

Contribution to the UK government's Balance of Competences Review Enlargement

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Introduction

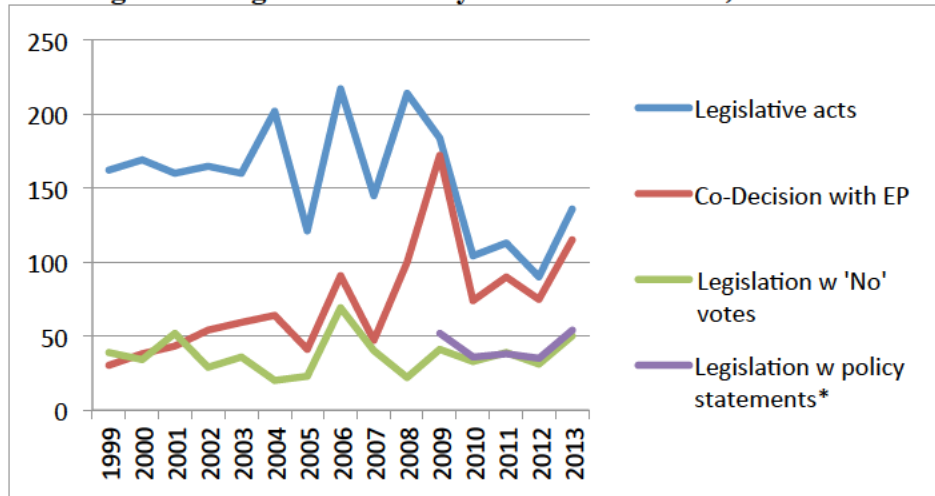
This paper highlights key findings from in-depth research on the impact of previous enlargements on politics and policy-making in the European Union. In particular, it looks at the changes that have taken place in decision-making in the EU Council. The EU Council (or, formally, the Council of the European Union) is the most important legislative institution in the EU, as it is where the governments meet to negotiate and adopt legislation. The paper builds on a number of previous publications published in academic journals as well as policy briefs and reports published by policy think tanks in Brussels. The data presented is part of on-going research carried out at the LSE, and the data also forms basis for the reporting of EU legislative activities by VoteWatch Europe, a transparency organisation based in Brussels. The two main issues addressed in this brief are the questions of 1) how policy processes have been affected by the latest enlargements, and 2) how the representation of interests has changed.

Decision-making in EU28

Policy-making has changed a great deal in the EU over the past two decades. This is in part due to the large-scale expansion of the EU, due to important treaty changes, and due to changes to the political environment and priorities by the Member States. Politicians and senior officials still characterise negotiations between the governments as a form of traditional diplomacy where representatives make use of informal channels as much as they decide on legislation according to the formal 'rules of the game'. But there is no doubt that both the culture and processes for finding agreements are different today compared to ten years ago.

Figure 1 below shows how legislative activity has changed in the Council since January 1999, when records for the first time became publicly available in a meaningful way. The figure makes it clear that overall, the Council has experienced a decline in the yearly adoption rates in the last few years. Ahead of the 2004 enlargement, the EU concluded on just over 160 legislative acts per year. This increased quite significantly in the months leading up to the May 2004 enlargement, but was then followed by a slump in the last half of 2004 and into 2005. Since then there have been a couple of peaks –to do with the preparation for the introduction of the Lisbon treaty in December 2009 – but the last few years have seen a decrease the legislative level to 113 acts in 2011, 90 acts in 2012, and 136 legislative acts adopted in 2013. Compared to most national legislatures, these numbers are nevertheless quite high.

Figure 1: Legislative activity in the EU Council, 1999-2013



* Policy statements are shown from 2009 onwards.

Figure 1 also shows that while the total legislative activity level appears to have dropped, more decisions have been adopted with the European Parliament under the Co-Decision procedure. Since the introduction of the Lisbon Treaty in 2009 close to 80% of legislation is by Co-Decision, and in the last two years it has been at approximately 85%. Also, of the items adopted under Co-Decision since 2009, 69 per cent (208 out of 301 items) were agreed with the Parliament at the first reading stage.

A last observation to make from Figure 1 is that contestation in the Council appears to have increased. While the biggest proportion of legislation is adopted with all Member States in favour of a given proposal, a larger percentage of policies have governments who either vote 'No' or 'Abstain' than previously. Nevertheless, when opposition is recorded on a proposal, it is still usually a small number of Member States who are found to be in opposition –groups are now between 1 and 5 countries, while before the enlargement it was usually only a single or up to 3 countries in opposition. Nevertheless, the numbers indicate that recorded disagreement does not appear to reflect 'majority vs. minority' dynamics in the Council as such. It rather illustrates that voting is part of a 'signalling game', which governments use show to domestic interests and parliaments that they voiced their position on a proposal, even though the proposal looked set to be approved by all other governments. Hence, in a case where a proposal is of less salience to the national government, a Council member may decide not to state its preferences even if these are clearly not met by the legislation on the table. It would chose not to do so because being in opposition means the government is excluded from the negotiations on the majority agreement which is constructed and as the domestic parliament may simply not pay attention whether their position was upheld when the legislation is of little saliency. Consequently, the numbers in Figure 1 are most likely downwards biased and only reflect the 'tip of the iceberg' in terms of how much disagreement over proposals is actually present in the Council negotiations.

The purple graph in Figure 1 further supports this last point as it shows how Member States make use of 'formal statements' in legislative decision-making. These statements are policy statements that governments can submit and have included in the Council minutes when a proposal has been adopted and voted on. They are used to clarify a position, and range from statements which simply elaborate on the reasons behind a government's support or opposition in the votes, or – at times – show severe disagreement with a decision although the government may have chosen not to oppose the proposal through voting. Interestingly, Figure 1 therefore shows that, while opposition in voting has increased since enlargement, the use of formal statements is also significant: for example, Member State governments submitted policy statements on 39% in 2012 and on 40% of legislation in 2013. From

include their positions in the formal statements. In many cases between 3-9 governments submit their statements, either together in groups or individually.

Negotiation culture

In addition to what can be observed in the above data, two extensive studies (Hagemann and De Clerk-Sacchse 2007; Hagemann 2014) have concluded that Council meetings have radically changed since the 2004 enlargement. Meetings are reported to increasingly rely on the internal formal rules of procedure, with a stricter time keeping and 'order of business'. Also, there is less of a 'familiar' tone both in COREPER and around the ministerial table, as negotiators do not necessarily all know each other. In fact, one observer from the Council administration has described the situation as a "move towards an UN-style system". A greater tendency towards reading out statements and keeping to the formal procedures of negotiations has prevailed.

Another interesting observation that has been pointed out is that the 'big bang'-enlargement resulted in the presence of more states with an 'Anglo-Saxon' way of thinking, meaning a presumption in favour of less legislation and less regulation. Together with a decision by the European Commission to introduce less legislation in order to devote more attention to individual proposals, this could serve as a partial explanation to the decrease in legislation observed for the years following May 2004. However, although the amount of legislation has in fact declined since May 2004, practitioners from the old Member States on several occasion state that the workload has in fact increased. It was stressed that this holds true for both the working group level of the decision-making process all the way to the ministerial negotiations. For example, it was explained by an official from a country that then held the presidency, that the construction of either a majority or a blocking minority has become harder simply because negotiations need to include more member states. Both the Council meetings and those of the preparatory bodies also tend to last considerably longer since the enlargement. This observation is confirmed in both the data set as well as in interviews. The latter clarified, however, that the most difficult point in the process is usually not the working groups or the COREPER level, but rather the ministerial negotiation table itself. Whereas the administration has indeed seen an increase in the work load in many respects, most of the interviewees found that the most difficult task was not in the administrative part but rather in finding agreement between political representatives.

In fact, there is evidence – although only anecdotally – that when a government feels strongly about a proposed policy amendment, but find it unlikely to successfully get it pass the high majority threshold in the Council, they may instead approach like-minded representatives in the European Parliament (EP), and in particular see to make alliances with MEPs in relevant EP committees.

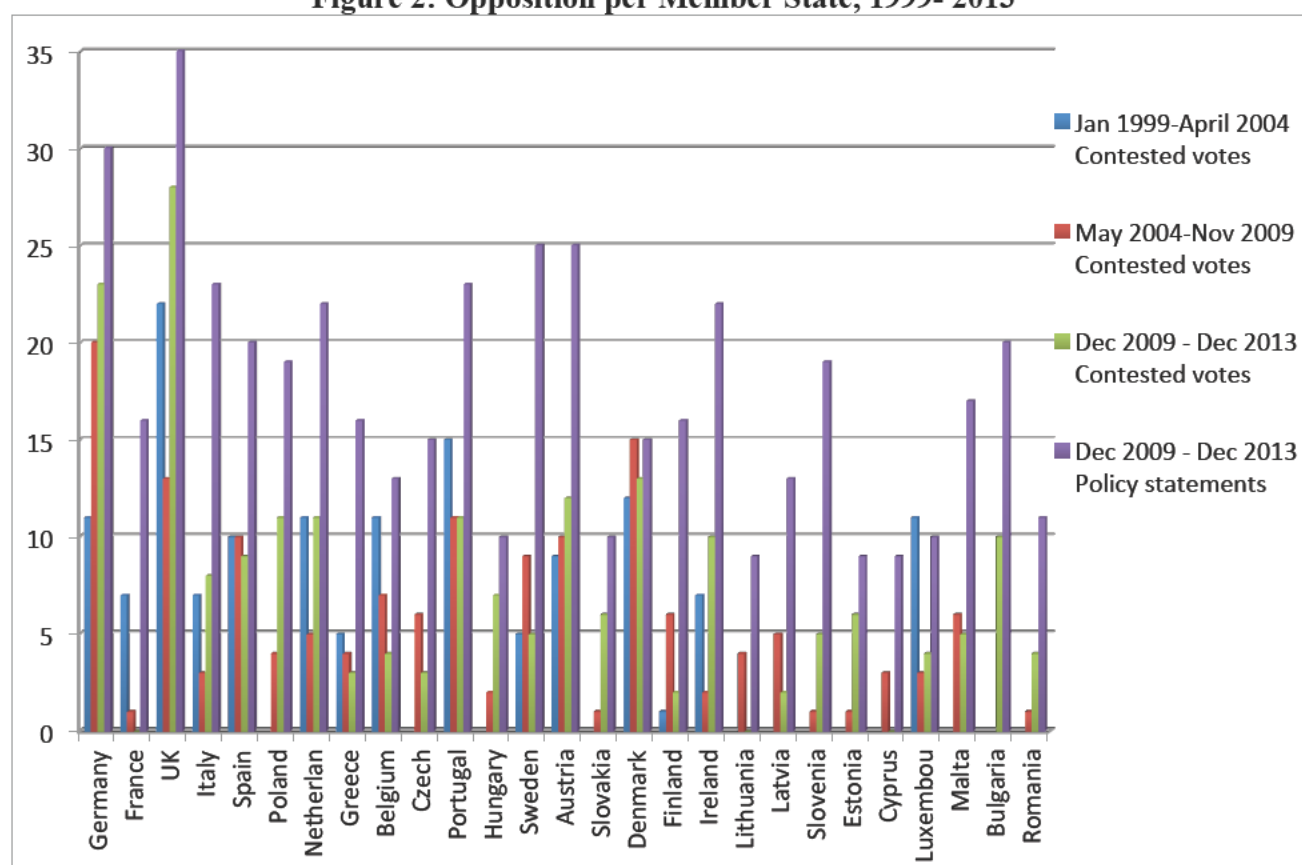
Enlargement and the representation of interests in the EU: Oppositions and coalitions

Most studies of politics in the Council have concluded that it is the large member states and northern countries that dominate both in negotiation rounds and in the actual voting scenarios (Mattila, 2004; Hayes-Renshaw & Wallace, 2006). A redistributive cleavage and a grouping of free-market vs. regulatory members have also been identified in certain periods and particularly within specific policy areas (Zimmer et al., 2005; Thomson et al., 2004). On the four-year period leading up to the 2004 enlargement, patterns of party political influence have also been detected, suggesting that the Council's composition of centre-left and centre-right governments may additionally play a role for the overall legislative output (Hagemann, 2007). However, little substantive evidence has been presented to form conclusive predictions for the choice of either supporting or opposing legislation in the EU today.

Figure 2 below shows how often each Member State voted with the majority when we divide the data into three distinct periods, so as to mark the 2004 enlargement as well as the introduction of the Lisbon Treaty. In other words, the data is here organised as follows:

- January 1999 - April 2004 (5 years, 4 months), up to the 2004 enlargement with 10 new Member States;
- May 2004 - November 2009 (5 years, 7 months), the period up to the entry into force of the Lisbon Treaty;
- December 2009 – December 2013 (4 years).

Figure 2: Opposition per Member State, 1999- 2013



The Member State which overall has voted against the majority most often during the three periods is the United Kingdom. The UK has had a minority position in one out of ten votes during the 2009-2013 period. Germany, Austria, Denmark and the Netherlands follow suit. At the other end, we see that France and Lithuania have always voted with the majority, followed by Cyprus, Greece, Finland and Latvia.

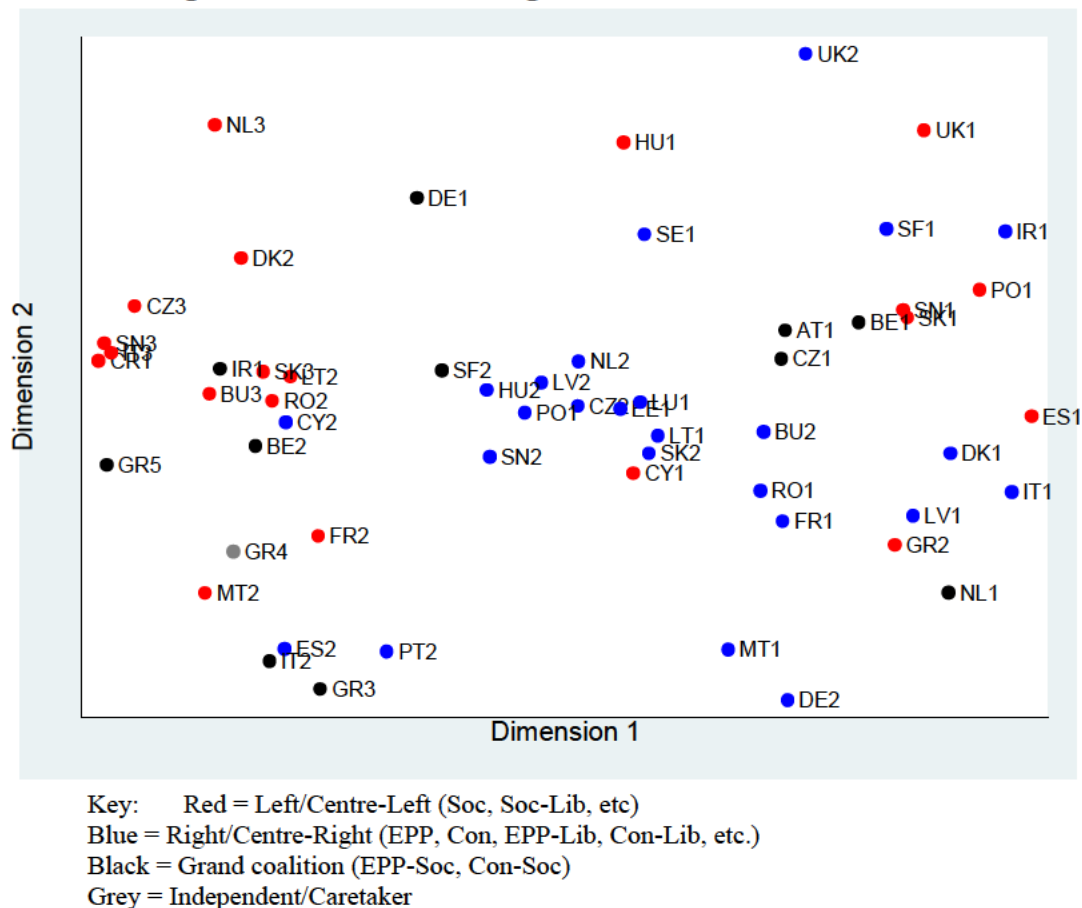
However, as suggested above, there may be more to the picture than what is reflected in the recording of 'No' votes in the Council. The high number of formal statements submitted by the governments (the purple column) indicates that some governments are indeed more keen to clarify their positions than others, and the number of formal statements does not necessarily correspond with the positions voiced through voting. As already explained, formal statements are often used to raise concern – or even direct disagreement – with a proposal, although the government may not chose to oppose the policy when it comes to a vote. As the figure shows, this is the case for e.g. France. Recent findings from an on-going research project suggest that governments' decision to submit formal statements

strongly correlates with the kind of scrutiny powers held by its national parliament and parliamentary committees (Hagemann et al., 2014).

Who votes with whom?

When looking further into the data, we find that the coalitions of countries which have previously been identified in the literature cannot be found in today's Council in a systematic manner. Figure 3 below shows how often individual governments have voted together since 2009: the figure should be read like a map, where two governments who are placed close together also vote together on most issues, while two governments who are far apart, do not vote the same way. Please note that the model behind the analysis does not provide the meaning of the figure's two dimensions, but simply replicate how similar these governments are in their voting. Hence, it is the readers' own task to interpret the results and see if any meaningful cleavages can be found based on the proximity of the governments' positions.

Figure 3: Coalitions in voting in the EU Council, 2009-2013.



In the figure, each country name is followed by a 1, 2 or 3 referring to whether it is the first, second or even third government in place during the years 2009-2013¹. The figure suggest that a blue and red 'core' of centre-left and centre-right governments exists in two places in the vote map; one towards the left of 'Dimension 1' and placed centrally on 'Dimension 2', and one more centrally positioned on both axes. It is also possible to identify a number of more 'euro-sceptic' governments towards the top and the right hand side of the picture. And a number of southern countries appear towards the bottom of Dimension 2, while they are spread out across Dimension 1. In sum, it therefore seems that some divisions may exist in legislative decision-making in the Council, but these do not appear as clear-cut and permanent cleavages between the governments in the EU of 28.

¹ Please note the data here corresponds with the last of the periods presented in the previous figures, i.e. from July 2009 to

Conclusion: EU of 28 and the need for greater accountability

The EU's enlargements to 25, 7 and now 28 Member States have been very impressive. The EU institutions have done an extraordinary job in the adjustment to a new setting with so many more countries represented in Brussels and Strasbourg. However, while the Council - which we have focused on here - has managed to continue to adopt legislation at an impressive rate, we find that there have been significant changes to the internal processes and legislative procedures in the Council since the enlargement of May 2004. Many of these changes are the consequence of the increased number of interests that need to be accommodated in the legislation, a general formalisation of the meetings and an emphasis on high 'productivity' in terms of short legislative sessions and limited negotiation time spent on individual proposals. The number of pieces of legislation adopted at the 1st reading in the Council has increased significantly. The country holding the presidency at any one time especially feels strong pressure to reach early and swift agreements.

The changes of course pose a number of questions, and have in some respects been a challenge both politically and for the EU officials. So while this paper will stress the conclusion that the 2004, 2007 and 2013 enlargements have been a great success on all levels, it is also important to recognise where there are room for improvements.

In this respect, a first recommendation is for government representatives and the Council secretariat to seriously address the increased demand for transparency and higher degrees of accountability in Council decision-making. Too little is known about how governments reach agreements, and who's actually in favour or opposition to the proposal. As explained in this brief, at the moment governments only record their opposition if they have strong reasons for doing so. And rarely do we see governments explicitly explain their *support* for EU decisions. More detailed and public information on voting records would help this process, and would make it easier for national parliaments to get more closely engaged with EU politics as well (more on this below).

A second recommendation is to consider certain aspects of the inter-institutional agreements and internal Council rules for negotiating policies with the European Parliament. There are great concerns on both sides that the current process, which heavily relies of 'trialogue' meetings and early agreements, is not necessarily representative of the full Council and Parliament, and that it may at times result in sub-optimal policy agreements. Many government representatives – especially from the permanent representations in Brussels – have the impression that the Council is now the loser from this negotiation process. It appears from our work that they are right: The Parliament's amendments at the first reading are difficult for the Council to reject, and individual governments at times look to the Parliament's committees to get their proposal included in a policy as they find it difficult to it through the Council.

Last, is a recommendation to better bridge decision-making at the EU level with political debates and parliamentary scrutiny at the national level. This is of course a frequently heard criticism at the moment. But apart from the UK, a number of European parliaments are currently exploring ways to develop their scrutiny procedures in European affairs, whether formally or regarding more informal practices. The main conclusions from these exercises so far are that much is needed regarding national parliaments' insight into decision-making in the European Council and the Council of the European Union. So rather than pointing to the European Parliament (or the Commission) as soon as references are made to a 'democratic deficit' in the EU, this brief will argue that focus should be on the Council.

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