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## Enlargements and Their Impact on EU Governance and Decision-Making

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## Abstract

This article examines the impact of enlargements on EU governance and decision-making, especially legislative decision-making. It is shown that all EU enlargement rounds, other than the first, have served to help improve the EU's decision-making capacities, by promoting treaty and other changes that have made decision-making processes more efficient. The legislative outputs of the decision-making processes have declined in recent years, but this is for reasons other than enlargement.

## Keywords

Enlargements; EU decision-making; EU governance; qualified majority voting

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The EU has been enlarging for over forty years. It has done so via a series of enlargement rounds: the first round (of 1973), the Mediterranean round (of the 1980s), the EFTAn round (of 1995), and the 10 + 2 round (of 2004/07). Only the most recent accession – of Croatia in 2013 – has not clearly been part of an enlargement round, though in time it is likely to come to be seen as the trailblazer of a (very drawn-out) Balkan enlargement round.

Enlargement has thus long featured, as a highly prominent issue, on the EU agenda. This article focuses on the relationships between enlargements and the EU's decision-making processes and capacities, particularly in respect of the making of legislation. By not only increasing the number of member states but also by increasing the diversity of member states, enlargements have inevitably posed major challenges for the EU's legislative decision-making mechanisms. How have they adjusted and responded to these challenges, and what have been the consequences?

Many changes have, of course, been made to the EU's institutional and decision-making arrangements over the years, but they have not all been related to enlargements. The increased policy scope of the EU has been another driving factor. So have growing concerns about the 'democratic deficit', which have led to the EP's powers being progressively increased. In this article attention is restricted to changes that have, in large part at least, been a response to enlargements.

The article is structured as follows. The first section examines the ways in which the EU has prepared for and has adjusted to enlargements. The second section explains how the extent of institutional and decision-making changes has been constrained by a requirement that the EU should not be *too* efficient. The third section analyses the impacts of enlargements on EU decision-making outcomes. The article finishes with some general conclusions.

### PREPARING FOR AND ADJUSTING TO ENLARGEMENTS

The prospect of an enlargement round has always given rise to concerns that accessions will make EU governance, and especially legislative decision-making, more difficult. Such concerns have arisen primarily from the fact that enlargements mean there is the prospect of more national needs and preferences having to be satisfied, or at least accommodated, if agreements are to be reached.

The first enlargement round, of 1973, duly made legislative decision-making more difficult. It did so because it occurred at a time when the EC was: 1) seeking to move into more contentious policy areas – notably in respect of the internal market, where much of the necessary negative integration had been achieved and there was now the challenge of focusing more on positive integration; 2) greatly hampered in its ability to take necessary decisions both by there being only very limited treaty provisions for majority voting and also by the impact of the 1966 Luxembourg Compromise – which combined to result in virtually all significant decisions needing the unanimous approval of all member states. The accessions of Denmark and the UK in particular strengthened decision-making rigidities, with both being generally opposed to policy expansion and both insisting on upholding the Luxembourg Compromise.

So, the addition of three more member states compounded existing decision-making difficulties and helped to produce the infamous years of Eurosclerosis – when decision-making in many policy areas, including the core internal market policy area, virtually ground to a halt to the background of seemingly never-ending disputes between member states over, for example, the product standards to be applied to such goods as chocolate, beer, and lawnmowers.

However, subsequent enlargement rounds have not been so damaging to the EU's ability to make decisions. Indeed, in some respects they have improved the EU's decision-making capacities by encouraging the member states to anticipate and react to enlargements by progressively adjusting institutional and decision-making arrangements so as to ensure that decision-making gridlock does not occur when (the ever-larger number of) member states disagree on a policy matter. As the following sub-sections on changes that have been made in advance of and in adjusting to enlargements show, some of the changes that have been made are formal in nature and have been entrenched in the treaties whilst others have been informal.

### ***An Increased Availability of Qualified Majority Voting***

The founding treaties of the 1950s stipulated that the great majority of decisions requiring Council of Ministers approval must be taken by unanimity. Only very limited provision was made for qualified majority voting (QMV). This meant that the extent and speed of decision-making on most issues could be dictated by the most reluctant member state.

All of the major rounds of treaty reform that have been undertaken since the founding treaties – starting with the 1986 Single European Act (SEA) and continuing through the 1992 Maastricht Treaty, the 1997 Amsterdam Treaty, the 2001 Nice Treaty, and the 2007 Lisbon Treaty – have included extensions to the availability of QMV as a core component. The increasing size of the EU's membership has been an important driving force behind these extensions, with it being recognised that more member states necessarily makes decision-making more difficult, especially when decisions can be made only by unanimity.

Such has been the extent of the extensions that have been made over the years to the treaty-based availability of QMV that it can now be used for over 90 per cent of legislation. Unanimity is required only for decisions in a few high-profile and sensitive areas – such as treaty reforms, enlargements, taxation, and foreign and external security policy.

### ***An Increased Willingness to Use Qualified Majority Voting***

Extending the availability of QMV would serve little purpose if there was not also a willingness to use it. Little such willingness existed for the fifteen years or so after the Luxembourg Compromise, except for a limited number of procedural matters and matters where a timetable was pressing. However, a willingness began to develop from the early 1980s – that is, after Greece became a member in 1981 and as the major phase of the Mediterranean enlargement, with the Portuguese and Spanish accessions, moved to its conclusion – and has continued to do so. The strong preference for consensual decision-making remains, but the culture of the Council has changed in such a way as to result in voting no longer being viewed as necessarily needing to be avoided.

Votes are now explicitly used in about 20 per cent of the cases where they could be, and in about another 10 per cent of cases they are implicitly used in the sense that states that are known not to be in favour of a proposal choose not to register a dissenting vote. When there are formal votes, it is unusual for more than a couple of states to abstain or vote against. (There is a considerable academic literature on voting in the Council. See, for example: Golub 2012; Häge and Naurin 2013; Hosli, Mattila & Uriot 2011; Naurin and Wallace 2008; Thomson 2011.)

It might have been expected that the 2004/07 enlargement would have increased the use of voting, bringing in as it did not just many more member states but also member states that in important respects had different policy needs than the EU-15. No such increase has occurred. What has occurred, however, are two significant developments that may be said to amount to an increase in *de facto* voting. First, the shadow of the vote has become increasingly important, with the possibility of a vote being called resulting in member states in a non-blocking minority being more willing to negotiate the best deal they can get rather than be formally outvoted. This is especially so in Council formations that deal with a lot of specific and technical legislation and is less so in formations where legislation is not so common and where much of what there is covers politically sensitive matters (Deloche-Gaudez and Beaudonnet 2011). Second, there has been an increased practice of governments that are opposed to proposals registering their opposition not through casting dissenting votes but through issuing dissenting statements that are attached to the published minutes of Council meetings. This practice enables governments to signal their concerns to other policy actors and domestic audiences, whilst at the same time also enabling them to be seen by the governments of other member states to be abiding by the consensual culture of the Council and as being helpful in difficult circumstances.

A willingness to use QMV has now even spread to the European Council, which was first given the power to use QMV – for the nomination of Commission Presidents-designate – by the Nice Treaty. On the first occasion QMV could have been used for this purpose, in June 2004, the European Council preferred to stay with its traditional consensual decision-making mode, even though there were two candidates who almost certainly would have received qualified majority support had a vote been called. However, in June 2014, when the *Spitzenkandidat* (top candidate) system was employed by the EP to pressure the European Council to accept its nominee, Jean-Claude Juncker, QMV was used – with the UK and Hungary voting against (Nugent and Rhinard 2015).

### ***An Increased Use of Restricted Access Meetings to Facilitate Decision-Making***

The just-described increased availability of and willingness to use QMV in the Council and European Council is a practical reaction to the changed circumstances brought about both by enlargements and by the EU's widening policy portfolio.

Another practical reaction has been increased decision-making activity outside of formal decision-making bodies, usually in restricted access meetings. The situation in Council meetings since the 2004/07 enlargement shows clearly why this has occurred:

- Ministerial level meetings may well have 150 or so member state and institutional representatives in the room at any one time, not counting interpreters. COREPER meetings may have 100 or so and working parties may have around 70.
- In consequence of the number attending, meetings need to be held in cavernous rooms, with microphones necessary and with there being little possibility of much meaningful eye contact between people who are not sitting near to each other.
- Speaking interventions often take the form more of the reading of pre-prepared statements than of real negotiations.
- Ministers, especially senior ministers, have become increasingly reluctant to attend, particularly when there are no key issues on an agenda, and when they do attend they often are not present for the whole meeting.

Given this nature of Council meetings, and with many more allies now being required if qualified majorities on proposals are to be found or are to be denied, much of the political activity that is necessary for decisions to be able to be made takes place on the margins of meetings and in a myriad of pre-meeting informal settings in which representatives of different combinations of member state governments gather on both bilateral and multilateral bases. This pattern even reaches up to European Council level, as the mushrooming in recent years of all sorts of pre-summit meetings – many of which have been focused on the eurozone crisis – illustrates.

Restricted access meetings can allow national representatives to exchange views more frankly and easily than they can when the representatives of all governments are present. As such, they can facilitate decision-making, not least by enabling pre-decisions to be made, especially when representatives of key member states are involved in the meetings.

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In the context of EMU, two particularly important, functionally specific *and formal* restricted access meetings have been established. One of these is the Eurogroup of ministers, which was created in 1998 as an unofficial gathering of Ministers of Finance from eurozone states and which, in recognition of its increasing importance, was given legal status by the Lisbon Treaty. The other is the Euro Summit, which emerged out of the eurozone crisis and which was given formal status by the 2012 Treaty on Stability, Coordination and Governance (TSCG – the so-called Fiscal Pact Treaty, which is an extra-EU treaty). Heads of State or Government of eurozone members may attend all Euro Summits whilst Heads of State or Government of member states that have ratified the TSCG but which are not eurozone members may attend for certain agenda items. As Wessels (2015: 206) has shown, the frequency of Euro Summit meetings depends on ‘the issues at hand and on the overall political context’. So, there were four meetings in each of 2011 and 2012, one in 2013, and none at all in 2014. In 2015, the Greek crisis brought Euro Summits to the very centre of the decision-making stage.

### ***Institutional Changes Designed to Provide Better Leadership***

The EU was long thought to suffer from something of a leadership deficit that was damaging to decision-making efficiency and effectiveness. There was no shortage of policy actors offering leadership in particular contexts and at particular times – with the Commission, the Council

Presidency, and groups of member states (especially France and Germany) much to the fore – but as the EU grew larger and became involved in an ever wider range of policy activities EU political elites began to sense an increasing need for a more focused and consistent leadership that could increase the EU's decision-making capacity.

This felt need, which was intensified from the late 1990s as the prospect of a major enlargement round including ten Central and Eastern European countries (CEECs) grew closer, formed an important part of the background to the decision – first taken at the 2000 Nice summit and then elaborated at the 2001 Laeken summit – to convene a Convention on the Future of Europe, which quickly came to be known as the Constitutional Convention. The Convention laid the bases for the inclusion in the Lisbon Treaty of two new institutional positions designed to give the EU greater leadership potential and strengthen EU decision-making capacity. One of these new positions was the post of semi-permanent and full-time European Council President. The other was the post of High Representative of the Union for Foreign Affairs and Security Policy, which was a considerably revamped and upgraded version of the post of High Representative for the Common Foreign and Security Policy which had been established by the Amsterdam Treaty.

Another, and related, recent efficiency-minded institutional change intended to improve leadership has been a reform of the Council Presidency system. The Council Presidency used to rotate between the member states on a six-month basis, but following the 2004 enlargement it was decided to arrange it in groupings of three states. This change – which grew out of a long-standing practice of preceding, current and succeeding Presidencies working closely with one another in a system known as the troika – was taken partly to assist (the now much larger number of) small member states with the heavy duties associated with the Presidency and partly to try and improve continuity and enhance consistency between Presidencies. The new system was formalised and strengthened in a Declaration annexed to the Treaty of Lisbon, which stated that the Presidency would now 'be held by pre-established groups of three Member States for a period of 18 months'. In practice, this change is not seen by EU practitioners to have had much of an impact (interviews conducted in Brussels).

### *Increasing Numbers of Decision-Making Processes*

When the EC was established in the 1950s a fairly simple and hierarchically-based decision-making system was created in the form of the Community method (Dehousse 2011; Buonanno and Nugent 2013). However, as Ingeborg Tömmel demonstrates in her article in this special issue, as the EC attempted to move into an increasing number of policy areas and as it also enlarged, the Community method proved to be too rigid and inflexible for types of policy development that touched on particularly sensitive issues or on matters that sharply divided the member states. Accordingly, since the late 1960s, when foreign policy began to be developed, and more particularly since the early 1990s, when pressures to expand greatly the range of the policy portfolio intensified, increasing use has been made of a variety of non-hierarchical policy approaches that employ an array of indirect steering mechanisms. The use of these approaches, which are essentially intergovernmentally-based, has resulted in a mushrooming of decision-making processes that are more flexible and less constraining than the classic Community method. Foremost amongst these newer decision-making processes are various forms of the new modes of governance (NMG), and especially the open method of coordination (OMC), which have come to be used for a wide range of social and economic policies – many of them as part of the Lisbon Strategy/Europe 2020 policy programme (Büchs 2007; Copeland and Papadimitriou 2012; Héritier and Rhodes 2011).

So, an increase in the number of policy processes to accommodate differing national positions has been another way of dealing with the challenge of ensuring that the growing number of member states brought about by enlargements has not resulted in decision-making impasses. Precisely how large the number of increased policy processes has been obviously depends on the criteria that are used for counting them. A figure of well over 100 formal decision-making processes can be identified if account is taken of what may be thought of as important but not necessarily 'first rank' variations – with the former including, for example, whether or not the European Economic and Social Committee and the Committee of the Regions must be consulted on a policy proposal. If attention is narrowed to first rank variations the figure naturally drops, but it remains, by comparison with decision-making processes in national political systems, still very high. An indication of this is seen in the figure given by the Constitutional Convention, which identified no fewer than 28 significantly different procedures (Buonanno and Nugent 2013: 83).

### ***Increasing Differentiation***

A central assumption when the EC was founded was that all member states should and would fully participate in all policies (see Eckert, Maas, Tömmel this issue). There was to be no picking and choosing of which policies to participate in and there were to be no laggards in honouring policy commitments. In short, all member states were to swim abreast in policy terms.

For the most part, this expectation and accompanying obligation continues. However, it does not do so in pristine form. This is because since the late 1970s, and more particularly since the early 1990s, there has been an increasing acceptance in EU circles that there are circumstances in which some member states will not, and sometimes even should not, be full participants in particular policies. To use the term that has come to be generally utilised for describing this phenomenon, the need for some policy *differentiation* has come to be accepted (Leuffen, Rittberger & Schimmelfennig 2013).

Differentiation is the starkest way in which the EU has responded to the situation brought about by enlargements whereby its membership has come to include states that either have no wish, or do not have the capacity, to be part of particular policy initiatives and activities. This heterogeneity of membership has resulted in the development of policy areas where one or more member states do not participate, do not fully participate, or participate in distinctive ways. It is very striking in the context of an analysis of the impact of enlargement on EU governance and decision-making that none of the founding member states has sought to use differentiation to opt out, even partially, of a major EU policy activity, whilst two of the three states of the first enlargement round (Denmark and the UK) have been differentiation's most active users.

There are different types of differentiation, some of which are formal and some of which are informal.

### ***Formal Differentiation***

Formal differentiation consists of two main types: *à la carte* and *multi-speed*.

*À la carte differentiation* is the more important type in that it involves member states choosing not to participate in a policy or part of a policy. The European Monetary System, which was developed from the late 1970s with the UK not participating, was the first instance of such differentiation. It was followed in the mid-1980s by the Schengen System, from which the UK and Ireland opted out. *À la carte* differentiation was then given a considerable boost when the Maastricht Treaty gave it

formal authorisation. The authorisation was very specific, taking the form of permitting the UK and Denmark not to participate in the third stage of EMU and allowing also the UK to opt out of the Social Charter. Along with the Treaty's creation of the intergovernmental CFSP (Common Foreign and Security Policy) and JHA (Justice and Home Affairs) pillars, these opt-out provisions can be seen as laying foundations for a less rigid treaty base for policy development. As Majone (2005: 15) has put it:

It is now clear... that the differentiation or flexibility that appeared in several forms in the TEU was no momentary aberration – a sort of *of à la carte* integration – but the clear indication of an emergent strategy for achieving progress in politically sensitive areas, even at the price of a loss of overall coherence of the system.

The Amsterdam Treaty widened the Maastricht 'dispensations' by providing for 'Provisions on Closer Cooperation' in the Community and JHA pillars. This authorised policy development within the treaty framework but with not all member states involved, subject to a number of safeguards and conditions – including that such cooperation be open to all member states, 'is only used as a last resort', and 'does not affect the "*acquis communautaire*"' (TEU post-Amsterdam Treaty, Article 43). The Amsterdam Treaty did not extend closer cooperation to the CFSP, but did allow for a different kind of flexibility within this policy area in that it allowed for member states not to apply CFSP decisions under specified circumstances. The Nice Treaty subsequently extended the remit of closer cooperation – which it renamed enhanced cooperation – to the CFSP pillar (but with military and defence matters excluded), and made it easier to operationalise by replacing the Amsterdam stipulation that a majority of member states must be involved in a closer cooperation initiative by a stipulation that only eight (increased to nine when Bulgaria and Romania joined the EU in 2007) must be so. The Lisbon Treaty largely confirmed the post-Nice position, but dropped the military and defence policy exclusion.

The perceived divisive nature of enhanced cooperation is an important reason why it was initially not used. However, it has gradually come to be seen as being more acceptable and is now occasionally being utilised, such as for the establishment of a European patent – from which Italy and Spain opted out because of objections to the limited use of languages in the operation of the scheme. It may in time prove to be very significant for the use of enhanced cooperation that at the time of writing several member state governments are supporting its use in one of the most sensitive policy areas of all: taxation. More particularly, some governments (the exact number keeps varying, but hovers around 11) are seeking to use enhanced cooperation for the creation of an EU financial transactions tax.

The other main type of formal differentiation is *multi-speed differentiation*, which occurs when a member state or states wish to participate in a policy but judge themselves, or are judged by others in authority, to be not yet sufficiently prepared or able to do so. The first clear example of multi-speed differentiation occurred with the launch of the single currency phase of EMU in 1999, when Greece was excluded (although only until 2001 as it turned out) because the Commission, supported by the Council of Ministers, decided that it did not meet the qualifying convergence criteria. The 2004-07 enlargements then saw multi-speed differentiation on a mass scale, with the new member states all initially being prevented by their terms of accession from becoming EMU or Schengen members until they had established their credentials for membership. (Seven of the ten 2004 acceding states have since become eurozone members – the Czech Republic, Hungary and Poland are the exceptions – whilst nine of them have been admitted into the Schengen Area – with Cyprus being the exception.)

### ***Informal Differentiation***

The word 'differentiation' is usually applied only to the formal à la carte and multi-speed processes of the kind that have just been described. However, as Andersen and Sitter (2006) have argued, there is a strong case for applying it more widely because opting out or exclusion from a policy area are not the only ways in which there is variation between member states in their policy engagement. There are other ways, of which an especially important one is when what Andersen and Sitter call 'autonomous integration' exists. This occurs when weak demands for single organisational and behavioural patterns at EU level combine with strong national level pressures for the maintenance of established national practices. Situations of this sort are particularly common in some of the more sensitive economic and social policy spheres, including those covering industry, employment, and social welfare. In such circumstances, one of two types of policy instrument is commonly used. The first type involves EU laws, usually in the form of directives, which allow considerable flexibility in national transposition and application. A particularly graphic example of such a law is a directive that was agreed in March 2015 – after years of highly-charged political conflict – on the use of genetically-modified crops (GMOs) in the EU (*Official Journal* 2015). Under the directive, EU member states are, subject to some restrictions, able to restrict or ban the cultivation of GMOs in their territory, but are not able to block the authorisation process at EU level. The second type of policy instrument involves non-legal mechanisms such as communications, recommendations, and resolutions. Member states may be strongly pressured to abide by the requirements of the contents of such policy instruments, but the instruments themselves have no binding force behind them. This is one of the main criticisms of the OMC, which relies heavily on soft law instruments.

But whether or not legal instruments are used, autonomous integration involves member states being accorded considerable flexibility in the ways in which they apply decisions. Naturally, where this flexibility exists, the need for member states to oppose the taking of the relevant authorising decisions is weakened: which is precisely why the above-mentioned GMO directive was able to be (eventually) passed.

### **CONSTRAINTS ON BEING TOO EFFICIENT**

The EU has thus adjusted itself in many ways so as to ensure that enlargements have not resulted in its decision-making capacities grinding to a halt. But, it has always been restricted in how far it has been able to go in making such adjustments. Two, in practice overlapping, constraints have existed, both of which are found – to differing degrees and in varying forms – in all federal and quasi-federal systems.

#### ***A Reluctance and Unwillingness to Maximise the Efficiency of EU Decision-Making Processes***

There has been a reluctance of some member states and an unwillingness of others to go as far in pursuing decision-making efficiency as 'advanced integrationists' have wished. (In democratic systems, efficient decision-making may be said to consist of decisions being able to be made relatively quickly by a restricted number of policy actors operating on largely majoritarian bases.) States that are not in the 'integration fast stream', and especially states where eurosceptic tendencies are pronounced, are not naturally predisposed to support more 'efficient' EU decision-making processes and the loss of national control that is entailed unless clear national benefits will result.

The UK, with its concerns about the preservation of national sovereignty, has long been the most 'problematic' state in this regard (though, in a notable exception to the customary UK position, Mrs Thatcher actively supported the use of QMV for the passage of legislative measures to give effect to the Commission's programme of 'completing' the internal market by 1992). But, the UK has not been alone in wanting a slower integrationist pace than 'fast integration' states such as Belgium, Italy and Luxembourg normally have preferred. Denmark, Sweden and more recently the Czech Republic, Hungary and Poland have, for example, also been in the 'slow integration stream' on particular issues. Sometimes, even states normally associated with strong integrationist positions have adopted cautious stances towards 'efficiency reforms'. Such was the case, for example, with Germany in the Intergovernmental Conference (IGC) that produced the Amsterdam Treaty, when domestic political difficulties resulted in Chancellor Kohl being unwilling to agree to all of the extensions to QMV most other states either wanted or were prepared to accept.

A point meriting note here is that prior to the 2004/07 enlargements it was widely assumed, especially by those in the 'intergovernmental school' of EU Studies, that the new Central and Eastern member states would be particularly sensitive to sovereignty-related issues and hence would be less-integrated minded than most existing member states. In practice, as a group they have not proved to be so.

### ***The Need to Retain the Confidence of All Member States in Decision-Making Processes***

Like all federal and federal-like systems, the EU must retain the confidence of its constituent units (the member states). It cannot be too majoritarian in its governance arrangements. It is a voluntary organisation, so retaining the confidence of members is vital. If member states were to feel their needs and preferences were not being reasonably accommodated within decision-making settings they could become highly disruptive members (as the UK has been at various times) and could even come to question the value of membership.

The EU, therefore, has always had to balance the need for decision-making efficiency with the potentially conflicting need of ensuring that all member states feel they have a fair involvement in decision-making processes. Accordingly, several 'inefficient' features of decision-making processes are deliberately 'built in' to reassure member states – especially eurosceptic-leaning and smaller member states – that their policy needs and preferences will be both heard and will not be, and indeed cannot be, easily ignored or by-passed. The most notable of these 'inefficient' features include the (over) large sizes of the College of Commissioners and the EP, and the continued use of decision-making by unanimity in the European Council for *virtually all* decisions and in the Council for *some important* decisions.

### **THE IMPACT OF ENLARGEMENTS ON DECISION-MAKING OUTCOMES**

So, over the years the EU has made various changes and adjustments to its decision-making structures and processes that, in large part, have been designed to enable it to adapt to enlargements. But it has also retained features of its original structures and processes – such as one Commissioner for each member state and the unanimity requirement in the Council for a few highly sensitive policy areas – that may be viewed as making for decision-making inefficiencies. What does the evidence indicate with regard to where, in practice, the balance lies between decision-making efficiency and inefficiency?

### *The Volume of Decisional Outputs*

It is easy to make a case that notwithstanding the 'improvements' that have been made to EU decision-making processes, EU decisional outputs are less than satisfactory. Too many policy areas can be portrayed as being not sufficiently developed, whilst too many of those that are developed can be presented as being based not on clear and strong policy decisions but rather on decisions that are rooted in compromises in which there is something for everyone.

However, the critique should not be overdone, for there clearly have been very considerable EU-level policy and legislative achievements over the years. To cite just a few of the EU's most important policy advances since the 1995 enlargement: EMU and the single currency have been established and operated; the internal market has continued to deepen on many fronts, with significant legislation having been passed in such key areas as the liberalisation of network industries, the opening-up of services, and protections for consumers; justice and home affairs policy has mushroomed, with many measures adopted – on matters including visas, management of external borders, and police and judicial cooperation – in pursuit of the goal of creating an 'area of freedom, security and justice'; and the foreign and external security policies have both greatly advanced, to the point that the EU now has launched over 30 civilian/police/military operations – something that was almost unimaginable until relatively recently.

This success of EU policy and legislative processes since the 1995 enlargement can be judged not only in qualitative terms but also in quantitative terms, with the EU having continued to produce a very considerable volume and a wide range of policy and legislative outputs each year. Focusing here just on legislative outputs, Hix (2008), König, Luertgert & Dannwolf (2006) and others have indicated that the volume of legislation in the early 2000s was lower than it was in the first half of the 1990s. But, this depends on what is counted, for the total number of 'basic' legislative acts (that is, excluding 'amending' acts) actually rose: from a total of 1500-2000 per year in the first half of the 1990s to 2500-3000 in the first half of the 2000s. If directives, which are usually the most important legislative acts, only are counted, there is indeed a decline, but it is only slight – from 40-60 in the first half of the 1990s to 35-45 in the first half of the 2000s (EUR-Lex 1990-2005). So, the figures show no sign of the 1995 EFTAn enlargement having greatly diminished the EU's decision-making capacity.

The EUR-Lex figures for the years immediately after the 2004 enlargement show the total number of basic acts per year falling back to between 1500-2200, but the number of directives held steady – albeit within a wider band of between 16 (2007) to 76 (2009). A number of academic studies – usually using narrower tabulation criteria than EUR-Lex and employing variable measuring techniques – have also shown no significant reduction in the total number of acts being adopted in the early years following the 2004 enlargement (see, for example Best and Settembri 2008a; Hagemann and De Clerk-Sachsse 2007). Taking figures compiled by Best and Settembri (2008b), comparing two twelve month periods before and after the 2004 enlargement, a total of 479 acts were adopted under the Greek and Italian Presidencies in 2003 whilst 455 were adopted under the British and Austrian presidencies in the second half of 2005 and the first half of 2006. However, whilst Best and Settembri's figures indicate no significant decline in the total volume of EU acts, they do show a decline in the proportion that are legislative acts: from 56 per cent to 49 per cent, thus confirming the more widely-observed feature of EU policy and decision-making processes of a decline in the use of the Community method to make legislation and an increase in the use of other methods to produce non-legislative outputs.

So, the last two enlargement rounds have not resulted in a significant overall decline in the volume of EU legislative activity. Moreover, in so far as there has been a marginal decline in legislative outputs since the early 1990s, it is not accounted for by enlargements. Focusing on directives, a

number of – in practice overlapping – reasons can be identified for the decline. One is that the particular circumstances of the late 1980s and early 1990s, when the EU was very much in policy expansionist mode and required a very high volume of legislation – not least in regard to ‘completing the internal market’ – no longer apply. A second reason is that, as Hix (2008) has emphasised, the nature of the policy agenda has shifted in the direction of more contested and divisive issues. There used to be a broad consensus amongst policy actors about the principle of creating the internal market, but once the essential foundations of the market were largely in place and the political debate moved onto the extent to which and the ways in which the market should be social or economically liberal in character, consensus became less easy to find and decisions became harder to make. A third reason is that since the early 1990s it has become logistically more difficult for the Commission to bring forward legislative proposals. It must, for example, now produce impact assessments for any new legislation of significance and it must be able to justify new legislative proposals in terms of the principles of subsidiarity (EU actions must be more likely to advance policy goals than national actions) and proportionality (EU actions must not exceed what is necessary to achieve the objectives of the treaties). The working assumption has thus become that new EU-level legislative activity must be seen to be ‘fully justified’ – which, inevitably, has made the Commission more cautious about bringing forward legislative proposals. A fourth reason is that as the EU has moved into more difficult and sensitive policy areas – of both a socio-economic nature, such as Lisbon Strategy/Europe 2020-related policies, and of a non-economic nature, such as security-related policies – then so has much of its policy-making activity become focused on using non-legislative policy instruments. In such policy areas the member states often accept that there is a need for EU policy activity but are not necessarily persuaded that this need always take the form of enacting binding legislation.

A fifth reason, which had been ‘lurking’ for some time but that has been greatly boosted by the rising tide of euroscepticism that has accompanied the post 2008-economic and eurozone crises, is widely-felt concerns that the EU has not sufficiently prioritised the core policy challenges facing the Union. Such concerns have led to various initiatives over the years – initially under the general heading *Better Lawmaking* and more recently *Better Regulation* – which have included drives for more focused and more effective legislation, and also only for legislation that is absolutely necessary. This latter drive ‘took off’ in 2012 and has continued to date: only 11 new directives were passed in 2012 and only 14 in 2013 (EUR-Lex 2012 and 2013). The figure of 53 directives in 2014 might at first sight appear to indicate that the drive came to a halt, but 2014 was untypical as it included the last few months of the 2009-14 Parliament, which like previous outgoing Parliaments used its dying days to push through unfinished business. The drive was returned to after the 2014 EP elections, with the incoming Juncker Commission proposing in its 2015 Work Programme only 23 ‘new initiatives’, of which just fourteen were anticipated as being at least partly legislative in character (European Commission 2014, Annex I).

### *The Speed of Decisional Outputs*

EU policy processes are subject to great variations in terms of how quickly they proceed. Whereas at the national level a government with a working majority in the legislature can normally be confident of making reasonably rapid progress with a policy initiative, at the EU level no such assumption can be made – especially if the policy issue in question is controversial and/or is strongly contested.

Examples of very slow, and in some cases no, decision-making in seemingly important policy areas are not difficult to find. Corporate taxation policy is an example of the latter, with the Commission having first made the case for some harmonisation of corporate tax rates and shifting responsibility for corporate taxes from the national to the European level as long ago as the early 1960s – a decade

before the first enlargement. But, nothing much beyond the loose 1997 voluntary Tax Code and legislative instruments to deal with specific tax problems, such as double taxation, have been achieved. In consequence, the Commission's attention has increasingly turned more to the need for a common corporate tax base, but this idea has also met with stiff resistance from some member states.

An example of very slow decision-making is provided by the EP and Council regulation on The Registration, Evaluation, Authorisation and Restrictions of Chemicals (REACH). Proposed by the Commission in October 2003 – for the purpose of reducing health risks and protecting the environment through the required registration and authorisation over an eleven-year period of some 30,000 substances – the Regulation was not passed until December 2006, by which time its contents had been much diluted. The protraction of the policy process was occasioned by the complexity of the legislation (it was some 1,000 pages in length!) and by fierce disagreements in and between the Council and EP – that were partly fuelled by intense lobbying from environmental and business interests – about where the balance should lie between environmental protection on the one hand and competitiveness on the other.

However, slow though EU policy processes can be, they are not necessarily so. Several factors can make for a relatively speedy legislative process. The extent to which a proposal is or is not controversial is, of course, one factor. Another is the availability of QMV in the Council. And a third factor is the applicable legislative process, with measures that are subject to the one-stage consultation procedure naturally tending to proceed more quickly than those that are subject to the potentially three-stage ordinary procedure.

It was noted above that the 2004-07 enlargement has not in itself reduced the volume of policy outputs. The evidence in regards to whether it has reduced decision-making speeds is not wholly consistent. Two major research studies of the early post-enlargement years showed that decision-making speeds did slow, albeit only relatively marginally, as a result of the enlargement (König 2007; Hertz and Leuffen 2011), but two other studies detected no such decreases (Golub 2007; Best and Settembri 2008a and b). The explanation for the contrasting findings of the studies lies in a mixture of differences in the methodology used and differences also in the decisions being studied.

Yet, however one evaluates the empirical evidence, it is clear that, notwithstanding the increased transaction costs involved, the 2004-07 enlargement round has not *significantly* slowed the speed of EU decision-making. There appear to be three main reasons for this. The first reason is that policy actors from the 2004-07 member states rapidly adapted to the EU's prevailing decision-making norms and mores, and particularly to coalition dynamics. So, representatives from the new member states quickly came to recognise, as much as representatives from EU-15 states have long done, the importance of coalition formation and of not being isolated in the Council. The second reason is that the pre-2004 trends of increasingly using explicit and implicit QMV and settling matters as early as possible (notably by reaching agreements at first reading under the ordinary legislative procedure), both of which quicken decision-making, have continued. The third reason is that the enlargement round further stimulated the already developing movement away from the use of tight legislation towards the use of policy instruments that give more room for adjustments to suit local circumstances. This is most obviously the case with the increasing use of non-legislative instruments, but even where legislative instruments are used they are often now looser and more flexible in form than they formerly were. As such, they are more likely to be politically acceptable.

What then are decision-making speeds? Taking legislative proposals that are subject to the ordinary procedure, during the 2009-14 Parliament the average period from the Commission issuing a proposal to it being finally adopted was 19 months (European Parliament 2014: 10). Since the 19 months is an average, much legislation naturally passes at a faster speed. So, legislation that is

agreed at first reading – which now constitutes over 85 per cent of concluded ordinary procedures – averages 17 months (ibid). Best and Settembri (2008b) calculate that what they categorise as ‘major’ legislative acts take, on average, almost 900 days from the initial reference from the Commission to the Council and EP to adoption, while ‘ordinary’ acts take almost 400 days and ‘minor’ acts take just over 200 days. These timescales are longer than is common in national legislatures, but given the enormous diversity of interests and the large number of actors that are involved in EU decision-making processes they are not as protracted as perhaps might be anticipated. That said, the figures just given do not, of course, allow for acts that the Commission would like to have proposed but did not do so because it knew that they had no chance of attracting the required support.

## CONCLUSIONS

The EU has adjusted its decision-making arrangements over the years so as to ensure that as the number of member states has increased so has the sometimes predicted decision-making paralysis been avoided. In addition to formal changes that have been made to decision-making processes, attitudinal changes amongst decision-makers have also been important, with it having become increasingly recognised and accepted that – in an EU with now so many member states and so many areas of policy involvement – decision-making flexibility is vital if the EU is to be able to function in a reasonably efficient manner.

The combined effect of the changes has been to ensure that legislative processes have continued to be reasonably efficient, both in terms of the volume and speeds of outputs. Where the changes have impacted most has been on the organisational nature of the EU itself. This is most obviously seen with differentiation, which is both making the EU a more internally varied organisation and is altering what it means to be an EU member state. The increasing use of differentiation is usually presented by supporters of the European integration process as being regrettable because it loosens the nature of the EU, but it is also highly functional in that it enables integration to proceed.

Like most of the other changes to decision-making processes that have been noted in this article, differentiation has been introduced and developed in a pragmatic and adaptive way rather than being laid down at a distinct moment as part of an intended transformation of the EU system. But, the shifts in the nature of governance that the changes have brought about may certainly be thought of as amounting to a de facto transformation.

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