they represent four-fifth of the intergovernmental acts in EU25 against two-thirds in EU15.

The remaining findings will be presented in the order in which the variables have been operationalised in the previous section.

1) Output

The proportion of new bill out of the total has remained stable: slightly more than a half of proposed Community acts is new, both in EU15 and EU25. Yet, there has been a pronounced change in the share of important legislative bills. The number of both major and ordinary acts decreases by roughly one-third after enlargement (Figure 2). Although the total number of acts adopted decreases by 11%, marginal acts increase by almost one-fifth. On the whole, the vast majority (57.1%) of Community acts adopted in EU25 is largely marginal (vs. 42.6% in EU15).

The role of supranational institutions in delivering this output has, on the whole, remained stable: the percentage of acts adopted on a Commission proposal is equivalent before and after enlargement, and the proportion of acts adopted also by the EP (in addition the Council alone) has decreased only marginally.

On the contrary, the content of legislative bills is different: the average length of Community legislation increases significantly after enlargement. In EU25, a legislative act is on average 15%

Member States” and are adopted by the Council in its legislative capacity. Such acts are present in all the categories described above. Yet, this category excludes important acts in the field, *inter alia*, of internal administration, budget, interinstitutional and international relations and is thus rarely used in this paper.

longer than in EU15. The same measure shows even greater rates of levitation when it comes to important pieces of legislation (+83%). Directives have, on average, more than doubled their length, whilst regulations are some 9,5% shorter in EU25. Interestingly, there is also an important difference between files decided under codecision and consultation procedure (Figure 3). Whereas, regardless of the procedure, legislation tends to be longer as its importance increases, the variation between acts within the same category of salience varies radically depending on the procedure. Under consultation, there is no increase (if not minimal, for ordinary acts) in the length of legislation before or after enlargement. Under codecision, on the contrary, the increase is already pronounced for minor and ordinary acts and becomes dramatic for important acts.

The same variation is present if one distinguishes between legislation adopted under unanimity or qualified majority rule (figure 4). Acts subject to unanimity are on the whole much shorter than acts adopted by qualified majority. More interestingly, between acts of equivalent importance, those adopted by unanimity are not longer after enlargement⁹⁵; on the contrary, the average length of acts adopted by qualified majority increases dramatically after enlargement⁹⁶, and the increase is particularly pronounced for ordinary (+55.7%) and major acts (+77.5%).

One additional finding is that despite all the efforts, especially by the Commission, at reducing the legislative burden at the European level and despite the diminution of Community acts, the normative production of the EU, counted by the number of words in adopted bills, increased by little less than one-fifth.

2) Process

Community legislation adopted by unanimity declined significantly (from 63 to 42 acts), whilst the decrease of legislation adopted by qualified majority is much more modest (from 203 to 181).

⁹⁵ Minor acts are not a real exception because their average lengths (before and after enlargement) are based on an excessively limited number of observations: 2 and 4, respectively.

⁹⁶ Limited exception: the length of minor acts under adopted qualified majority rule decreases by 8.5% after enlargement, but their length is very reduced.

The difference between the two procedures is even more striking if judged by the number of acts that are “legally binding in or for the Member States”: whereas the number of acts adopted by qualified majority has remained almost identical (from 125 to 119), the number of acts adopted by unanimity has halved (figure 5).

The contestation of Community legislation adopted under qualified majority has increased very marginally and has remained stable for most important acts (Figure 6).

Broadly speaking, enlargement has not entailed a slower decision-making process: on the contrary, the adoption is, on average, more expedite. Predictably, important legislation takes longer to be decided upon than ordinary or minor, but there is no significant difference between EU15 and EU25. Ordinary acts are actually decided significantly faster after enlargement (figure 7).

Interestingly, the situation changes if the data are presented by procedure (figure 8): whereas acts under consultation are decided increasingly rapidly, decisions under codecision take longer (+22.7%). In fact, it took 4.5% longer for the EU25 to adopt 69 codecision files than it took EU15 to adopt 81.

Concerning the political input provided by the EU institutions, findings are consistent. In global terms, the overall number of Community acts adopted without discussion (as “A points”) in the Council has slightly increased after enlargement (from 76.9% to 82.3%). Conversely, the average number of “B point” discussions held per piece of Community legislation has decreased significantly, from 0.69 to 0.40. The decline is particularly pronounced for major acts (figure 9).

The same trend is confirmed by more comprehensive information on the type of representation in the Council (Table 3): 22.5% of important acts are adopted in EU25 without any discussion among ministers as compared to 3.7% in EU15. Moreover, none of the major acts adopted in EU25 have been negotiated by ministers only, which happened in one-fourth of the cases in EU15.

The same holds true for the EP and the Commission: on average, the EP in EU25 has adopted 0.6 opinions per act (vs. 0.89 in EU15); after enlargement, the Commission has adopted only 12.6% of its proposal by oral procedure (vs. 18.9%⁹⁷ before enlargement).

3) Potential

Resort to comitology procedures decreases significantly: in EU25, only 17.7% of Community acts contain comitology provisions (vs. 27.4% in EU15). It also decreases for acts adopted under consultation and codecision procedures. However, the percentage increases from 60% to 68.3% in case of important acts (figure 10).

Concerning transparency of Council's works, the percentage of adopted acts published in Annex III – thus entailing the disclosure of less information – increases, to the detriment of acts published in Annex I (figure 11).

As for the evolution of codecision files, long-term data confirm the increasing number of acts (both in absolute and relative terms) adopted at 1st reading (figure 12). Also the bills included in this dataset point to the same direction: whereas before enlargement only 29.6% of codecision files were adopted at 1st reading, they increase to 65.2% in EU25 (figure 13).

4. Conclusion

This paper makes the case for a comprehensive assessment of the 2004 enlargement of the European Union. As the agenda for future enlargements and the desirability of a new constitutional settlement largely depend on the performance of EU25-27, the system needed a health check. To this end, an analytical framework has been put forward; through the concept of

⁹⁷ This value might even be downward biased because the databases consulted failed to provide information on the Commission decision mode on roughly one-third of the cases, some of which might have been adopted by oral procedure.

accountability, three levels of analysis have been identified and considered as relevant for gauging key aspects of the EU: its output, its decision-making process and its transparency. The study contrasts two years of comparable and representative decision-making process at the EU level. It draws on an extensive dataset of 934 acts adopted by the EU, for a total of over 30000 observations.

The main finding is that the Union proves to be a flexible system, showing an extraordinary capacity of adapting to a new environment with increased membership and, arguably, increased political diversity. After enlargement, the system delivers a comparable amount of acts; on average, it does so faster and without greater political contestation than before. These results are even more remarkable if one considers that they have been achieved without the broader treaty revision promised after the adoption of the Treaty of Nice.

A closer look at what the EU produces and the way it operates, however, shows that EU25 is significantly different from EU15, more different than most recent accounts would admit. When the rules leave a wide margin for negotiation (i.e. outside unanimity rule), the system delivers on time and without increased political “noise”. But this come at the expenses of two other dimensions: first, legislation becomes the main recipient of the increased variety of interests and its content is fundamentally altered. Diversity is accommodated through significantly longer bills and one may wonder whether more detailed legislation is well-suited to foster more integration. Second, the decision-making process becomes more bureaucratised and enjoys less political input: the Council discusses legislation less frequently and, when it does, the representation of the member states is less frequently entrusted to ministers. The Commission decides by oral procedure one-third of the times less frequently than before enlargement and, in EU25, bills benefit from a significantly lower number of opinions voted by the committees of the EP. Finally, resort to comitology provisions removes an increased share of major acts from the traditional decision-making process.

Under unanimity rule, on the contrary, changes in the process are less pronounced, but the difference in the delivery rate is striking. Not only Community legislation adopted under unanimity rule has decreased by one-third in EU25 (from 62 to 41), but also has diminished the

salience of such bills: more than a half of the 41 bills adopted under unanimity rule after enlargement are “minor acts”, whilst only 5 (vs. 19 in EU15) are considered as having major political importance.

The main driver behind these changes is the codecision procedure: all the trends traced in this work are magnified when Council and Parliament are required to act together. The difference between codecision in EU15 and EU25 is apparent, at least at two levels. On the one hand, the dynamics of the procedure itself have significantly changed. Since enlargement, deals are increasingly reached at 1st reading. Although this could be interpreted as an indicator of greater maturity in the relationship between Council and Parliament, the development does not seem to provide the EU system with more efficiency: on the contrary, codecision at 25 is some 22% slower than at 15. 1st readings, in particular, are now more than 40% slower than before enlargement. Codecision makes the process slower regardless of the type of act under consideration⁹⁸ and the majority rule applied⁹⁹. On the other hand, the output of codecision is different: after enlargement, Community legislation is almost 30% shorter when adopted under consultation procedure, but 70% longer if adopted through codecision.

Not only codecision slows down the process and changes the content of the legislative output, but it also perverts the nature of interinstitutional relations. The high frequency of codecision files concluded at 1st reading, the fact that emissaries of Council and Parliament get together to broker an agreement since the outset of the procedure, the practice of adopting package deals amalgamating amendments from both institutions suggest that a new type of procedure is surfacing. It will be left to future research to investigate more closely the consequences of this trend, at least in three respects: the quality of the output it produces, the quality of the process with regards, in particular, to its amenability to public scrutiny and the evolving role of the Commission. Future research will also have to assess whether the constitutional treaty, in making the current codecision procedure the default legislative procedure, renders the EU a desirable service.

⁹⁸ Directives, for example, are adopted 26% faster under consultation and 27% slower under codecision after enlargement. Similarly, regulations are adopted 36% faster under consultation and 25% slower under codecision.

⁹⁹ Community acts adopted under qualified majority rule take 15% faster under consultation and 22% longer under codecision.

The fact that decision-making after enlargement is measured having as a term of reference one year of decision-making before enlargement took place makes the findings presented in this work problematic in two respects. On the one hand, an accurate account of the evolving trends in EU decision-making would require a longer time frame to come to concluding findings. The aim to design a meaningful comparison between pre- and post-enlargement Europe called for a temporally narrower approach: yet, future research should continue to monitor whether such trends will consolidate over time. On the other hand, the actual magnitude of the changes detected can hardly be grasped: not only certain differences could be the consequence of mere contingencies but also it is quite risky to determine what constitutes a significant change as opposed to a marginal one in absolute terms, when the comparison is established in relative terms.

In sum, after enlargement the EU is found to decide slightly less and - more important - increasingly on marginal issues. Despite the celebrated simplification of the regulatory environment, its legislation is significantly longer and more detailed than EU15's bills: this is hardly a sign of greater commitment to a pro-Europe agenda. EU25 finds it harder to decide by unanimity, whilst acts subject to qualified majority rule become more contested. Codecision procedure is less popular and more disadvantageous: getting to an agreement will take four and a half months longer and, by then, the length of the act eventually adopted will have doubled. In addition, the increasing resort to 1st reading agreements amplifies the scope for informal and obscure package deals between Council and Parliament. More and more ministers defect from Council meetings when important legislation is discussed, to the benefit of diplomats. Commission and EP provide a weaker political input to the overall process.

Demonstrating that enlargement is responsible for all this would go beyond the purposes of this paper. Yet, accounts that celebrate the continuity between EU15 and EU25 place enlargement above suspicion; studies that demonstrate change under the stringent requirements of a before-after research design make enlargement at least a strong suspect.

Appendix I – Data

Data collected for this paper refer to all acts adopted by the Council (alone or with another institution, usually the EP) during four presidencies: the two held in 2003 by Greece and Italy, respectively, the one held in the second semester of 2005 (by the United Kingdom) and the one held in the first half of 2006 by Austria¹⁰⁰. It includes acts adopted on a proposal from the Commission or from a member state (in particular decisions adopted in the framework of the II and III pillars) as well as acts having as a legal basis a treaty article or a piece of secondary legislation. It contains information on 934 acts, gathered through combined reliance on two databases: Commission's Prelex¹⁰¹ and Council's monthly summaries of acts adopted¹⁰² (both its annexes I and III).

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

- Institutional identification code¹⁰³ (nominal)
- Title of the proposed act (nominal)
- Type of act (nominal)
- Paternity of the act¹⁰⁴ (nominal)
- Procedure pursued (nominal)
- Act adopted on a proposal from the Commission? (nominal, dichotomous)
- Council's internal decision mode¹⁰⁵ (nominal, dichotomous)
- Document adopted (nominal)
- Annex of the Monthly summary of Council acts where the information is reported¹⁰⁶ (nominal, dichotomous)
- Majority requirements (nominal)
- No. of delegations against (numeric)

¹⁰⁰ To determine whether one act “belongs” to one of the four presidencies, the dataset takes into account the date of formal adoption by the Council (or that of the signature by EP and Council for Codecision acts).

¹⁰¹ The database on inter-institutional procedures, monitoring the stages of the decision-making process between the Commission and the other EU institutions. Accessible at: <http://ec.europa.eu/prelex/apcnet.cfm>

¹⁰² They are prepared by the General Secretariat of the Council. When necessary, the information of the summaries has been complemented by other sources from Council: these include, in particular, “Council minutes”, “Press releases” and other documents searched through its “Register”. All information is accessible at: <http://www.consilium.europa.eu>

¹⁰³ The Commission's code number and the Interinstitutional code number for acts adopted on the basis of a Commission proposal or nonetheless included in the Prelex database; the Council's reference document for all other acts.

¹⁰⁴ For example: “Act of the Council”, “Act of the European Parliament and the Council”, etc.

¹⁰⁵ Written or oral procedure

¹⁰⁶ There is a crucial difference between Annex I and III. Annex I lists all definitive legislative acts adopted by the Council in the month to which the summary refers. As prescribe by art. 207(3) of the EC Treaty, the list shows any opposing votes and abstentions, voting explanations and voting rules applicable. Are considered as “legislative” those acts that the Council adopts in its legislative capacity. In its rules of procedure (article 7), the Council explains that it acts in its legislative capacity when “it adopts rules which are legally binding in or for the Member States, by means of regulations, directives, framework decisions or decisions, on the basis of the relevant provisions of the Treaties”. This excludes, for example, budgetary acts, appointments, acts concerning international or interinstitutional relations as well as all non-binding acts. Annex III lists all these other acts and shows voting results, voting explanations and statements only when the Council has decided to make them public.

- No. of delegations abstaining (numeric)
- No. of statements for each Council decision (numeric)
- No. of corrigenda to the original document in the Council (numeric)
- No. of revisions to the original document in the Council (numeric)
- No. of addenda to the original document in the Council (numeric)
- Nature of legal basis¹⁰⁷ (ordinal, dichotomous)
- Date of adoption of the Commission proposal
- Commission's internal decision mode (nominal)
- No. of discussion in the Council as a "B point" – at 1st reading (numeric)
- Has formal adoption by the Council been preceded by a political agreement – at 1st reading? (nominal, dichotomous)
- No. of discussion in the Council as a "B point" – at 2nd reading (numeric)
- Has formal adoption by the Council been preceded by a political agreement – at 2nd reading? (nominal, dichotomous)
- Date of final adoption (or signature) of the act (nominal)
- No. of days between introduction of the proposal and final adoption (numeric)
- No. of delegations represented by a minister at the moment of reaching political agreement or on the occasion of the last discussion as a "B point" in the Council – at 1st reading (numeric)
- No. of delegations represented by a deputy minister (or equivalent political representative) at the moment of reaching political agreement or on the occasion of the last discussion as a "B point" in the Council – at 1st reading (numeric)
- No. of delegations represented by a diplomat at the moment of reaching political agreement or on the occasion of the last discussion as a "B point" in the Council – at 1st reading (numeric)
- Final title, as published by the Official Journal, of the adopted act (nominal)
- Length of adopted legislation, measured by the no. of words (numeric)
- Does the final act contain "comitology" provisions? (nominal, dichotomous)
- No. of "opinions" delivered by EP committees on the adopted act (numeric)
- Stage of codecision procedure at which the act has been adopted (ordinal)

¹⁰⁷ Primary or secondary.

Appendix II – Tables and Figures

Table 1 – Examples of Community acts with different salience

1. Major acts

- Council Regulation (EC) No 1698/2005 of 20 September 2005 on support for rural development by the European Agricultural Fund for Rural Development (EAFRD) (5)
- Council Regulation (EC) No 2201/2003 of 27 November 2003 concerning jurisdiction and the recognition and enforcement of judgments in matrimonial matters and the matters of parental responsibility (4)

2. Ordinary acts

- Directive 2005/45/EC of the European Parliament and of the Council of 7 September 2005 on the mutual recognition of seafarers' certificates issued by the Member States (3)
- Council Regulation (EC) No 2323/2003 of 17 December 2003 setting aid rates in the seeds sector for the 2004/05 marketing year (2)

3. Minor acts

- Council Act of 5 June 2003 amending the Staff Regulations applicable to Europol employees (1)
- Council Regulation (EC) No 1936/2005 of 21 November 2005 amending Regulation (EC) No 27/2005, as concerns herring, Greenland halibut and octopus (0)

Table 2 – Summary of dimensions, variables, hypotheses and operational definitions

Dimension	Variable	Hypothesis	Operational definition
1. Output	<i>Novelty of legislation</i>	Enlargement, in changing the distribution of preferences within the EU, might have also determined new conditions for the adoption of original legislation	% of acts (out of the total) that do not amend, implement or otherwise interfere with pre-existing legislation.
	<i>Importance of legislation</i>	Enlargement might have had an impact on the proportion of important legislation adopted	% of adopted acts (out of the total) classified as "important", "ordinary" and "minor"
	<i>Contribution of legislation to EU deepening</i>	Enlargement might have altered the balance of powers between supranational and intergovernmental institutions, hence (positively or adversely) affecting the pro-integration agenda	% of acts (out of the total) adopted on a Commission proposal; % of acts (out of the total) adopted by the EP and the Council
		Enlargement might have altered the extent to which the decision-makers (Council alone or with the EP) impose constraints on the integrationist agenda of the Commission, hence (positively or adversely) affecting the pro-integration agenda	Average length of legislation, measured by the number of words of each bill
2. Process	<i>Deadlock, contestation and delay in EU policy process</i>	Enlargement might have affected the decision-making process, in particular in situations where all members are veto players	% of acts (out of the total) adopted under unanimity rule
		Enlargement might have led to different levels of contestation in the decision-making process	Average number of votes against and abstentions per act adopted under qualified majority rule
		Enlargement might have altered the rate at which legislation is adopted	The average number of days necessary to adopt a proposal
	<i>Political input</i>	Enlargement might have altered the amount of political input provided by EU institutions in the policy process	In the Council: (1) % of bills (out of the total) adopted without discussion as a "B point"; (2) average number of discussions as "B point" per act; (3) % of frequency of five different types of representation
In the Commission: % of proposals (out of the total) adopted according to the oral procedure			
In the EP: average number of "opinions" adopted by EP committees on each act			
3. Transparency	<i>Amenability to public scrutiny</i>	Enlargement might have led to institutional developments that render decision-making process more or less amenable to public scrutiny	% of acts (out of the total) containing comitology provisions
			% of acts (out of the total) published in Annex I of the monthly summary of Council's acts
			% of codecision files adopted at 1 st reading (out of all codecision files).

Figure 1 – Number of acts adopted at the EU level before/after enlargement, by type

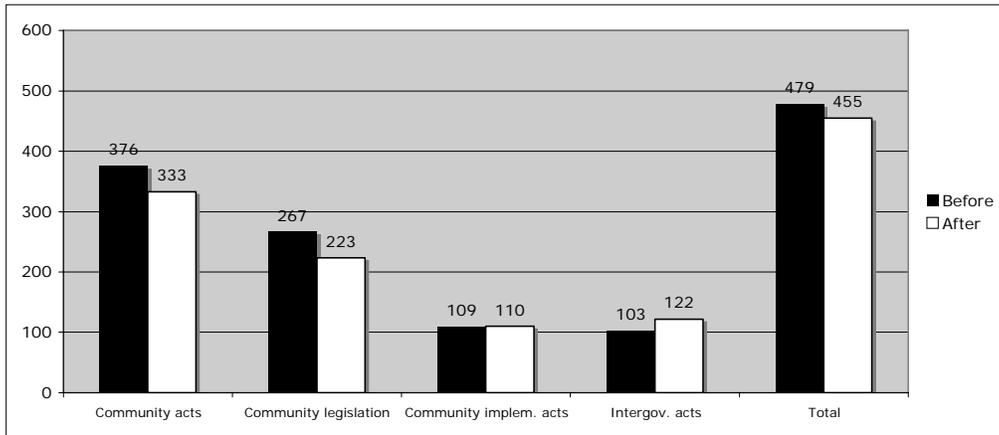


Figure 2 - Number of Community acts adopted before/after enlargement, by salience

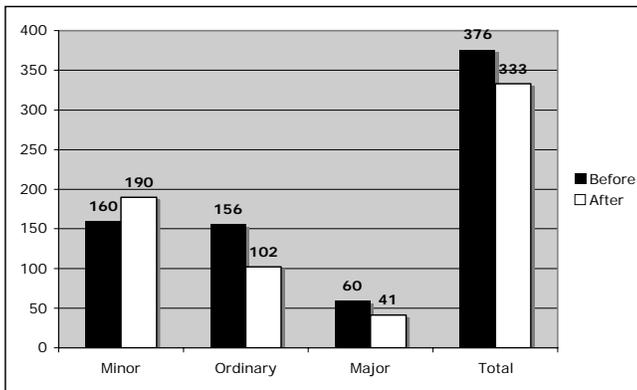


Figure 3- Average length (no. of words) of Community legislation adopted before/after enlargement, by salience and procedure

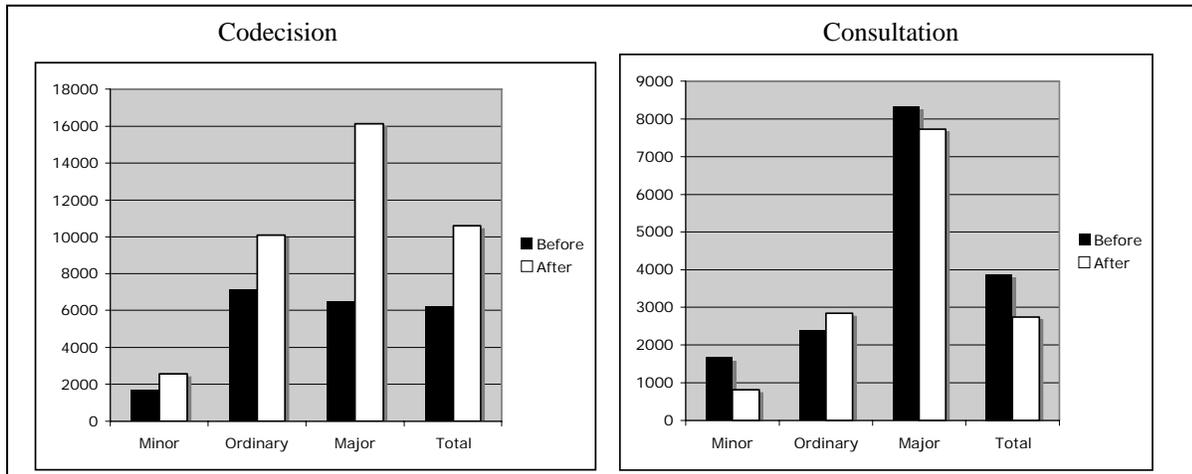


Figure 4 - Average length (no. of words) of Community legislation adopted before/after enlargement, by salience and voting rule

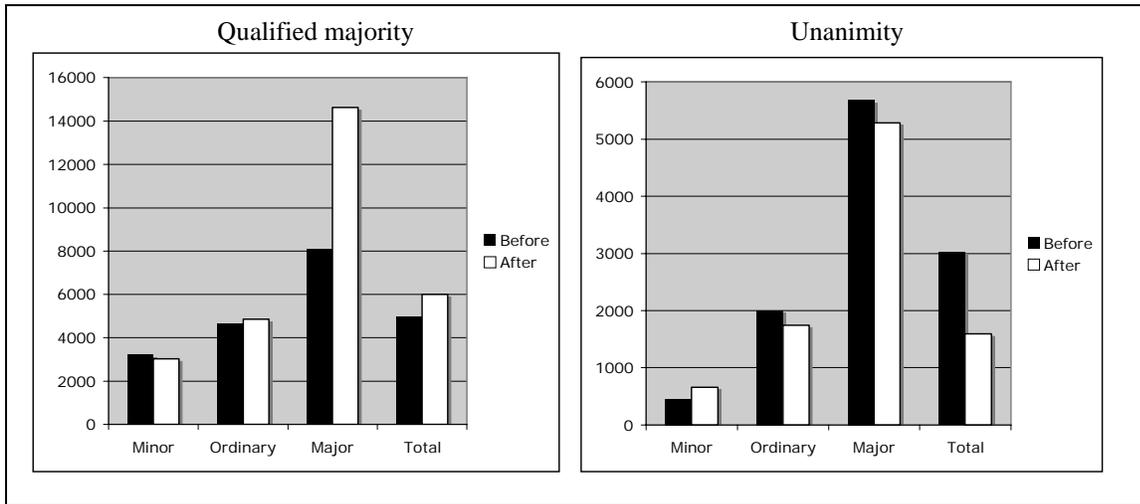


Figure 5 – Number of acts that are “legally binding in or for the Member States” adopted before/after enlargement, by voting rule

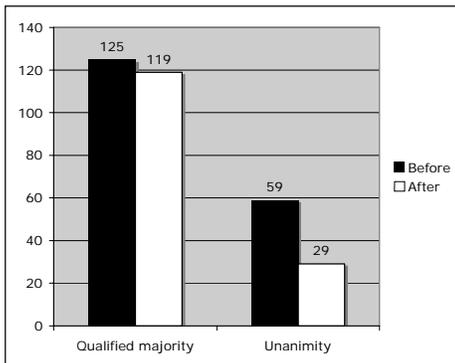


Figure 6 - Average number of states abstaining or opposing the adoption of Community legislation under QMV before/after enlargement, by salience

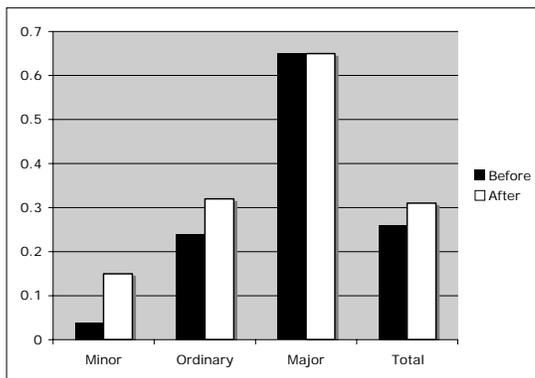


Figure 7 - Average number of days necessary to adopt Community legislation before/after enlargement, by salience

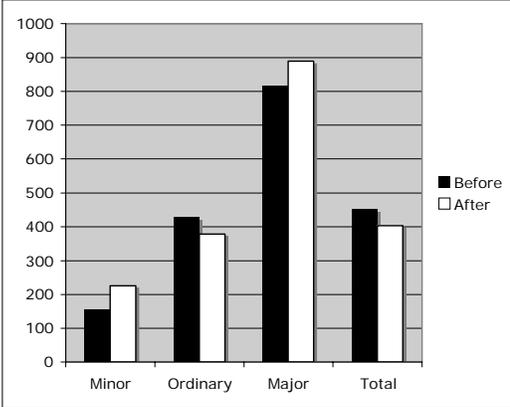


Figure 8 - Average number of days necessary to adopt Community legislation before/after enlargement, by procedure

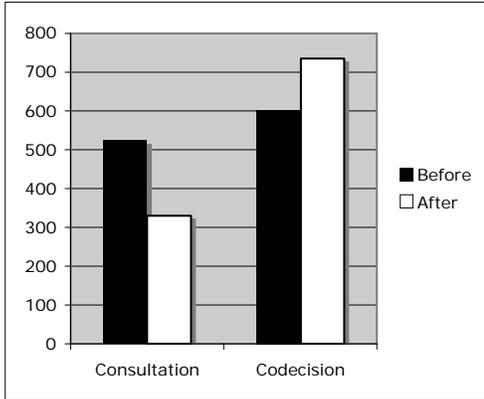


Figure 9 - Average number of discussions as “B point” in the Council per Community act before/after enlargement, by salience

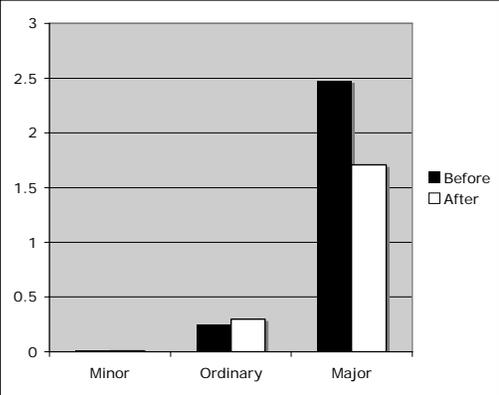


Table 3 – Percentage of ministerial and diplomatic representation in the Council when adopting Community acts before/after enlargement, by salience and type of representation

		Minor	Ordinary	Major
Before	Plenum of ministers	0.6%	4.0%	25.9%
	Full ministerial	0.0%	2.0%	25.9%
	Over 90% ministerial	1.3%	9.3%	14.8%
	Mixed ministerial – diplomatic	0.0%	4.0%	29.6%
	Full diplomatic	98.1%	80.7%	3.7%
After	Plenum of ministers	0.0%	1.0%	0.0%
	Full ministerial	0.0%	1.0%	22.5%
	Over 90% ministerial	1.1%	20.4%	45.0%
	Mixed ministerial – diplomatic	0.0%	2.9%	10.0%
	Full diplomatic	98.9%	74.8%	22.5%

Figure 10 - Percentage of Community acts containing comitology provisions before/after enlargement, by salience

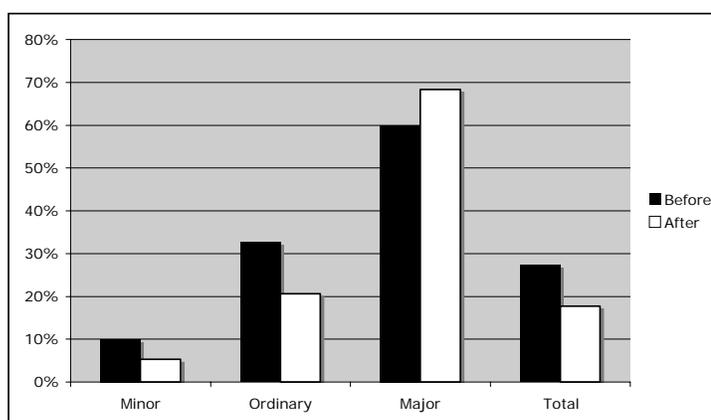


Figure 11 - Number of acts published in the monthly summary of Council's acts (MSCA) before/after enlargement, by Annex

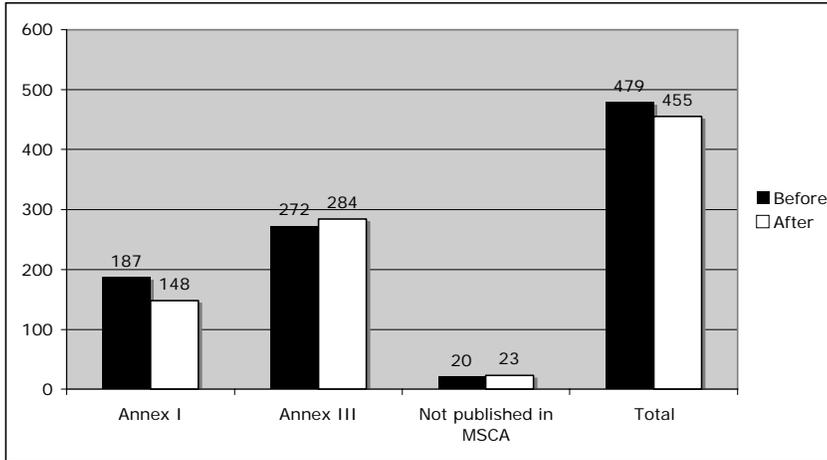
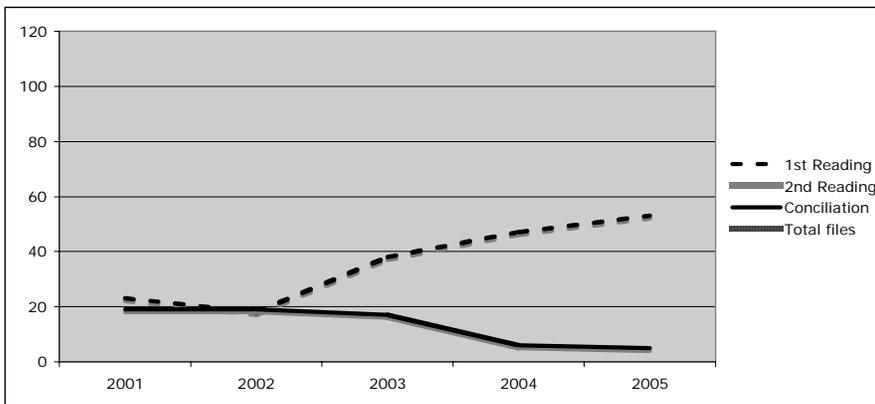
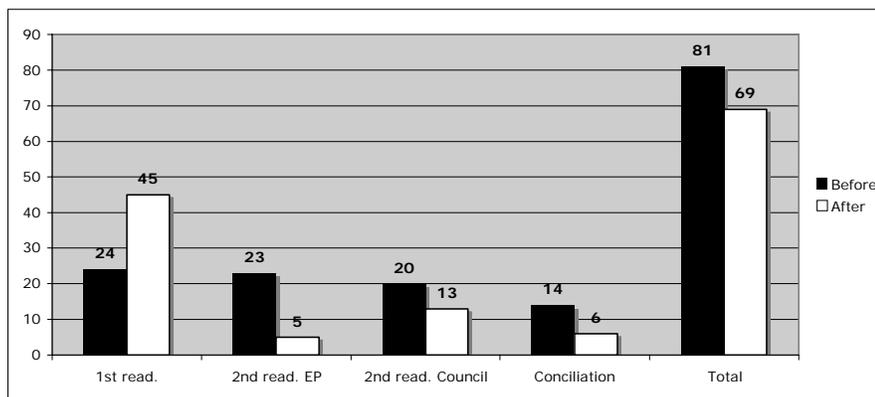


Figure 12 - Number of acts adopted under codecision between 2000 and 2005, by reading



Source: http://ec.europa.eu/codecision/index_en.htm

Figure 13 - Number of acts adopted under codecision before/after enlargement, by reading



ANNEX

**COUNCIL OF
THE EUROPEAN
UNION**

Brussels,

RUE DE LA LOI, 175
B-1048 Brussels

Mr. Paolo Costa

Chairman, European Parliament Committee on Transport and Tourism

STRASBOURG

**Subject: Proposal for a Directive of the European Parliament and of
the Council on enhancing port security**

Dear Mr Costa,

Following the informal meeting between the representatives of the three institutions, a draft overall compromise package was agreed today by the Permanent Representatives Committee.

I am therefore now in a position to confirm that, should the European Parliament vote in the exact form as set out in the compromise package in the Annex to this letter, the Council would, in accordance with Article 251, paragraph 2, first subparagraph, first indent of the Treaty, adopt the proposed Directive in the form of the text thus amended.