



Institute for  
European Studies  
*Vrije Universiteit Brussel*

# EU Enlargement: Lessons from, and Prospects for

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IES WORKING PAPER 3/2013



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ISSN Number: 2034-6697  
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## ABSTRACT

In 2009 the European Union (EU) reached a crucial moment in its history, in which the terms *Europe* and *crisis* became conjoined: the European sovereign-debt crisis, or Euro-crisis. Yet enlargement remains on the agenda, with the EU's next enlargement starting on 1<sup>st</sup> July 2013 with the accession of Croatia, Iceland and FYROM looking set to follow in the near future, and probably other Western Balkan states and possibly Turkey in the long term. Enlargement therefore will soon come back into focus. Focusing on climate and energy security policy, this working paper first reflects upon the impact of the 2004/2007 enlargement on the EU. A reflection on the EU's recent past with some of the lessons that can be learnt then follows, with a consideration that predictions of decision- and policy-making *gridlock* were not realised, that newer member states have proved influential, and that prospective member states cannot be expected to be passive nor impotent. The latter part of this paper evaluates the potential prospects and outcomes of these lessons with regard to future enlargement from within (Scotland and Catalonia), and without (Turkey), and the political factors which may dictate whether these possible enlargements are realised.

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## 1 Introduction: All Quiet on the (South) Eastern Front?

EMMANUEL DALLE MULLE, GERBEN WEDEKIND, INGE DEPOORTER, THOMAS SATTICH & TOMAS MALTBY

In 2009 the European Union (EU) reached a crucial moment in its history, in which the terms *Europe* and *crisis* became conjoined: the European sovereign-debt crisis, or Euro-crisis. All eyes since have been turned on the Eurozone, which saw a series of high-level summits and a number of emergency measures with the aim of saving the common currency. Another prominent feature of the history of the EU has been somewhat forgotten in the course of these dramatic events: the EU's 2004/2007 enlargement. Expectations were that this enlargement round would have a profound impact on the EU and was expected to be the starting point of its overall transformation. Yet during the first years of their membership, the newer EU Member States rather became a stabilising element in a troubled EU, being committed to the core of the European project, while aspiring to eventual inclusion in the Eurozone and Schengen Agreement. Given Croatia's accession in July 2013, and the membership aspirations of the Balkan countries and Turkey (and Iceland), from a Brussels perspective one could therefore ask: all quiet on the (South) Eastern front?

Public opinion in the 'old' Member States was critical towards enlargement of the EU. Whereas European and national policy-makers portrayed the prospects for the EU in a positive light, the general public in the old Member States had a much gloomier perception. Integration research was not unimpressed by these somewhat mixed feelings, yet it reflected the ambiguous perception of the enlargement in a somewhat delayed fashion: many scholars at first regarded the enlargement as a historical turning point for European integration and expected that the expansion would change Europe greatly. The only question seemed to be in which way enlargement would impact the EU (Grabbe, 2004)? Various negative consequences were considered to be the likely result of the enlargement: expectations of a *blockade* or *gridlock* of policy- and decision-making processes were widespread (Wallace, 2007) as well as concerns regarding a potential *race to the bottom* in several policy fields (Kvist, 2004), including the environment, consumer protection, etc. Only a few scholars did not share these concerns (Wyplosz, 2005).

Since 2004, assessment of the enlargement surmised that many initial fears were unrealised, concluding that it was a *business as usual-scenario* (Christiansen, Best and Settembri, 2008) became mainstream (Sedelmeier and Young, 2006). In view of the plethora of misgivings around 2004 this change is intriguing; if valid, it would undermine the widespread assumption that the *Eastern* countries still differ from their *West-European* counterparts, and many of the earlier concerns were based on a perception of the new EU Member States *en bloc*. With Hungary, Cyprus and Slovenia heading towards the centre of Europe's current political and economic crisis, this judgment may have to be revised (again). Secondly, since many scholars and others (e.g. Von Weizsäcker, Dehaene and Simon, 1999; von Carlowitz, 2001) urged for institutional reform, it undermines the assumption that the EU institutional structure and decision-making process is not able to function efficiently with more Member States.

Hence, Political Science seems to reflect the mixed feelings present in the public debates regarding the EU-enlargement. Yet, the course of the scholarly debate on the prospects and dangers of the enlargement suggests that the pendulum of Political Science mainstream thinking simply swung from one extreme to the other - from *blockade/race to the bottom* to *business as usual*. It is therefore very likely that the actual outcomes of the enlargement are to be found between the two poles of this debate, in the grey area of daily European-level decision-making. This paper reflects upon the impact on, and lessons from, EU enlargement on climate policy and energy security policy, and evaluates the potential prospects and outcomes of future enlargement(s). This article presents a few cases as lessons from the 2004/2007 EU enlargement alongside articles which reflect upon prospects for future enlargement(s).



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## 2 Still United in Diversity? The Impact of the EU's 2004/2007 Enlargement on Policy-making: The Case of European Climate Policy. From Politics to Policy

THOMAS SATTICH

### 2.1. All quiet on the (South-) Eastern front?

The following sections briefly outline the preliminary results of (ongoing) research work which has been conducted in the context of a doctoral thesis at the Research Centre for East European Studies at the University of Bremen and the Institute for European Studies at the Vrije Universiteit Brussel. The research work aims at a better understanding of the consequences of the EU's last two enlargement rounds on the policy-making process at the European level. It is centred around the question, how the political system of the EU reacted to the impact of the new Member States. In terms of the EU's self chosen slogan *United in Diversity* (European Union), the research work asks, in which direction the EU gravitated after the enlargement was accomplished: Towards more unity or more diversity?

In order to shed some light on this question, the following sections evolve around the hypothesis that the accession of the new Member States to the EU resulted in a shift of established policy-making procedures (or *patterns*). This approach follows the dominant assessment of Political Science around 2004 (Nugent 2004, 7), which underlined the *gridlock/blockade scenario* and the assumption of significant consequences for the EU and its policy output (see introduction). The later assessment of Political Science (Wallace, 2007: 5), namely the *business as usual scenario*, which was much less alarmist and noted a much less significant impact of the enlargement on EU policy-making, would have been equally well suited as a starting point; yet given the widespread assumption of (mostly) negative side effects for the EU resulting from the enlargement – namely a breakdown of the policy-making process, a race to the bottom with regard to high standards, and a historical turning point for the EU – it seems more relevant to start with the initial view.

At first sight, both scenarios – *gridlock/blockade* and *business as usual* – seem to be very distinct, yet they both share one expectation with regard to the EU Member States: similar behaviour of the entire group of countries after they acceded the EU. Whereas the *blockade scenario* assumes the formation of a bloc (to exert influence on the policy-making process), the *business as usual scenario* assumes just the opposite, the traceless absorption of the new group of countries in the given structures of European policy-making. The question therefore is, whether the accession of ten countries from Central and Eastern Europe plus Malta and Cyprus indeed added a new line of conflict to European *politics*, this time *New vs. Old* EU Member States, or not. According to the above-mentioned discussions in Political Science the existence of such a divide serves as a hypothesis to test. Given the enlargement indeed resulted in such a new *cleavage* in European policy-making, the subsequent questions are: 1) whether this divide has an impact on the EU's output?; and, 2) whether it affects European policy in a comparable manner in the various fields of EU policy-making? It is hypothesised that enlargement has had a considerable impact on the EU's policy output.

### 2.2. Theory, model and case study design

In order to design a research framework which allows the isolation and measurement of the variables, some theoretical groundwork is necessary. In this regard the study draws upon several theories which are widely used for the definition of European policy-making: 1) Multi-level Governance (Marks *et al.*, 1996; Börzel, 2008); 2) constructivist approaches (Risse, 2004); 3) neo-institutionalism (March and Olsen, 1998; Pierson, 2004); and, 4) the dimensionality of EU-level politics (Hix, 2008; Hooghe and Marks, 1999). In order to combine these different theories, Paul A. Sabatiers' Advocacy Coalition Framework (ACF) serves as model of the EU policy-making process (Sabatier, 1998; Sabatier and Weible,

2007). The basic concept of this model is the *Advocacy Coalition*, a loose, informal network of political actors from all levels of government (supranational, national, subnational) and society (lobby, consultancy, science, journalism, etc.) on an issue-specific policy field.

The formation and collective action of these coalitions is based on shared world views or political *beliefs* (Sabatier and Weible, 2007: 194-196), and on the desire to translate these into legislation (Sabatier and Weible, 2007: 194-196). According to this model, several advocacy coalitions – each based on a different set of political *beliefs* – compete with each other for influence on the policy-making result. Which coalitions prevail depends on personnel strength and the resources to dominate the policy field (Sabatier and Weible, 2007: 196). According to this model policy-making and its output is very stable over time, as the different policy subsystems (e.g. clean air policy) normally feature one coalition which reflects the *zeitgeist* and therefore is able to dominate the policy output. Change therefore is measured in decades (Sabatier and Weible, 2007: 198-199). Only external shocks may cause quicker changes. With regard to the high quantity of the newcomers, the enlargement may have had enough weight to trigger quick change, by altering the existing balance between the advocacy coalitions on a given policy field. Following the *blockade/business as usual* framework, the enlargement could have resulted in a whole spectrum of consequences for the policy-making process: at one possible extreme the newcomers in the policy-making process formed their own advocacy coalition(s), on the other extreme they merge into given structures.

### 2.3. The case of climate policy: renewable energy and emissions trading

In order to allow broad generalisation, case selection faces several premises: 1) the selected case has to be representative for a larger number of cases; 2) it has to fit with the theoretical framework; 3) the chosen model of the policy process (Sabatier, 1998); and, 4) the case study design. In the context of this study, only supranational, highly Europeanised policy fields meet the premises of the set up, notably such with regulative measures negotiated in a deliberative manner. Moreover, the selected cases should be based on earlier cases before the enlargement in order to guarantee that the new actors from the new Member States meet a policy subsystem, which has already been in place. Climate policy is well suited in all the above-mentioned respects and therefore used as a backdrop of the study. In order to isolate and measure the impact of the newcomers on EU policy-making, two separate examples for EU climate policy are analysed in parallel: subcase A) EU policy on greenhouse gas emission reductions and subcase B) the promotion of renewable energies. The study aims to assess the integration of the actors from the new EU Member States into the policy-making process for both subcases: the negotiations of A) Directive 2009/28/EC on the promotion of the use of renewable energy; and, B) Directive 2009/29/EC to improve and extend the greenhouse gas emission allowance trading scheme.

A) Emissions Trading System (ETS): the hub of the discussions on the reduction of CO<sub>2</sub> emissions was the *national vs. supranational* dimension. Since support for a market-based policy instrument was widespread already before the enlargement, the policy-making process resulted in a revision of the ETS. Yet, whereas the predecessor Directive 2003/87/EC established a decentralised policy instrument which left Member States much leeway for the allocation of emission allowances, the revision 2009/29/EC resulted in a centralised, pan-European scheme with harmonised rules, which has been called a governance *u-turn* with regard to the concept of hierarchy as a mode of governance.

B) Renewable energies (RES): the hub of the discussions on the promotion of renewable energies was of a related, but slightly different nature: despite strong initiatives to harmonise the promotion of renewables on the basis of tradable certificates, Directive 2009/28/EC stayed – as its predecessor 2001/77/EC – indifferent with regard to a particular instrument. Hence, no harmonisation took place. This result clearly contradicts the internal market paradigm of the EU and the trend to so called *new policy instruments*.

## 2.4. Case study methods: network and cluster analysis

Methodologically, the case study follows a mixed methods approach; the triangulation of network-, cluster- and content analysis as well as process tracing. This selection is based on three core elements of the Advocacy Coalition Framework: 1) the ACF presumes the cooperation of actors in the policy-making process; network analysis is applied in order to visualise these interactions; 2) the ACF implies close ideological ties between the cooperating actors as well as common policy ideas; based on a set of categories, cluster analysis should identify such groups; 3) the ACF furthermore assumes that successful policy-making is the translation of the policy ideas of individual groups into policy output. Using the same set of categories as for the cluster analysis, this time to analyse the policy output, should allow deductions which group of actors dominated the policy-making process and was able to translate its policy ideas into European legislation. As a concluding step, process tracing is applied in order to close the causal chain between hypotheses (changed Advocacy Coalitions, changed policy) with the policy output (Directives 2009/29/EC and 2009/28/EC).

Since the Advocacy Coalition Framework underlines the importance of the micro level of policy-making and the role of the individual actor's behaviour for the policy output, network and cluster analysis constitute the core of the study's empirical part. Their application serves two purposes: 1) the identification of existing Advocacy Coalitions; and, 2) the role of the actors from the new EU Member States within them. Since the ACF suggests the involvement of a large variety of actors (politics, lobby groups, civil society, etc.), and hardly differentiates between the relevance of the individual stakeholder for the policy result, data collection has to be extensive.

## 2.5. Data collection

Most of the data is qualitative and is to be quantified for the analysis with statistics programmes: whereas the network affiliations are collected as binary and undirected data (contact = 1, non-contact/no data = 0), the policy ideas of the single actors are registered as metric data which reflects the positions taken by the individual actors regarding a defined system of categories (*compliance with a category* = 0, *indifference/no data* = 1, *non-compliance* = 2). The categories thereby are based on EU typical dimensions of policy-making: 1) the *national-supranational*; and, 2) the *regulative dimension* of European policy-making. For each of the two cases 8 (2009/28/EC), respectively 7 (2009/29/EC) categories are designed to attribute the individual actors on these dimensions. The attribution procedure thereby follows Sabatier's (1993; 1998; 2007) political *belief systems* and scientific assessment with regard to the discussions on the European ETS and the promotion of renewable energies. The result is several data matrices comprising the quantified data on network affiliations (subcase A: 237 actors; B: 157 actors) and policy ideas (subcase A: 161 actors; B: 123 actors). The two directives 2009/29/EC and 2009/28/EC provide the data for the content analysis, whereas media coverage provides the data for process tracing.

## 2.6. Data analysis

The computer programme Gephi is utilised to calculate and visualise the networks. A mathematical algorithm simulates repulsion and attraction forces between *nodes* (= actors) in the network (0 = repulsion, *like two magnetic fields*; 1 = attraction, *nodes/actors linked by a spring*). The result is an overview over the network and densely interlinked regions ready for further analysis. One important aspect is the detection of *communities* within the network, which is based on the ability of Gephi to calculate path distances. These communities are taken as one of two indicators for the presence of an advocacy coalition. Based on the number of affiliations with other actors, Gephi furthermore is used to visualise *central actors* with an important position in the overall network. With regard to the actors from the new EU Member States the methods allow detailed insight in their network affiliations, their distribution and overall strength in the network as well as their presence (and absence) in the different *communities*. The computer programme moreover allows for a filtering of the results, and thus to

determine, whether the actors from the new EU Member States played a role among the group of the most central stakeholders.

The statistics programme XLSTAT is used to calculate and visualise clusters of actors with common policy ideas according to their placement in the system of categories. Using Ward's minimum variance method for a hierarchical agglomerative clustering (Euclidian distance) the results show a dendrogram which visualises the various clusters. The individual clusters thereby are the second indicator for the presence of an advocacy coalition. Advocacy coalitions thus are expected, where *communities* in the network and *cluster* overlap, that is to say, when the same actors are found in community and cluster.

## 2.7. Results

The results at hand differ very much for the two cases: whereas the actors from the new EU Member States did form an advocacy coalition in the case of the ETS (which also includes a number of actors from the old EU Member States), this does not hold true for RES policy; here the newcomers to the policy field played a negligible role. This difference is striking, since the new EU Member States have been present in both negotiations according to their demographic weight<sup>1</sup> in the EU, that is to say, they started negotiations from equal positions. However, only in the ETS case did the results of network and cluster analysis overlap, allowing the inference that there was the presence of an advocacy coalition, driven by actors from the new EU Member States. With regard to the secondary aim of the research work, to determine what impact the enlargement had on the policy-making output, the results also differ: consistent with the premises of the Advocacy Coalition Framework there is no measurable impact on Directive 2009/28/EC on renewable energy, yet the EU-12 were able to leave their mark on Directive 2009/29/EC on the ETS.

At this stage one can extrapolate some preliminary conclusions: the enlargement had an effect on European politics as well as on European policy. In this regard it seems that the EU gravitated towards more diversity. Yet given the case study selection, which singled out two closely related and comparable examples of European politics/policy, the effect is not evenly distributed over the different policy fields. Further research is required to explain this disparity, yet with regard to the results at hand it can be assumed that the impact of the enlargement is highly specific on the different policy fields. For detailed results of the study please see <http://newrospheres.wordpress.com/>.

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<sup>1</sup> The "EU-12" account for 20 per cent of EU's population, their weight in the policy-making process should be accordingly.

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### **3 Enlargement and EU Policy-making: How Newer Member States can be, and are, Influential as Agenda-Setters and Steerers in EU Energy Policy**

TOMAS MALTBY

#### **3.1. Explaining Member State influence on EU policy-making: agenda-setting and Europeanisation uploading: How influence is achieved**

Early conceptions of Europeanisation tended to focus less on the opportunities to shape EU policy that are conferred upon new members, and more on the impact of the EU on domestic politics, policy and polity (Goetz and Hix, 2000; Buller and Gamble, 2002). Such a conception assumes that 'the imperatives, logic and norms of the EU become intrinsically absorbed into domestic policy, to the extent that the distinction between European and domestic policy requirements progressively ceases to exist' (Featherstone, 1998: 24). However, as highlighted by Radaelli (2004: 190) a top down approach can be problematic when restricted solely to a 'logic in which the only aim is to find out the domestic effects of independent variables defined at the EU level'. This necessarily restricts scope to adaptation to, and implementation of, EU policy. Bulmer and Lequesne (2002) commented that, '[t]he question of how successful a Member State is in promoting or 'uploading' its policy preferences is one of the most relatively under-researched and under-theorised in the literature on EU governance'.

This article conceives of EU agenda setting and policy-making process as a holistic, bi-directional process, which takes account of the 'second dimension' of Europeanisation, whereby Member States also seek to 'externalise' their national foreign policy positions at the EU level, success of which results in 'Europeanised' policy' (Tsardanidis and Stavridis, 2005: 221-222; also Börzel, 2002). Once full membership is conferred upon a state, opportunities are available to shape EU policy through uploading, or projecting preferences, whilst simultaneously being shaped by EU-level pressures. The relationship between structure and agency (and in this context between EU institutions and EU Member State governments) conceived here is one that is mutually constitutive; accounting for the potential reflexivity of the process. This framework allows for consideration of the strategic behaviour of (newer) Member State actors, within the constraints set by EU membership.

This research utilises a framework for evaluating both when, and how, EU Member States can influence policy-making in the EU. Princen (2011: 930-931) pinpoints two challenges for agenda-setters in the EU: 1) building credibility through capacity building and deriving authority from this; and, 2) by gaining attention through mobilising supporters and arousing interest (intensity and continuity of interest). Similarly, Copsy and Pamorksa (2010: 309) assert that the influence capacity of Member States depends on relatively fixed political power (size of a state's population and its economic weight), but also on 'variable' factors: 'the intensity of its policy preference, its skill at coalition-building, its administrative capacity, its persuasive advocacy, the receptiveness of other Member States and its domestic political strength'. Also relevant is Kingdon's work on (successful) policy entrepreneurs, which posited three necessary criteria: 1) generating well-developed proposals supported by sustained advocacy; 2) consensus- and coalition-building with other Member State and EU institutions; 3) taking advantage of policy windows, which also requires policy coordination and administrative capacity (Kingdon, 2003: 204).

Uploading is then linked to five factors, which comprise the hypotheses tested in this deductive research: motivation, expertise, coalition-building, learning how to act in the EU policy-making environment and autonomy to act. The latter relates to energy (in)dependence and diversification opportunities and trade relations with, in this case, Russia.

Europeanisation is conceptualised not as internalisation of rules and norms of behaviour, but more as a compliance based on strategic calculation on the part of relevant Member State actors both in Brussels and national capitals. This is assumed to occur through the learning of appropriate norms, rules and strategies. Europeanisation then leads to national decision-makers making decisions on a strategically calculated basis; altering behaviour and strategies to take account of the context in which they are made, and the accepted norms of appropriateness within environments, as Ladrech (1994: 17) commented, 'an incremental process reorienting the direction and shape of politics to the degree that EC political and economic dynamics become part of the organisational logic of national politics and policy-making'. It is hypothesised that 'actor self-interest effectively 'maps on' to 'appropriate' behaviour', and varies over time and depending on the issue (Goldmann, 2005: 43), rather than there being a clearly delineated distinction between the logics of appropriateness and consequentiality (March and Olsen, 1998). It is considered that strategies employed alter over time, but not necessarily values. Whilst the latter shift posited by Sociological Institutional accounts, a transformation of values and identity effected by Europeanisation, is not ruled out, it is largely precluded from this analysis due to the difficulty of discerning between the two by the methodology employed here, the examination of sources through triangulating explicit statements in interviews<sup>2</sup>, policy documents and the interpretation of secondary sources.

### 3.2. Agenda and policy-making influence in energy policy; hypotheses

Since the Treaty establishing the European Coal and Steel Community, the structure (EU institutions, rules, decision-making procedures, norms and informal 'rules of the game') and agents (Member State actors) have been co-constituted. Even at the level of high politics membership constrains autonomy by ensuring that strategic action of Member State actors necessarily occurs within and is orientated towards the context of EU membership, and at the same time impacts and affects the institutions (and other actors) in which the interaction occurs (Hay, 2002: 127). The conception of Europeanisation employed here is one which conceives of agents in line with Jessop's strategic relational approach, their 'strategically calculating structural orientation' occurs within 'structurally inscribed strategic selectivity' (2001). Rules and informal norms can be contextually dependent. The options of strategic actors are dependent upon a reflection on what actions are considered to be appropriate in a particular context.

Here it is the extent to which, since their 2004 and 2007 enlargements, two newer Member States (Poland and Bulgaria) have attempted to, and succeeded in, shaping energy policy which is evaluated – selected as an example of a policy area that has been high on the EU's agenda in recent years, and has led to considerable decision, policy and legislative outputs. In doing so through a bi-directional holistic Europeanisation lens, the research allows for and tests (strategic), and norm advocacy and leadership (Björkdahl, 2008). It also considers the role of intersubjective understandings of energy security, how these evolve, and how such perceptions can be affected by actors and events.

How newer, non-large, Member States can influence policy- and decision-making in the EU:

- Utilising regional and strategic alliance-building;
- Diplomatic skill and learning over time of the 'rules of the game' (intensity of interest / government prioritisation);
- Relations with Russia as this factor can act to constrain or incentivise / an active role in energy policy-making, depending on extent of energy dependence and broader political and economic relations;
- Authority derived from demonstrable expertise, related to administrative capacity;

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<sup>2</sup> Interviews conducted in Brussels, Warsaw and Sofia, with officials from the Commission, national Ministries, energy attachés in Permanent Representatives, national energy companies, academics, journalists and think tanks between 2010 and 2013.



- Windows of opportunity for policy developments (the impact of supply disruptions).

### **3.3. Poland as a newer member state agenda-setter: Assertive, and becoming effective.**

Polish influence has been significant. Successive governments have focused on energy policy and EU-Russia relations. Since accession, Poland's capacity to exert influence has increased, determined by diplomatic learning resulting in a more consensus style of negotiating, and the Polish government has increasingly adopted appropriate norms, rules and strategies for the uploading of national preferences. The credibility of Polish government energy policy proposals has been derived increasingly from demonstrable expertise, and increased administrative capacity and a move towards a more 'results oriented not procedure orientated' civil service culture. Through persuasive advocacy and improved alliance-building (within the Visegrád Group) Polish governments have capitalised on a policy window created by gas supply disruptions, that in turn affected Member States receptiveness to Polish preferences.

Poland then had medium initial impact, then quite substantial within a few years of accession. This was achieved through concentrating resources and diplomatic energy on the issue, appealing to norms of 'solidarity', achieving EU recognition of importance of regions in the Single Market, and achieving a 'spirit of solidarity' in energy relations in the Lisbon Treaty. The Visegrád regional grouping has been useful for example immediately prior to Council summits, as have bilateral coordination with Member States such as Lithuania, and trilateral with France and Germany. In Poland, Russia has had a far lesser constraining influence on policy-making, but has provided a focus of energy and foreign policy efforts of the Polish government with regard to participating in EU policy- and decision-making. The history of conflict with Russia and recent supply disruptions have played into the Polish government's objectives.

Capitalising on the context of two gas supply disruptions, the repeated appeal by Poland for energy 'solidarity' mechanisms in regional groupings and in Council and Commission interactions contributed to the inclusion of the energy chapter and 'spirit of solidarity' in energy security reference in the Lisbon Treaty of June 2007, and subsequent EU policy that has legislated for a limited communitarisation of energy policy.

### **3.4. Bulgaria: Passive, but becoming involved.**

Political will to increase energy security in Bulgaria appeared to be lacking until 2009, and since then characteristics of Bulgarian energy policy-making -weak administrative capacity, weak regional coordination, and the influence of Russia- have been obstacles to stated government policy of re-orientating away from dependence upon Russian energy interests and towards a convergence with EU energy security objectives.

From 2009, a qualified shift of governmental perceptions of the energy security situation (with a new coalition government), along with the pressures of EU membership led to a rhetorical focus on diversification and the internal energy market. The disruptions also contributed to a stronger EU energy policy and legislative response, greater (though far from great) coherence and competence for the EU as an energy actor (Maltby, 2013). As a consequence the EU is increasingly considered an alternative, or supplementary, energy security guarantor, and EU accession and interaction between national and EU level actors has begun to affect strategic calculations on realising national preferences. Yet the limits of EU pressure were exposed by limited Bulgarian implementation of infrastructure objectives or timely transposition of EU legislation until a change of government in 2009, with a significant shift not apparent until 2012.

The Europeanisation of energy security policy in Bulgaria, and autonomy of the Bulgarian government to act, has been inhibited by the historically derived economic and political

interests related to Bulgarian-Russian trade and energy imports. Preferences regarding how to ensure national and energy security in Bulgaria have altered, but weak administrative capacity has both undermined the capacity to transpose EU legislation, and to develop and implement coherent energy policy that matches Europeanised government objectives. There has been a distinct lack of focus on the regional level, though the recent initiation of interconnection construction with neighbouring countries demonstrates an improvement here. What remains is a lack of resources or inclination to be involved at the EU level. The weakness of administrative capacity in Bulgaria has made independent policy-making difficult, with strong influence from lobby groups. It has also limited the 'energy' expended on coordinating policy responses and promoting the Bulgarian government position (where known).

Overall Bulgaria has been a passive EU energy policy actor, with very limited impact, which is increasing marginally, but the first 4-5 years of membership were characterised by inertia, and unimplemented objectives.

### 3.5. Conclusions

Figure 2) which strategies have Bulgaria and Poland used to influence energy policy-making? Table of preliminary results:

Strategies employed	The success of Polish strategy	The success of Bulgarian strategy
Hypothesis 1 - Regional and strategic alliance building	Medium	Low
Hypothesis 2 - Diplomatic skill and learning over time of the 'rules of the game' (Intensity of interest / government prioritisation)	Medium (even High)	Low (improving)
Hypothesis 3 - Relations with Russia (constraining or enabling energy policy-making)	Low	High
Hypothesis 4 - Authority derived from demonstrable expertise related to administrative capacity	Medium to High	Low (Medium potential)
Hypothesis 5 - Windows of opportunity for policy developments (impact of supply disruptions)	Low to medium	High

*Source: Authors' empirical research (methodology noted on page 2).*

Pressure from the EU (Europeanisation) is mostly unilateral until the point at which accession occurs. After this newer Member States are also able to participate in and shape policy, though the capacity and inclination to do so varies between Member States and across policy areas. For both the newer Member States examined, data gathered through elite interviews and primary documentary evidence suggests it is clear that administrative capacity has proven to be an important factor in accounting for activism and policy/decision-making influence, though limitations can be overcome by focusing limited resources on certain resources, and this is particularly applicable to smaller Member States. Regional groupings can play a role in diplomatic learning, allowing an awareness of other Member State preferences, and the development of common positions and more convincing appeals for EU solidarity on energy issues. For Bulgaria at least, the role of Russia and Russian interests in Bulgarian economics and politics has constrained the development of an independent Bulgarian energy policy, one that would otherwise likely be more in line with that of the European Commission.

### 3.6. Implications for future enlargement

Whilst the influence of Croatia and Iceland is likely to be negligible (though Iceland could play a role in the formation of renewable energy policy - with its extensive geothermal resources), Turkey would be a major energy actor with a key role as a transit state for gas from Russia and the Caspian region that may facilitate strong regional group activity, and

significant administrative capacity derived from its large size (it would be one of the major EU Member States due to its population size).

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## 4 The Impact of 'Widening' on the *Substantive Lourdeur* of EU Decision-Making

INGE DEPOORTER

### 4.1. Examining the impact of the EU enlargement on the quality of EU legislation

The purpose here is to examine the impact of the fifth EU enlargement on what Krislov, Ehlerman and Weiler (1986: 34) call the *substantive lourdeur* of EU decision-making. The *substantive lourdeur* has a negative impact on the quality of legislation. This concept was used to describe the decisional malaise after the Luxembourg Compromise (1966). However, it is still relevant in the context of EU enlargement because sociological theories on group size (e.g. Simmel, 1902) indicate that an increase of the group affects the behaviour of the group, and, the outcome of what the group produces.

The conclusions of the research on the effects of the group size on group behaviour and functioning are very uniform: the number of individual members in the group affects the functioning and performance of the group. Small groups appear to be more efficient and the members of small groups are more satisfied about their performance than the members of the larger groups (Hackman and Vidmar, 1970: 43; Hare, 1952: 261 and Olson, 1965). Larger groups have to deal more regularly with coordination problems, conflicts among the members and they need more time to finalise their assigned task(s) (Hackman and Vidmar, 1970: 49; Hare, 1952: 267 and Devine a.o., 2001: 670). In other words, an increase in the number of members of a group has an impact on the efficiency and quality of the group performance. Applying this to the recent EU enlargement, the accession of new Member States would be expected to have a negative impact on the quality of the adopted legislation.

Good legislation means that each legislative decision has to meet certain standards in order to accomplish its functions. As such, the standards or requirements good legislation has to meet, differs with the functions we assign to legislation. This article examines the ability to produce clear and simple legislation, following the recent EU enlargement.

Therefore, a number of technical standards and a number of other standards that are also crucial to produce clear and simple legislation are selected (see table 1).<sup>3</sup>

**Table 1: Quality of EU legislation standards**

Quality category	Quality requirement
1. Technical quality	a. length/volume of the adopted decision b. length of title c. title reflects content of adopted decision d. (comprehensible) external reference e. no use of non-legal statements
2. Implementation and transposition	a. clear transposition deadlines for Directives
3. Consultation and due procedure	a. evidence based and duly motivated decisions
4. Subsidiarity and proportionality	a. necessity of Community action b. informed and evidence-based decision-making

*Source: Voermans, 2009 and European Communities, 2003*

<sup>3</sup> These standards are selected out of the literature on quality of legislation (e.g. Voermans, 2009 and Xanthaki, 2001) and EU documents on drafting good legislation (e.g. European Communities, 2003).

To examine the quality of legislation, a content-analysis should be conducted. Both a quantitative and qualitative content analysis will be conducted because using both research methods makes the research more complete (Holsti, 1969: 12). The main purpose in using this research method is to examine trends and patterns in the material under investigation.

#### 4.2. Case study: Transport

The research of Hagemann and De Clerck-Sachsse (2007) showed that some policy areas were more affected by the accession of 10 new Member States than others in terms of the amount of adopted legislation. One of these policy areas is the transport sector. Therefore, and because transport was seen as an important element in the European integration process (Greaves, 2000: 3), the transport sector is examined. Since the research focuses on the recent EU enlargement, only the transport policy legislation adopted by the European Parliament and the Council of the EU in the period 1999-2011 that was still in force at the time of the research (1/03/2012) is selected (see table 2).

**Table 2: Research material for the quantitative content analysis**

Procedure started		Adopted before 1/05/2004	Adopted after 1/05/2004
Before 1/05/2004	Regulations	17	4
	Directives	17	11
	Decisions	0	1
	Total	34 (35%)	16 (16%)
After 1/05/2004	Regulations		19
	Directives		27
	Decisions		2
	Total		48 (49%)

*Source: Eur-lex database, author's calculations*

For the qualitative content analysis only three Directives and three regulations were randomly selected across the three periods (see table 3).

**Table 3: Research material for the qualitative content analysis**

<b>Period 1</b>	Directive 2003/59/EC of 15 July 2003 on the initial qualification and periodic training of drivers of certain road vehicles for the carriage of goods or passengers, amending Council Regulation (EEC) No. 3820/85 and Council Directive 91/439/EEC and repealing Council Directive 76.914.EEC
	Regulation (EC) No. 847/2005 of 29 April 2004 on the negotiation and implementation of air service agreements between Member States and third countries
<b>Period 2</b>	Directive 2006/22/EC of 15 March 2006 on minimum conditions for the implementation of Council Regulation (EEC) No. 3820/85 and EEC No. 3821/85 concerning social legislation relating to road transport activities and repealing Council Directive 88/599/EEC
	Regulation (EC) No. 1370/2007 of 23 October 2007 on public passenger transport services by rail and road and repealing Council Regulations (EEC) Nos. 1191/69 and 1107/70
<b>Period 3</b>	Directive 2011/82/EU of 25 October 2011 facilitating the cross-border exchange of information on road safety related traffic offences
	Regulation (EC) No. 391/2009 of 23 April 2009 on common rules and standards for ship inspection and survey organisations

Period 1: decision-making procedure started before 1/05/2004, decision was adopted before 1/05/2004

Period 2: decision-making procedure started before 1/05/2004, decision was adopted after 1/05/2004

Period 3: decision-making procedure started after 1/05/2004, decision was adopted after 1/05/2004

The legislative texts were examined on 4 quality requirements (the codebook for this research can be found in annex A). Table 4 presents the average number for each of these quality requirements.

**Table 4: results of the quantitative content analysis**

<b>Average</b>		<b>Period 1</b>	<b>Period 2</b>	<b>Period 3</b>
<b>Number of pages decision</b>	Regulations	7	10	10
	Directives	7	5	7
	<b>Total</b>	<b>7</b>	<b>6</b>	<b>8</b>
<b>Number of pages annex</b>	Regulations	7	10	6
	Directives	7	30	17
	<b>Total</b>	<b>7</b>	<b>24</b>	<b>14</b>
<b>Number of pages total</b>	Regulations	14	20	15
	Directives	13	36	24
	<b>Total</b>	<b>14</b>	<b>30</b>	<b>22</b>
<b>Number of words</b>	Regulations	13	10	16
	Directives	14	11	11
	<b>Total</b>	<b>13</b>	<b>11</b>	<b>13</b>
<b>Number of external references</b>	Regulations	4	11	7
	Directives	6	9	9
	<b>Total</b>	<b>5</b>	<b>9</b>	<b>8</b>
<b>Number of precise ext. references</b>	Regulations	2	6	5
	Directives	3	5	6
	<b>Total</b>	<b>2</b>	<b>5</b>	<b>5</b>

*Source: Eur-lex database, author's calculations*

Period 1: decision-making procedure started before 1/05/2004, decision was adopted before 1/05/2004

Period 2: decision-making procedure started before 1/05/2004, decision was adopted after 1/05/2004

Period 3: decision-making procedure started after 1/05/2004, decision was adopted after 1/05/2004

The average number of pages of the decision does not show a trend in the quality of legislation. However, the average number of pages of the annexes does tell something. Comparing period 1 and period 3, table 4 shows that the average number of pages of the annexes doubled. The research showed that this is mainly caused by an increase in the number of pages of the annexes to the Directives, not to the regulations.<sup>4</sup>

<sup>4</sup> The results of period 2 needs to be treated carefully because only 16 EU decision could be included in the research material and there is one Directive with 252 pages of annexes.

As a consequence, the same trend is seen for the average number of pages of the decision and annexes taken together (total).

This should indicate that the decision-makers add more technical aspects to an EU legislative text than before EU enlargement because the annexes should not contain new rights and obligations.

Table 4 indicates that the average number of words of the title is more or less constant in the period 1999-2011.

Table 4 shows that the average number of external references to other binding EU acts did increase over the years. According to the literature on quality of legislation (Voermans, 2009; Xanthaki, 2001) this means that the EU acts adopted after the enlargement are less clear and less readable than the EU acts adopted before the enlargement. The same trend is noticeable for the average number of comprehensible<sup>5</sup> external references. This means that far from all external references in an EU act are comprehensible, but there is no trend that the decision-makers add more references that are not comprehensible. The average number of comprehensible external references increased because more external references are included in the EU acts.

The analysis whether or not the Directives included in the research have clear transposition deadlines showed that only a few had no clear transposition deadline or that they exceeded two years.

The qualitative content analysis of the 6 EU legislative texts (see table 3) detected no major problems regarding the title of the EU decision reflecting the content of the legislative text. The subject matter and for whom the decision is of interest is clear.

Non-legal statements were not detected in the enacting terms. In the recitals of each legislative texts under examination, at least one non-legal statement was found. Some of them were expressed as desires. Others can be seen as political statements. However, the analysis did not show that the decision-makers include more non-legal statements in (the recitals of) the adopted legislation after the 2004 EU enlargement.

All of the examined legislative texts contain (a number of) reasons for adopting the particular Directive or Regulation. In other words, the texts suggest that the decision-makers agreed on the necessity to adopt the decision. The analysis did not detect any shifts in the amount of reasons or in how motivated the adopted EU legislation is.

Lastly, in accordance with the quality requirement on subsidiarity and proportionality, each of the examined EU texts made a clear statement regarding the subsidiarity and proportionality principle and explained (briefly) why action is necessary on the level of the EU.

### **4.3. Conclusions and discussion**

The EU enlargement only has had an impact on a few quality requirements with the objective to produce clear and simple legislation. In other words, the 2004 EU enlargement did not cause major problems among the decision-makers that could affect the clarity and readability of the outcome of the decision-making process.

Another conclusion of this research is that there are still areas that need further examination to capture all possible areas that can be influenced by the widening process of the EU.

First, the research can be complemented with a content analysis on the quality of the legislation adopted in other policy areas. Second, this research could not provide the

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<sup>5</sup> i.e. references made to other (legal) texts with a clear mentioning of the topic of the other text. This makes it less necessary to examine the text to which the reference is made.

elements that explain why the enlarged Union does not produce notable worse legislation, in contrast with the hypothesis of the sociological theories on group size. Third, other requirements capturing other functions of good legislation could present a more thorough analysis of the impact of enlargement on the *substantive lourdeur* of EU decision-making.

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**Annex A - Coding Unit**

1. EU legislation in force (on 1/03/2012) and adopted in the period 1/01/1999-31/12/2011 and by the Eur-lex database filed under the Transport sector cover the research material.
2. Only the EU legislative texts adopted by the ordinary legislative procedure (before the Lisbon Treaty called the co-decision procedure) will be analysed.

**Coding Directory**

Variable	Name	Result	Explanation
1	# pages of decision	Number	i.e. the title, the recitals and the enacting terms
2	# pages of annexes	Number	
3	# pages of total	Number	i.e. variable 1 and 2
4	# words of the title	Number	Not the technical name (e.g. Directive 2003/59/EC) and not the reference(s) to which EU decision(s) are amended or repealed by the particular decision. Only the words that (should) cover the content/subject of the decision.
5	# external references	Number	Only in 'enacting terms'; only references to binding Community acts
6	# comprehensible external references	Number	Only in 'enacting terms'; only references to binding Community acts. According to guideline 16 of the Joint Practical Guideline (European Communities, 2003) for comprehensible references
7	Clear transposition deadline	Yes/no	Does not exceed 2 years (Inter Institutional Agreement on better-lawmaking of 2003)

## 5 Forecasting the Implications of Turkish EU-Accession for Council of Ministers' Decision-making

GERBEN WEDEKIND

### 5.1. Turkey: a contested EU candidate

Turkey's EU-accession bid continues to stir debate among scholars and decision-makers. The reason why Turkey's EU-membership bid is contested bluntly lies in the fact that the country is '[...] large, poor and Muslim. These three factors turn Turkey's accession to the EU into a major challenge, raising anxieties and resistance in many parts of Europe' (Independent Commission on Turkey, 2004: 23).

Already in 2002 then Bundestag member Mattias Wissman feared that Turkey's size would render the EU ungovernable:

'We have nothing against Turkey but we are of the opinion that the Union is at risk of breaking if one stretches it too far. When one makes it so big that it is no longer governable, can no longer be efficient. Turkey would soon be the largest country in the Union and would completely change the architecture of the EU' (Pahre and Ucuray, 2006: 3).

Few studies (e.g. Baldwin and Widgren; Wedekind, 2011) actually assess the implications of Turkish membership for decision-making practices in the EU. Since Turkey's significant population (and growth rates) could indeed alter EU decision-making in case of membership, it is however an aspect which should not be overlooked when assessing the country's membership bid.

In 2011, Turkey's population was 74 million, with an estimated annual growth rate of 1.2% (World Bank, 2013). If Turkey would enter the EU today, it would follow Germany as its largest member. However, since Turkey is a candidate 'whose accession could have substantial financial consequences', its accession can only be concluded after 2014, when the EU's next multi-annual programme enters into force. Conveniently ignoring increasing scepticism on Turkey's accession prospects and the slow pace of accession negotiations, it was expected that Turkey '[...] will join the EU in a decade or so [...]', thus around 2020 (BBC, 2010).

It can be expected that by 2020, the EU will have expanded its membership-base. Besides Croatia becoming the 28<sup>th</sup> EU Member State as of July 2013, Turkey, Iceland and Montenegro are currently in the process of negotiating membership to the Union, whereas Serbia, the Former Yugoslav Republic of Macedonia (FYROM), Albania, Bosnia-Herzegovina and Kosovo have submitted a membership request or might do so in the near future.

Besides an increase of the  $n$  beyond 28, the EU's demography will change. On the one hand, a large part of the 'old' EU members will experience the adverse effects of an ageing population, while for instance Turkey's populace will continue to grow during the coming years and by 2020 it is expected that Turkey will match Germany in terms of population.

Regarding decision-making processes, the 2009 Lisbon Treaty ascribes great importance to the number of Member States as well and their demographic size. Only when certain thresholds are met, can decision-making effectively take place in the Council of Ministers - the EU's main decision-making body.<sup>5</sup>

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<sup>5</sup> Lewis (2004: 149) states that 'The Council is very much at the centre of EU decision-making and plays a pivotal role in the making of European policy'. Although the Commission and the EP have alike functions, their respective powers '[...] are not comparable to those of the Council.'

In principle and as of 2014, proposals falling within exclusive competence areas - where Qualified Majority Voting (QMV) applies - can be adopted by the Council of Ministers, when:

- 1) at least 55% of the Member States votes in favour of the proposal, and;
- 2) these Member States comprise at least 65% of the EU's population (Treaty on European Union, 2010: 24).<sup>6</sup>

Logically, it follows that change in the number of Member States and demographic size will significantly influence decision-making dynamics and effectiveness.

## 5.2. Determinants of decision-making: effectiveness and power

Turkey's EU-membership can influence decision-making within the Council of Ministers in two ways. First, it can influence the 'effectiveness' of Council decision-making. 'Effectiveness' within the Council - or its capacity to act - is captured by 'passage probability', which is '[...] the likelihood that a random proposal would attract a winning coalition, assuming that all coalitions are equally likely' (Baldwin and Widgrén, 2005: 332).<sup>7</sup> Specifically, it is the number of all possible winning coalitions divided by the number of all possible coalitions' (Baldwin and Wyplosz, 2009: 123).<sup>8</sup> In the case of EU decision-making, it means that only those Council of Ministers' coalitions adhering to the Lisbon Treaty's provisions on QMV-voting would lead to a 'win'. Logically, it follows that changes in voting thresholds or in conditions relevant to the thresholds - such as Turkish EU-accession - can influence the EU's capacity to act.

Second, if the EU expands, its internal dynamics will most probably change. Baldwin and Widgrén (2005) regard these changes in voting dynamics primarily in terms of 'power' which is '[...] an actor's marginal contribution to the equilibrium outcome, i.e. how big the outcome shift would result from an actor's marginal preference shift' (Widgrén, 2008: 2). Power is measured through the Shapley-Shubik-Index (SSI) which gauges the likeliness that a nation 'finds itself in a position to 'break' a winning coalition on a randomly selected issue' (Baldwin and Widgrén, 2005: 332; Wedekind, 2011).

## 5.3. The influence of Turkish EU-membership on passage probability within the Council

In order to determine Turkey's potential impact on the Council's decision-making process, one should 'crystal gaze' the future composition of the EU. However, as exemplified by similar studies' erroneous findings (Baldwin and Widgrén, 2005; Wedekind, 2011), forecasting is prone to errors. By taking into account various possible scenarios however, the probability of incorrect forecasts decreases.

If Turkey becomes an EU Member, the Union will count more than 28 Member States.

Therefore, a number of different yet likely scenarios, or EU-compositions, can be identified:

<sup>6</sup> However, the TEU (2010: 322) indicates that the introduction of the Lisbon Treaty's voting thresholds can be postponed until 2017.

<sup>7</sup> In games where only 'yes' or 'no' decisions can be taken, the total amount of coalitions is  $2^n$ , where  $n$  is the number of actors participating in the vote (Ade, 2005: 6). Subsequently, index  $A$  is calculated by dividing the number of winning coalitions  $W$  by  $2^n$ . Thus passage probability is captured by the formula  $A = W/(2^n)$  (Holler and Owen, 2001: 300). Thus, in the case of the EU-27 the total number of coalitions is thus  $2^{27} = 134.217.728$ .

<sup>8</sup> This analysis uses Bräuninger and König's (2001) *Indices of Power 2.0* in order to calculate passage probability and power indices.

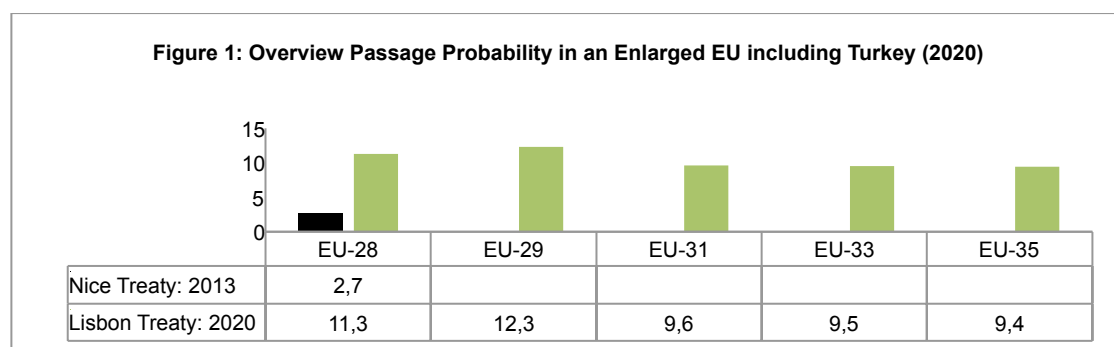
- **EU-29:** including Turkey as the only ‘new’ Member alongside the EU-28;
- **EU-31:** including the countries currently negotiating EU Membership, i.e. Turkey, Iceland and Montenegro;
- **EU-33:** including all Candidate Countries, i.e. Turkey, Iceland, Montenegro, FYROM, Serbia;
- **EU-35:** including all Accession Countries, i.e. Turkey, Iceland, Montenegro, FYROM, Serbia, Albania and Bosnia-Herzegovina.<sup>9</sup>

By contrasting these scenarios with similar ones although excluding Turkey (i.e. comparing a EU-29 with the EU-28, EU-31 versus EU-30; EU-33 with EU-32 and EU-35 with EU-34), one is subsequently able to find the intrinsic influence of Turkey on Council decision-making processes.

Figure 1 outlines the passage probability in an enlarged EU inclusive of Turkey in 2020. As a reference-point, the current decision-making efficiency is given (2.7%). Hence it appears that the replacement of the Nice Treaty’s triple majority scheme with the double majority scheme of the Lisbon Treaty would greatly increase decision-making efficiency (i.e. to 11.3%).<sup>10</sup>

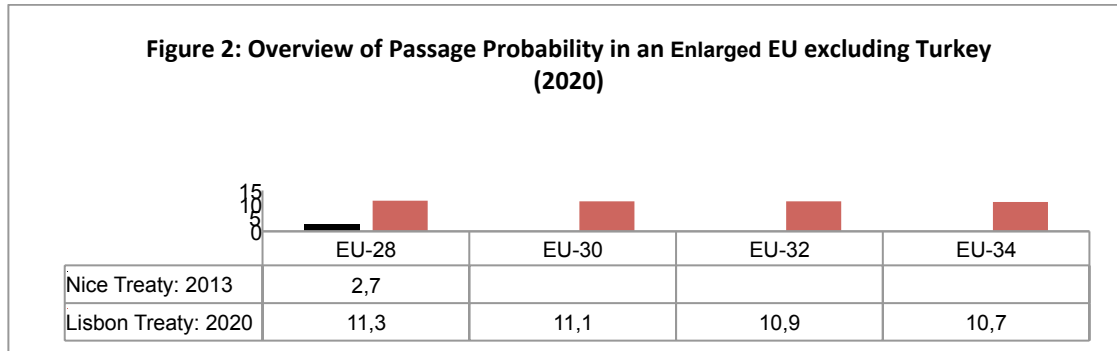
In an EU-29, passage probability would be 12.3%, thus marking a 1 percentage point increase from the EU-28. Subsequent scenarios however would see a slight decrease in effectiveness as passage probability would reduce to 9.6%, 9.5% and 9.4 for the respective EU-31, EU-33 and EU-35 scenarios.

When abovementioned figures are compared with the plots of Figure 2 – which depicts similar scenarios, yet excluding Turkey as an EU-member – it appears that Turkish EU-membership would generally lead to a marginal decrease in Council decision-making efficiency. Only if the EU-28 would expand with Turkey passage probability would slightly increase. In the remaining comparisons (i.e. EU-31 versus EU-30; EU-33/EU-32, and; EU-35/EU-34) Turkey’s EU-membership would decrease Council passage probability with respectively 1.5, 1.4 and 1.3 percentage points.



<sup>9</sup> In this study Kosovo is omitted because the United Nations (2011) - the principal source of this study’s demographic data - does not possess demographic predictions for this country.

<sup>10</sup> Although one needs to be careful as this Figure compares 2013 and 2020 data.

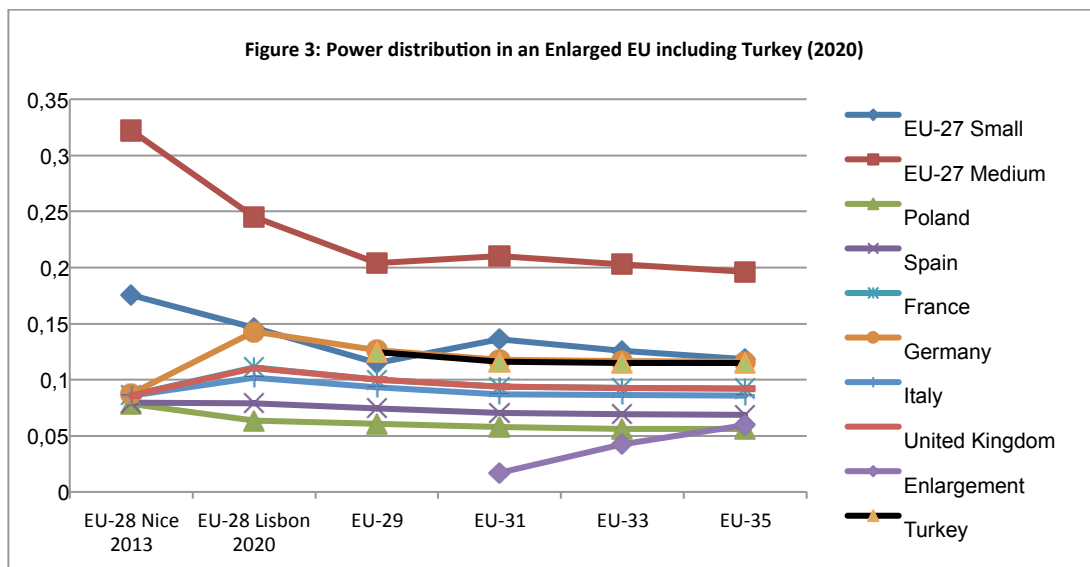


**5.4. The influence of Turkish EU-membership on the power distribution within the Council**

Generally, it appears that Turkish EU-membership has limited negative effects on the efficiency in an enlarged Council of Ministers. However, how would possible Turkish EU membership affect its power distribution?

Figure 3 and Figure 4 depict the power distribution within an enlarged EU - including and excluding Turkey. At a glance, both figures appear to be very similar. The Lisbon Treaty’s voting provisions greatly decrease the collective power of the small<sup>11</sup> and medium<sup>12</sup> EU Member States (i.e. -17.0% and -23.9%), whereas the largest Member States in contrast would see their power values surge (e.g. 63.6% for Germany). The medium EU-members collectively would remain the most powerful in the plotted enlargement scenarios whereas Germany would remain the most powerful Member State, closely followed by Turkey (in case of scenarios in Figure 3). Moreover, enlargement would generally result in decreasing power values: as the EU’s membership-base expands, power needs to be shared among more members thus logically leading to declining power values.

Figure 5 clearly shows the negative implications of Turkish EU-membership for other EU Member States’ power values. Each Member State - or grouping - would see its power decrease if Turkey would become a Member. However, the intensity of these implications varies across enlargement scenarios and differs among Member States.

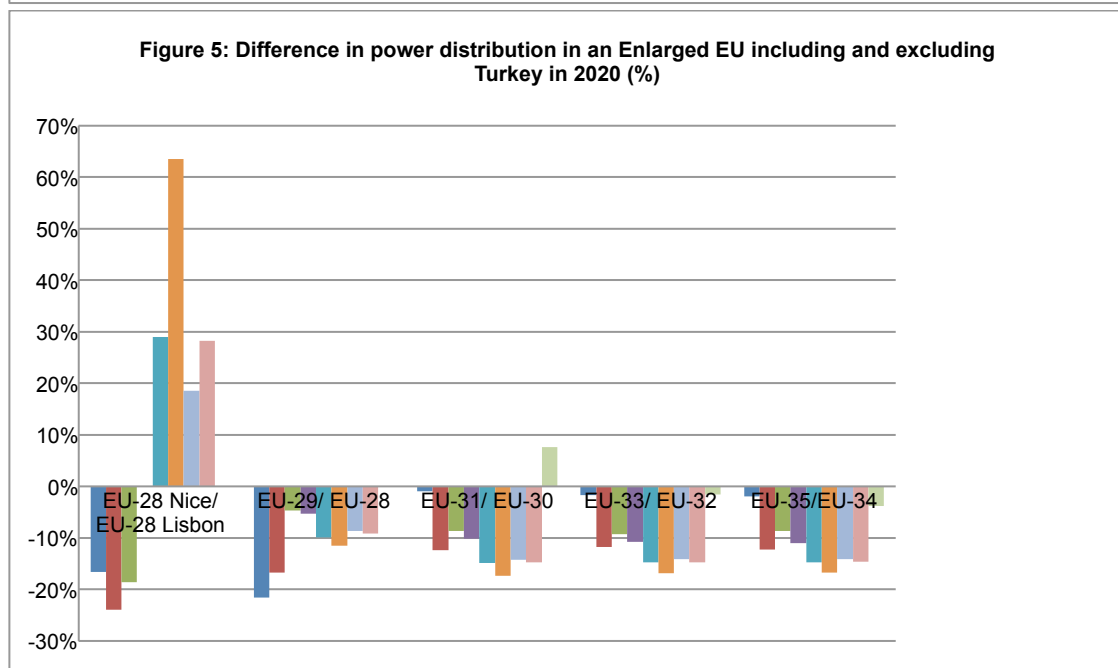
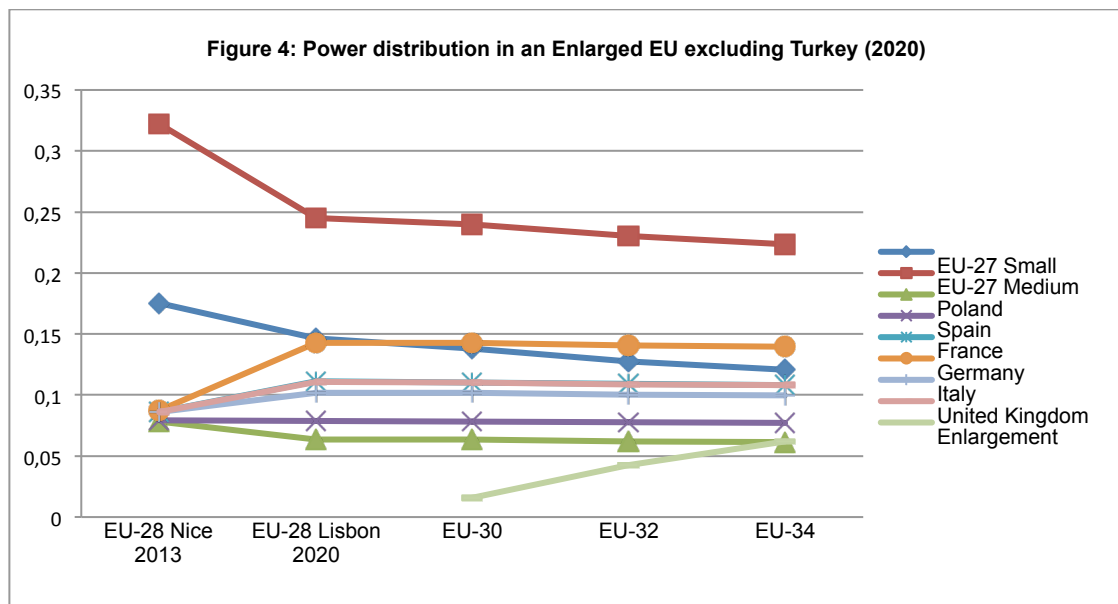


<sup>11</sup> i.e. EU Member States having less than 8 votes in the Council of Ministers: Croatia, Cyprus, Denmark, Estonia, Finland, Ireland, Latvia, Lithuania, Luxembourg, Malta and Slovakia and Slovenia.

<sup>12</sup> i.e. EU Member States having between 10 and 14 in the Council: Austria, Belgium, Bulgaria, Czech Republic, Greece, Hungary, Netherlands, Portugal, Romania and Sweden.

For instance, whereas small Member States would see their power decrease greatly if the EU-28 would expand with Turkey (-22%), this would not be the case for expansion to a EU-31 (-1.0%), EU-33 (-1.7%) and EU-35 (-2.0%). A somewhat similar trend is visible for the medium EU-Member States which would see their power decrease with respectively -16.7% (EU-29 versus 28), -12.4% (EU-31/30), -11.8% (EU-33/32) and 12.2% (EU-35/34) in case of Turkish EU-membership.

Overall, it appears that in EU-constellations exceeding 30 Members, the large Member States would endure greater power losses following Turkish Membership. If the EU-28 would expand with Turkey, Germany would lose 11.5% of its power, ranking it behind the small and medium Member States in terms of losses. However, if Turkey would join a EU-30, EU-32 or EU-34, Germany would endure the largest power losses, respectively, 17.3%, 16.9% and 16.7%. A similar pattern can be discerned for the other large Member States.



## 5.5. Conclusion

So will Turkey's EU-membership render the Union ungovernable? This analysis has shown that – at least quantitatively – Turkey's inclusion would not significantly decrease Council decision-making efficiency.

In this regard, possible Turkish EU-membership would only marginally influence Council decision-making effectiveness. Negative differences between scenarios including and excluding Turkey are limited and are increasingly so as the number of candidate countries entering the EU alongside Turkey grows. Instead, the analysis showed that changes in voting regimes (i.e. from the Nice Treaty's triple majority to double majority provisions of the Lisbon Treaty) appear to affect decision-making efficiency more profoundly than expansion of the EU's membership-base.

Turkish EU membership does however deeply impact the power distribution within the Council. In case of membership in 2020, Turkey would be the second largest EU member after Germany. All EU members would experience power losses as a result of Turkish membership, although the intensity would differ among Member States and enlargement scenarios. Small and medium-sized Member States would lose significant influence if the EU would expand to a EU-29 and EU-31. Large Member States then again would see their power decrease significantly if the EU would expand beyond 30 and with Turkey. In this case, Germany – although remaining the most powerful EU Member – would experience the most significant losses. This aspect could explain the resistance some of the Member States have towards Turkish EU-membership.

Obviously, this study is subjected to limitations as it ignores EU institutions other than the Council and disregards policy preferences. Moreover, the Council generally takes decisions by consensus instead of QMV (Hayes-Renshaw et al., 2006: 162-163). Moreover, the research uses the Shapley-Shubik Index which is not a flawless instrument (see Paterson, 2005). Nevertheless, this analysis shows that Turkish EU-accession is not a black and white case, something which should be noted by policy-makers and politicians when assessing its Turkish bid.

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## 6 Enlargement from Within? Secession and EU Membership

EMMANUEL DALLE MULLE

Recent events in Scotland and Catalonia have temporarily shifted the attention of the European public and policy-makers interested in the future membership of the EU from East to West. The success of secessionist parties in Scotland and Catalonia, along with their pledge to hold referenda on self-determination, has broached in the political arena the question of their status within the EU upon independence.

As seen in the previous sections, despite sceptical forecasts on the part of scholars and politicians, enlargement has not *per se* encumbered the EU policy-making process. New Member States have rather found their own way within existing networks or created their own ones and played a constructive role in Brussels. This suggests that the possible accession of Scotland and Catalonia to the EU as independent countries should not *a priori* have a negative impact on the workings of the Union, all the more so as the two regions have been within the Union for more than 20 years already.

This last section therefore focuses on rather different questions, that is, would an independent Scotland/Catalonia be automatically expelled from the Union or would it remain as a member? If the regions have to re-apply, what procedure will be followed? Answering to these questions is of the primary importance since the parties that are currently pushing for independence have based their own campaigns on the slogan "Independence in Europe", which takes for granted the regions' automatic membership of the EU upon independence. But is this true? The answer is likely to have an impact on the success of their bid for self-determination and, therefore, on the prospects for EU enlargement "from within" as well.

### 6.1. The Debate over Catalonia's and Scotland's EU Memberships

The cases for and against independence have been widely debated by the actors involved. In Scotland, the Scottish National Party (SNP) has been campaigning for independence in Europe since the late 1980s. Its major argument since has pointed to the absence of precise rules about secession within the Union, which would urge the Commission and the Council to flexibly accommodate similar situations within the existing treaties - as shown by the precedent of Greenland departure (Sillars, 1989: 29-34). The reasoning has been recently nuanced on account of the fact that Scottish citizens have been members of the EU and the EEC for 40 years. As the SNP suggests, depriving the Scots of their rights as European citizens as a result of their right to self-determination would contradict the EU's basic principles. Scotland would therefore renegotiate its position within the Union (Maddox, 2012a). Similar arguments have been used in Catalonia by *Convergència y Unió* (CiU) and *Esquerra Republicana de Catalunya* (ERC), the two parties leading the campaign for the independence referendum (Traynor, 2012; ERC, 2012). Yet, Artur Mas has framed the region's right to leave Spain on a wider reform of the EU into a federal state with Catalonia as a federated entity, which would obviously entail automatic membership (Mas, 2012).

While the arguments made by the parties involved have been quite similar, the reactions of the respective governments have been opposed. Despite arguing that Scotland should have to re-apply upon independence, and that the process would be long and uncertain (Maddox, 2012b; Thorp and Thompson, 2011; Secretary of State for Scotland, 2013), the United Kingdom (UK) government has granted the Scottish Parliament the powers to hold a referendum in 2014 and has never suggested it would veto a Scottish EU application. The Spanish government, on the other hand, has vocally and consistently denied the legality of any referendum (Moffet, 2012; Diez, 2012; El Periodico, 2012).

Finally, the European Commission has remained rather silent on the issue, and this is in line with its tendency to avoid stating 'its views on matters which, as things stand, are purely hypothetical' (European Commission, 2007). However, recent comments of some

EU representatives seem to confirm that secessionist regions will most likely have to re-apply, although there probably will be room for flexibility in choosing the precise procedure. According to some, for instance, Catalonia and Scotland could retain a kind of passive membership during the application process, thus minimising the disruption generated by secession (Fontanella-Khan *et al.*, 2012).

## 6.2. Some Legal Considerations

In assessing the arguments made by the SNP, CiU and ERC, the question whether Scotland's and Catalonia's independence would be cases of secession or something else needs to be answered. This entails two dimensions: the domestic and international.

Most elements suggest that both will be considered seceding states. Concerning Catalonia, from a domestic law perspective, there is not much of an alternative. The Spanish constitution asserts 'the indissoluble unity of the Spanish nation, the common and indivisible homeland of all Spaniards' (Cortes Generales, 1978: art. 2) and attributes sovereignty to the Spanish people. The fact that the Catalans call themselves a nation has no legal right (Delledonne, 2011: 8). As far as Scotland is concerned, the situation is a little more complex. The SNP has suggested that Scotland's independence would entail the dissolution of the UK - formed through the Acts of Union signed by the Kingdoms of Scotland and England in 1707. Nevertheless, this is highly unlikely to happen, as the Irish precedent shows.<sup>13</sup>

As far as international law is concerned, it is useful to look at the practice of the United Nations (UN) and to contrast it with the peculiar features of the EU. The UN was confronted with many instances of state secession, including the breakup of India-Pakistan, and the dissolution of the Soviet Union, the Federal Socialist Republic of Yugoslavia (FSRY) and Czechoslovakia, which are the most similar to the Scottish and Catalan cases. In the first two the UN accepted the claim to rightful succession made by the state that exercised control over most of the territory, the population, the resources and administrative apparatus of the previous state - i.e. India and Russia. In the third, the UN turned down the Federal Republic of Yugoslavia's (FRY later Serbia and Montenegro) claim of succession on account of the small coincidence between the FRY's and the FSRY's territory, resources and population. Finally, the Czech Republic could probably have made a reasonable demand for succession, but decided with the Slovak Republic to re-apply on different terms (Scharf, 1995: 43-66).

Thus, the rump Spain and UK will, in all likelihood, be considered the rightful successor states of Spain and the UK, as within their boundaries lie most of the territory, population, resources and administration of the former state. Nevertheless the UN and the EU work in very different ways and, in particular, accession to the UN does not require any treaty revision. In the EU this would be, at least in principle, obligatory, in order to adjust practical matters - such as the number of seats at the Parliament, the number of weighted votes at the Council and so on - to the new membership. Some then argue that secession from the EU is not possible without negotiation (MacCormick, 2000: 735; Schieren, 2000: 131-133).

A different legal perspective focusing on the moving treaty boundaries principle, however, challenges such a view. Accordingly, treaties are personal and not territorial, i.e., if a territory secedes from the Member State that signed the treaty, its clauses no longer apply there. German reunification would be a case in point, as the European treaties automatically extended to Eastern Germany without treaty revision as soon as the Democratic Republic was absorbed by the Federal Republic (Happold, 2000: 32-33).<sup>14</sup>

Nevertheless, as Jacqu e has pointed out, 'treaty revision would have allowed the new situation created by German unification to have been approached from an undisputable legal basis' (1991: 8). If this did not happen it is because, 'for quite understandable

<sup>13</sup> For more details on the secession of Ireland see Mair, 1978.

<sup>14</sup> Happold also mentions a case of secession: Algeria. Upon its independence in 1962 nobody suggested it should remain within the EEC (Happold, 2000: 33). For a position against Algeria being a precedent see (Schieren, 1995: 125).

political reasons, Member States have preferred to do without treaty revision' (Jacqué, 1991: 15).<sup>15</sup> Hence, the moving treaty boundaries principle was applied at the time, with the tacit understanding of the other members, but there was nothing legally compelling about that decision. It rather was the result of political expediency and the general willingness to reduce the potential disruption generated by German reunification.

### 6.3. Conclusion

Scotland and Catalonia will almost certainly have to re-apply for membership of the EU. This seems the most logical conclusion stemming from the review of legal arguments for and against automatic membership, as well as of the practice of the UN and the peculiarities of the Union. However, the precise procedure that will be followed, as well as the specific status that will be granted to the two regions during the process are still open to question. Furthermore, two additional considerations should be borne in mind: 1) the specific features of the European Treaties seem to suggest that a minimum of negotiations will be needed in order to settle the departure of the two regions; and, 2) past practice has shown that the Union tends to act flexibly with a view to accommodating the overriding interests of its members.

Three scenarios therefore seem likely. First, the two regions could be granted a kind of passive membership while their application is under review. This could also be accompanied by a substantial acceleration of the application process, although the quickest procedure ever - Sweden - still took 4 years. Second, Scotland and Catalonia will have to negotiate from outside the Union, with negative consequences for their economy and the life of their citizens. Third, opposition to the process on the part of some Member States could be so high as to urge the regions to apply for membership of the European Free Trade Association (EFTA) and the European Economic Area (EEA), a scenario recently predicted by Scottish Cabinet Secretary for Culture and External Affairs, Fiona Hyslop (Furby, 2011). This however would clearly be a setback, since it would entail that lack of decision-making powers which the SNP, CiU and ERC have consistently mentioned as one of the main reasons to seek independence.

It is difficult to foresee which scenario is the most likely. This will depend first on the nature of the process leading up to secession and, then, on the configuration of interests in Europe at the time of independence. Some have argued that a few European countries, threatened with secessionist drives within their borders, might use the veto power on the accession of new members bestowed upon them by article 49 of the Treaty on European Union (James, 2008). This however does not seem underpinned by sufficient evidence. In the wake of the joint UK-Scottish announcement that a referendum on independence will be held by 2014, no European country has declared its willingness to use such a power. Furthermore, the non-recognition of Kosovo's independence by five European countries<sup>16</sup> is often mentioned as proof that the same will happen with Scotland and Catalonia. Yet, the two examples are very different. The main reason why some countries refuse to recognise Kosovo lies in the unilateral nature of Kosovo's independence. There is no element to suggest that these countries will similarly oppose a process of consensual secession (Ker-Lindsay, 2012).

Nevertheless, what some European countries, and Spain above all others,<sup>17</sup> will clearly try to avoid is a precedent of automatic EU membership. This suggests that, as Scotland appears set to concretely confront the question of European membership before Catalonia, Madrid's flexibility will largely depend on the domestic situation in Spain. Although it is certain that automatic membership will be ruled out, there are a number of concessions that can be made or not during the application process, especially

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<sup>15</sup> Jacqué added that the decision not to change the treaties did not guarantee proper representation to the population of the German Democratic Republic in the European Parliament.

<sup>16</sup> These countries are Spain, Romania, Greece, Cyprus and Slovakia.

<sup>17</sup> In the debate on the Scottish independence referendum, Spain, along with Cyprus, has been the only EU Member State that unambiguously declared its opposition to any simplified procedure for Scottish accession (Peterkin 2012).

considering that, as a part of the UK, Scotland has so far benefitted from opt-out options that will have to be re-discussed.

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## 7 Conclusion

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At a time when the EU is going through what probably is the most serious crisis since its foundation, enlargement still remains a lively force and a relevant topic of discussion in the European political arena: with political frictions in Hungary, economic problems in Cyprus and Slovenia, with Croatia formally becoming the 28<sup>th</sup> member of the EU on 1 July 2013, Turkey's and Iceland's accession still on the agenda, and several Western Balkan states aspiring to membership, enlargement will soon come back into focus. Not only are candidate countries from South-West Europe and Turkey pursuing their negotiations for accession, but new unexpected members from within the Union itself might soon be knocking at the door of the Brussels institutions. Looking back to the previous enlargement rounds may help to draw some valuable lessons on how to successfully process upcoming enlargements.

The case studies presented above point to a major general conclusion, that from the observed variety of adaptation strategies pursued by the new Member States and results obtained, it is difficult, if not impossible, to consider the members of the 2004/2007 enlargement rounds *en bloc*. This conclusion becomes apparent when looking at the cases analysed in the energy sector, where administrative capacity –alongside with Russian influence in the case of Bulgaria– has proven to be an important factor in accounting for differences in activism and policy/decision-making influence. However, this does not mean that generalisations are not possible, since Member States have shown their capability to act collectively in order to shape policy, though the capacity and inclination to do so largely varies. This variation is best illustrated by the European energy and climate policy, where a group of actors from the new Member States effectively formed an advocacy coalition in the case of ETS negotiations, but not in the case of European policy on the promotion of renewable energy.

Nevertheless, a more general concern regarding the 2004-2007 enlargement impact pertains not so much to the new members' capabilities to actively participate in and influence policy-making, but rather to the possibility that the multiplication of actors would paralyse the decision-making process. By looking at the outcome of decision-making, the third section of this paper argues that the enlargement did not have a substantial negative impact on the quality of the EU legislation. Only a few criteria showed a relative decline in the average standard of the post-enlargement legislation, which runs counter to sociological theories of the size of groups on their functioning. This conclusion is confirmed by the fourth section, which looks at the possible impact of Turkey's accession on decision-making efficiency and dynamics in the EU's Council of Ministers. The analysis shows that - at least quantitatively - Turkey's inclusion would not significantly decrease Council decision-making efficiency. Indeed, negative differences between scenarios including and excluding Turkey are limited, and increasingly so, as the number of countries entering alongside Turkey grows. On the contrary, it is likely that institutional mechanisms - such as changes in voting regimes and thresholds - affect decision-making efficiency and dynamics more profoundly than the expansion of the EU's membership base.

Such an expansion, however, could also come in new and unexpected ways. That is, from EU breakaway regions. Here the peculiarity of the accession process, along with the absence of clear rules to guide it, have shifted the focus on the possible scenarios concerning Catalonia's and Scotland's status relating to the EU upon independence, rather than on their impact on policy-making. As suggested in this section, it is clear that the independent states arising thereof will have to reapply for Union membership, but the precise path to be followed will be largely influenced by political considerations. Three scenarios seem likely: passive membership until the end of the application process; temporary exclusion; and, in case of too high opposition, application for EFTA membership. What is certain is that European countries threatened with minority issues

will seek to avoid the setting of a precedent of automatic EU membership for a secessionist region.

The findings in the sections above suggest that as regards the impact of enlargement neither the *gridlock* nor the *business as usual scenarios* were realised. Therefore, the best way to determine the impact of the accession of future candidate countries is to assess each specific case in detail, without being distracted by theoretical considerations about the optimal threshold beyond which decision-making would collapse.