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Abstract

A driving argument behind recent EU treaty reforms was that more qualified majority voting (QMV) was required to reduce the potential dangers of legislative paralysis caused by enlargement. Whilst existing literature on enlargement mostly focuses on the question of what changed in the legislative process after the 2004 enlargement, the question of why these changes occurred has been given far less attention. Through the use of a single veto player theoretical model, this paper seeks to test and explain whether enlargement reduces the efficiency of the legislative process and alters the type of legislation produced, and whether QMV can compensate for these effects. In doing this, it offers a theoretical explanation as to why institutional changes that alter the level of cohesion between actors in the Council have an influence over both the legislative process and its outcomes.

Introduction

A driving argument behind the most recent treaty reforms was that more qualified majority voting (QMV) was required to reduce the potential dangers of legislative paralysis caused by enlargement, as more and more member states would need to be satisfied to pass decisions unanimously. This paper employs a single theoretical approach to test the belief that enlargement reduces the efficiency of the legislative process and alters the type of legislation produced, and whether QMV can compensate for these effects.

Whilst existing literature on enlargement mostly focuses on the question of what changed after the 2004 enlargement, the question of why these changes occurred has been given far less attention. Existing studies demonstrate that institutional structures, namely the size of Council and the voting procedure used, do have significant influences over the legislative process.¹ However, since voting procedural changes are frequently presented as a means to compensate for the effects of enlargement, we must seek to apply a more unified theory to seeing how QMV can compensate for the negative effects of a growth in the size of the Council. The few studies that do discuss how the voting procedure and enlargement interact, whilst highly insightful, have left ample room for the need to explain these interactions, as they do not present robust theories that could give us indications of what future treaty changes could bring.²

What effects have enlargement and voting procedure changes had on the Council; and what has caused these effects? This paper presents a single theoretical framework using a veto player analysis to explain how both changes in the size of Council and the voting

¹ See Helen Wallace, *Adapting to Enlargement of the European Union: institutional practice since May 2004*, 2007, TEPSA publication, retrieved 5 February 2012, <http://www.tepsa.be/publications.asp>. for a summary of research; Florence Deloche-Gaudez & Laurie Beaudonnet, *Decision-Making in the Enlarged EU Council of Ministers: A Softer Consensus Norm as an Explanation for its Apparent Adaptability?*, Fifth Pan-European Conference on EU Politics, Porto, Portugal, 23-26 June 2010; Sara Hageman & Julia De Clerck-Sachsse, *Decision-Making in the Enlarged Council of Ministers: Evaluating the Facts*, CEPS, *Policy Brief* No. 119, 2007.

² e.g. *ibid.*, pp. 11-12.

procedure used alter the levels of ‘cohesion’ between actors in the Council, and how this cohesion has an impact on the efficiency of the legislative process and the type of laws that are produced. This causal factor of ‘cohesion’ refers to proximity of the minimum number of actors required to find agreement, combining the two main institutional changes of enlargement and the voting procedure into a single continuous construct.

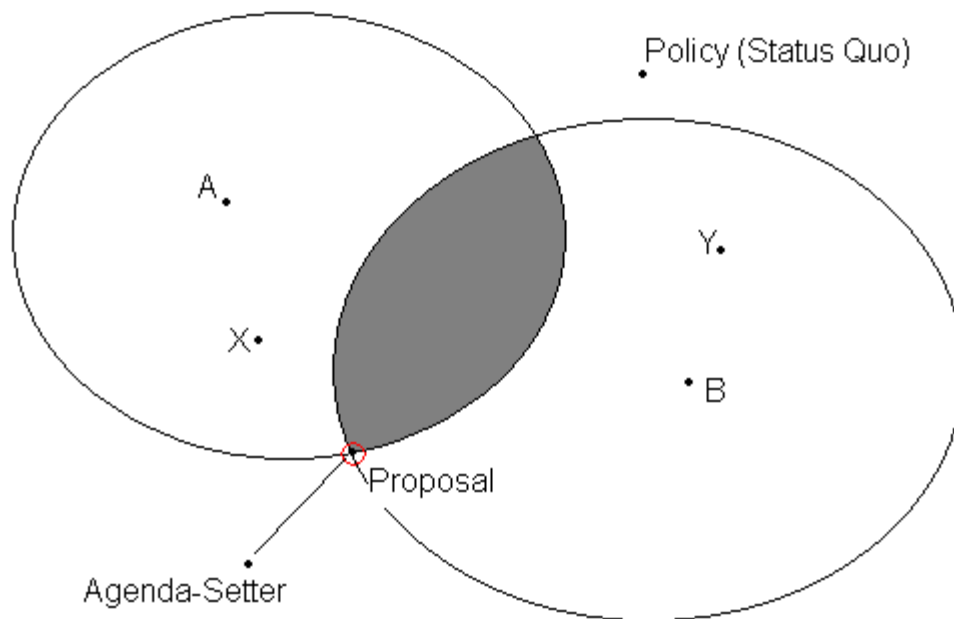
The paper will address these issues in three sections. Section I outlines the theoretical approach of a veto player analysis. After outlining how actors operate in this space and the theoretical constructs within it, the section outlines a number of assumptions and demonstrates how these generate seven experimental hypotheses to test. Part II explains the methods that are used to test these hypotheses with the evidence at hand, and operationalise the theoretical constructs. Part III ends the paper through employing these methods to test our theory and hypotheses.

The paper will argue that institutional structures that encourage more cohesion in the Council are likely to improve the efficiency of the process and broaden the depth and possibly the scope of EU legislation.

I. Theory and hypotheses

This part of the paper builds a theory of legislative dynamics in Council through arguing how a number of assumptions (numbered in brackets) can be made through the veto player theory, and then demonstrating how these assumptions establish a number of hypotheses relating to the research question. The veto player approach relies on the work of Tsebelis,³ which seeks to provide a uniform analytical tool for evaluating legislative processes. Some modifications have been made to adapt the model to the Council and improve clarity for the reader.

Figure 1: Basic policy space



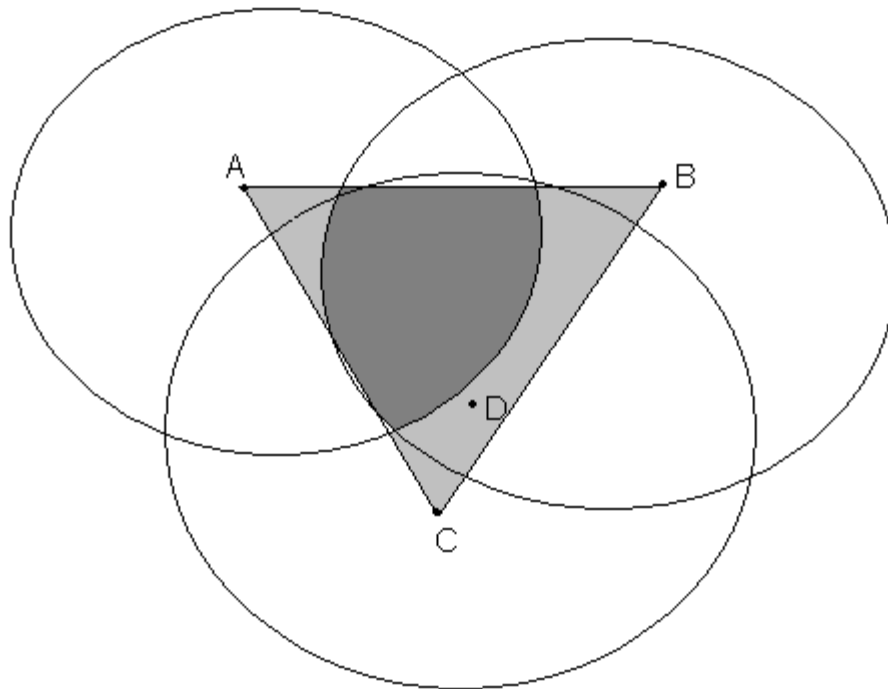
The theoretical framework is based on a spatial analysis of policy preferences, assessing how closely these preferences align (Figure 1). The shape around an actor's ideal position indicates the range of policy proposals that would be accepted by the actor. If actors

³ George Tsebelis, *Veto Players: How Political Institutions Work* (Princeton: Princeton University Press, 2002), p. 1.

are able to veto a proposal outside of this ‘range of preferences’, they will.⁴ Thus, in diagram 1, A will veto policy Y.

The policy space tells us the set of feasible or winnable proposals (the win-set) and the extent to which policy preferences diverge (the ‘core’).⁵ The ‘core’, the shaded area in figure 2, represents two key properties: the policy positions that cannot be changed by a proposal, and the level of divergence between veto players.⁶ The larger the divergence of preferences between veto players, the more difficult it is to find an agreement and the more likely the status quo is to remain, or the more ‘stable’ it is.⁷

Figure 2: Incohesion (Core)



⁴ *Ibid.*, p. 20 (referred to by Tsebelis as an ‘indifference curve’, relabelled here for clarity).

⁵ *Ibid.*, pp. 17-18.

⁶ *Ibid.*, p. 21.

⁷ *Ibid.*, pp. 29-31.

Geometrically, holding ranges of preference constant, any increase in the size of the core will result in a smaller win-set, so we can assert that both win-set and core sizes will give a negatively correlated indication of ‘policy stability’.⁸

For clarity, the core will be referred to as the ‘incohesion area’. As this incohesion area increases, the preferences of actors become further apart, and cohesion itself declines as it becomes more difficult for actors to agree. Thus, the basic theoretical assumption of a veto player analysis is that the larger incohesion is, the more difficult it is to change policy⁹ (assumption 1).

‘Absorption’ occurs if actors are located within the incohesion area, such as D in figure 2. Absorbed actors will have their preferences accommodated in any policy change, so we will not refer to these actors as ‘veto players’. Keeping this in mind, we can assert that more veto players result in larger incohesion, resulting in higher policy stability¹⁰ (assumption 2).

Now we turn to the impact of voting procedures. Under unanimity, each voting actor is an unconditional veto player, always possessing the capacity to veto a proposal. This means that the cohesion and win-set are easy to locate as any proposal outside of the range of acceptable proposals for any actor can be instantly identified (Figure 2).

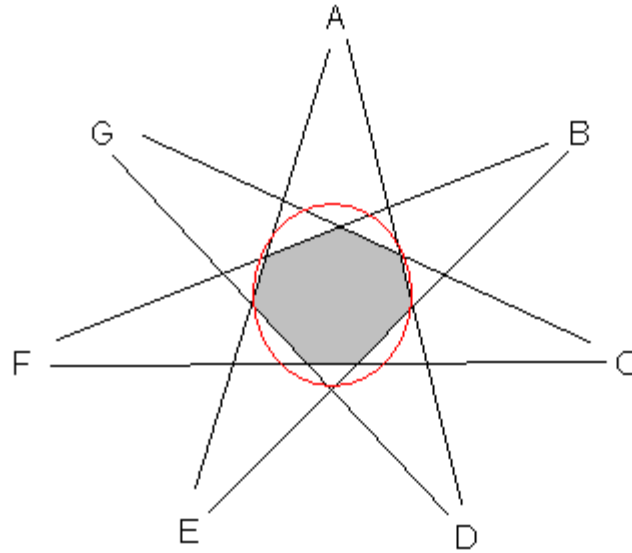
However, under qualified majority, members are only ‘conditional’ veto players (in Figure 3, 5 of 7 actors constitute a majority). This conditional veto status for individual actors under QMV means individual veto players can lose their veto capacity if a majority forms against them (being ‘de-vetoed’). Thus, if A, B, C, D, and E agree a proposal outside of the preferences of F and G, then F and G are de-vetoed.

⁸ *Ibid.*, p. 22.

⁹ *Ibid.*, p. 30, 48.

¹⁰ *Ibid.*, pp. 26-28.

Figure 3: Incohesion under QMV



The incohesion area under majority rules only consists of policy positions that a majority of actors can protect,¹¹ or alternatively, it represents the distance between veto players in all possible coalitions, excluding the space covered by alternative coalitions (Figure 3).

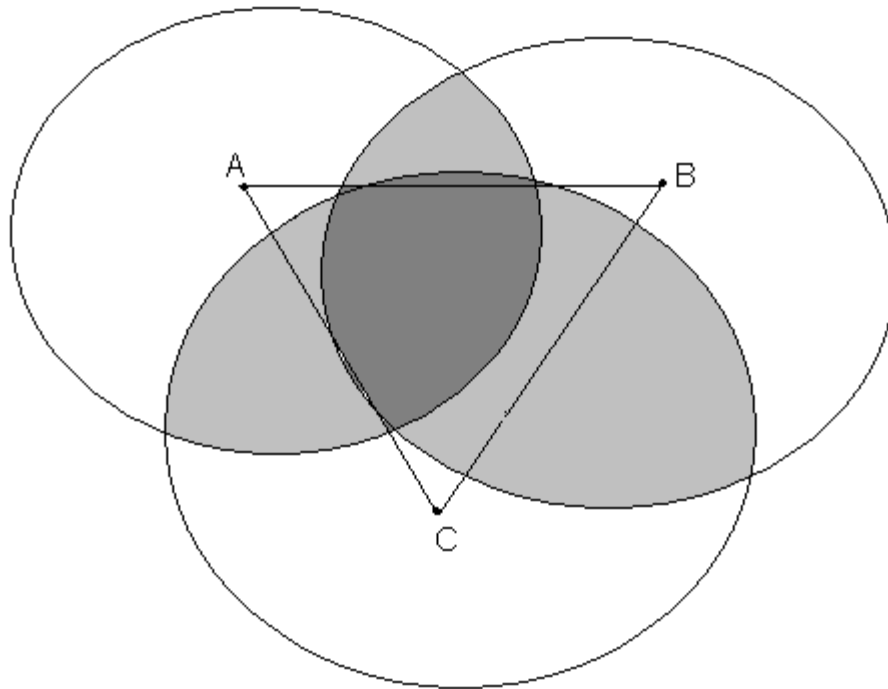
Assuming that several coalitions are possible, irregularly shaped win-sets are produced such as the lightly shaded 2 out of 3 majority win-set needed in Figure 4.¹² Since the Council does not use simple majority rules for most of its decisions, the unique properties of simple majorities¹³ will not be discussed here.

¹¹ *Ibid.*, pp. 39-40.

¹² *Ibid.*, pp. 41-45.

¹³ *Ibid.*, pp. 53-54.

Figure 4: Win-sets



Now we have an idea of the theoretical environment in which negotiations function according to our theory, we can discuss some of the theoretical constructs which should be influenced by the location of veto players within a static policy environment.

The first of these is procedural 'efficiency'. The characteristics of an efficient process are the capacity for a rapid response to problems, and a relatively low use of resources by actors to carry out the negotiations. If the status quo is outside the centre of the range of policy alternatives and the 'policy stability' results from the size of the core, rather than due to a general satisfaction with the status quo, then the policy stability represents legislative inefficiency. To put it another way, legislative inefficiency arises when actors want a policy change, but they are unable to agree to one.

The next two constructs are the ‘depth’ and the ‘scope’ of the legislation. Outcomes are the qualitative natures of the proposals that result from the legislative process. Here, they involve two key concepts around the extent of policy change:

Firstly, ‘depth’ of the legislative proposal is the extent to which a proposal effectively alters a specific aspect of the existing policy (assumption 1). Proposals have a deeper impact on the policy if they have a larger impact and require more activity and resources to implement. This is spatially indicated by more distance from the status quo. A ‘shallow’ proposal may seem radical, but in effect, places few obligations on implementing actors to change the status quo.

Secondly, ‘scope’ of the legislation describes how much policy is changed by the proposal (assumption). Proposals with a broader scope will cover more areas of policy, touching more subjects and discussing more issues. On a macro-level, this is the full extent of the *acquis communautaire*.

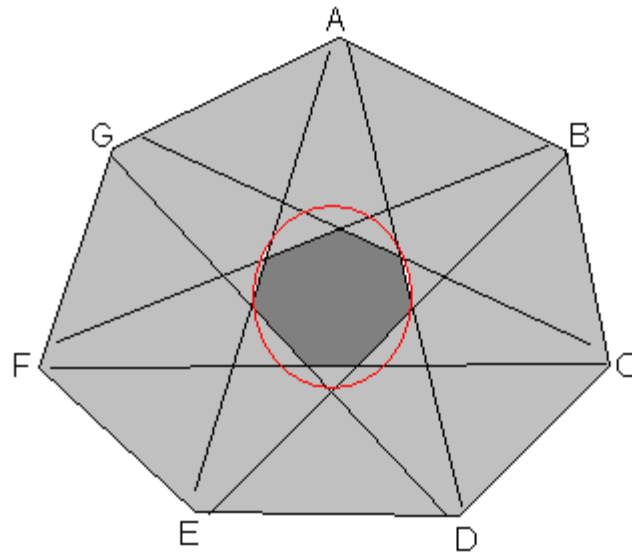
Following from assumptions 1 and 2, we can assert that greater policy stability results in a lower degree of change, reducing the likelihood of deeper and broader proposals being accepted (assumption 3).

We now turn to how the policy environment can be altered and the influence this should have on the decisions of actors. The policy environment can change in two fundamental ways. Firstly, this environment can be altered through broad changes to the institutional structure, and secondly, shifts in the range of acceptable policies for actors within existing institutions can occur.

Structural changes alter the ‘rules of the game’. For the EU, they include increasing the number of Member States, or changing the voting procedures. ‘Enlargement’ involves adding actors to the policy space. If the new actors are outside of the existing policy core,

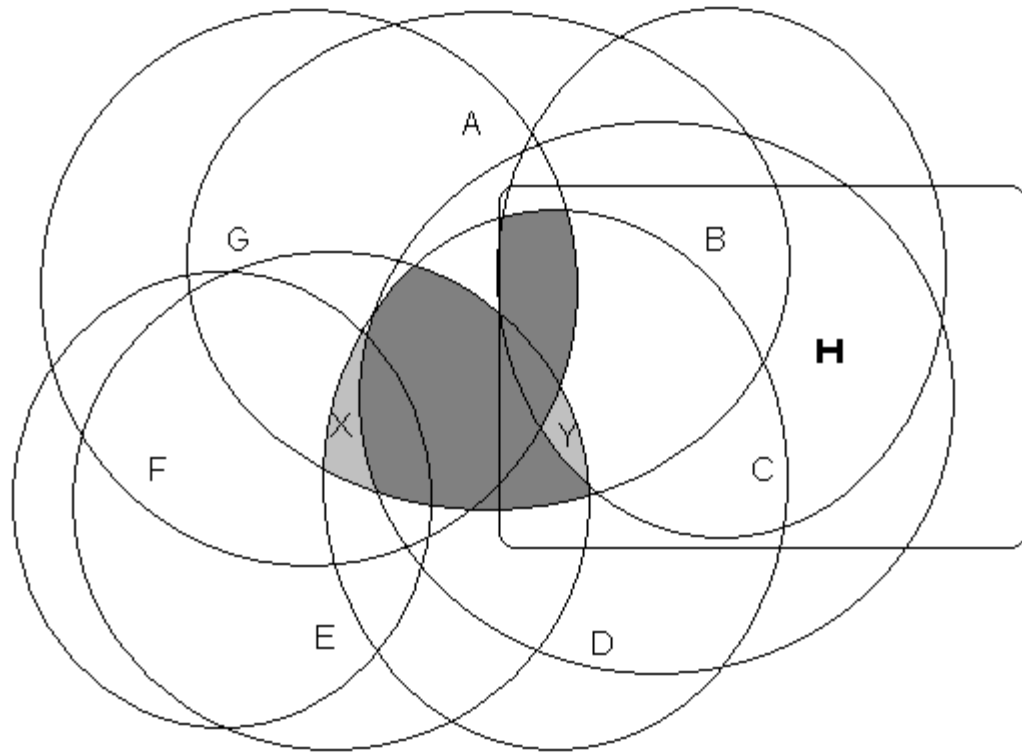
they will become new veto players and enlarge the policy core, in accordance with assumption 2.

Figure 5: Difference in incohesion between unanimity and QMV



The second structural change, altering the voting procedure, shifts the opportunities that actors have to realise their preferences. Firstly, as we can see from the differences between the lightly shaded (unanimity) and darkly shaded (QMV) incohesion areas in Figure 5, the incohesion area shrinks when the voting procedure switches from unanimity to QMV (assumption 4). This results in a decline in policy stability, in accordance with assumption 1. Secondly, actors outside the core can now be outvoted where they could not before.

Figure 6: Alteration of the win-set under QMV caused by enlargement



Furthermore, the addition of new actors can alter the win-set. As shown in Figure 6, if adding an actor to the policy space increases the majority threshold from 5 to 6, the addition of country H to the policy space (shown with a rectangle), leads to the shaded QMV win-set shifting. Whilst X is part of the win-set before enlargement and Y is not, after enlargement, Y becomes feasible and X no longer so. The location of feasible policy positions has moved. Thus, adding actors under QMV can alter the location of the win-set (assumption 5).

The ‘rigidity’ of negotiations describes how easy it is for actors to agree to policy change. If actors generally have larger ranges of acceptable policy changes, then the policy environment is more ‘fluid’. By increasing the win-set, these larger ranges mean that it is easier for actors to negotiate with each other and use fewer resources to build the necessary alliances to pass legislative proposals. The environment is more ‘rigid’ if actors are more reluctant to negotiate compromises through conceding on their ideal positions. A clear

relationship arises between the rigidity of the negotiating environment and policy stability, as a more fluid environment is more likely to lead to policy changes than a rigid environment (assumption 6).

I propose that the structural shifts discussed above, particularly voting structure changes, will directly influence the rigidity of the negotiations. During a negotiation, actors are able to adapt their preferences to suit their needs. A rational choice approach leads us to assume that these adaptations are realistic calculations designed to increase the probability that the actors will realise their goals.

Under unanimity, actors set their preference range in a manner that only accepts compromises that move closer to their ideal, as they have no incentive to do otherwise. The motivation behind setting the preference range is therefore ‘restricted’ as it will not compromise a policy shift further away from the actor’s preference than the status quo.

However, if the voting procedure shifts to QMV, then the unanimity motivation above no longer holds as actors can be outvoted. The new motivations of actors are to avoid being outvoted and to attempt to outvote those actors furthest away from their preferences.¹⁴ This is a more ‘fluid’ motivation behind changing preferences, as actors on the edge of the core can no longer rely on vetoing a proposal, but must more actively build alliances to avoid losing out. Thus, when a proposal supported by one coalition de-vetoes an actor, that actor has the incentive to expand what they will accept to build a new coalition and win back their veto. Thus, the shift from unanimity to QMV increases the fluidity of the negotiating environment and reduces policy stability (assumption 7).

¹⁴ Similar to the concept of being ‘strategic entrepreneurs’, *ibid.*, p. 44.

We can now generate a number of working hypotheses from this framework. These can be divided between hypotheses about how the changing dynamics should influence the legislative procedure, and how the changes should influence legislative outcomes.

When looking at structural changes to Council, following from assumptions 1, 2 and 3, our main procedural hypothesis will be that *those changes that reduce the level of cohesion will increase policy stability and consequently reduce legislative efficiency* (the main procedural hypothesis). Conversely, changes which increase cohesion increase the legislative efficiency. To assess this influence in more detail, procedural changes to cohesion following enlargement and under different voting procedures are assessed under three sub-hypotheses.

Since enlargement adds actors to the policy space, assumptions 1 and 2 allow us to assert that by adding actors to the policy space, *enlargement generally reduces cohesion and so reduces efficiency* (procedural hypothesis (enlargement)).

In contrast, switching to QMV should reduce the levels of inefficiency for two reasons. Firstly, following from assumption 4, QMV increases cohesion, as fewer Member States are needed in the Council to support a proposal for it to be agreed upon. This suggests that *switching to QMV increases legislative efficiency by increasing cohesion* (procedural hypothesis (QMV)). Secondly, part of this increase in efficiency is explained by the increased fluidity of the negotiating environment in accordance with assumptions 6 and 7, leading us to assert that *QMV increases legislative efficiency by increasing the fluidity of the policy environment* (procedural hypothesis (fluidity)).

We can also draw a number of assumptions around the legislative outputs on the basis of the link between cohesion levels and the win-set. Firstly, based on assumptions 1 and 3, higher levels of cohesion will result in a larger degree of change allowing us to make two hypotheses about the effects of changes on the depth and scope of legislation: *Changes*

which increase cohesion increase the depth of legislative outcomes (output hypothesis (depth)), with a similar influence on the scope of legislation, asserting that *changes which increase cohesion increase the scope of legislative outcomes* (output hypothesis (scope)1)

Following assumption 5, it is also useful to test whether enlargement has led to a shift in the win-set under QMV. If this is the case, then whilst under unanimity we should find a similar trend to output hypothesis (scope)1, under QMV, we should see a potential change in the direction of policies agreed. Notably this may contradict output hypothesis (scope)1 if enlargement extends the scope under QMV. Thus, we can assert that *enlargement results in a shift in the potential scope of legislation under QMV* (output hypothesis (scope)2).

Having outlined the central hypotheses of how cohesion influences the legislative process and outcome, and how they can be broken down to give a more accurate assessment of what is taking place in Council, it is now possible to consider how these claims can be evaluated.

II. Methods

Both quantitative and qualitative techniques in research design provide useful analytical tools for the social sciences, each possessing weaknesses that can be partly moderated by the other. A thorough analysis will ideally include both tools. The quantitative assessments will allow us to broadly test some of the assertions behind our theory and offer some macro-trend evidence in favour or against them. But such an analysis can only give us a broad indication and generate questions for a more in-depth qualitative analysis. Both quantitative and qualitative techniques in research design provide useful analytical tools for the social sciences, each possessing weaknesses that can be moderated by the other.

For the quantitative analysis Settembri's 2007 data-set was used,¹⁵ together with the analyses of other scholars. This data-set includes a range of variables on legislative texts involving the Council for 2003, the second half of 2005 and the first half of 2006. Whilst limited in its time-range, this data-set provides a good range of relevant variables compared to other data-sets. As was the intention of the original authors, this data-set also avoids the anomalies in legislative trends directly before and after enlargement, showing what the process was like after new Member States had had time to adjust to the procedures and the procedures had adjusted to the newcomers. Common Foreign and Security Policy agreements were removed from the set, leaving a sample size of 708 items.

The data-set employs a number of variables that are used to operationalise the theoretical constructs outlined in the previous section. The explanatory construct, cohesion, is operationalised through combining the variables of whether the data items were before or after enlargement and which procedure was used in each:

Table 1: Cohesion scale

1=High cohesion	2	3	4	5	6=Low cohesion
Simple/Pre-enlargement	Simple/Post-enlargement	QMV/Pre-enlargement	QMV/Post-enlargement	Unanim./Pre-enlargement	Unanim./Post-enlargement

Legislative efficiency is made operational through two variables: the duration of the legislative process (days to agreement); and the number of revisions that the Commission made to its original text.

The first of these is an indication of efficiency because, as discussed in part 1, if existing policy is deemed in need of reform, then policy stability represents a procedural

¹⁵ Paolo Settembri, The Impact of Enlargement on Council Decision Making Data-Set, 2007, retrieved 2/Jan/2012, <http://www.councildata.cergu.gu.se/cdeu/index.php/research-data/settembri>

inefficiency. The number of revisions gives us a rough indication of the number of times the Commission was forced to go back and alter its original proposal, indicating how difficult it was for the Commission to propose a text that was mostly accepted by the other actors.

The scope of legislation is made operational using the variables of the length of the final text (length) and whether the legislation was new or amending old legislation (novelty). Length is only a rough indication of the scope of legislation, as a short text can lead to considerable integration. However, longer texts generally imply more issues are covered by the text indicating a broader scope. Novelty, however, is a little clearer, as new laws are likely to be operating in an area that had not previously been influenced by European integration.

Depth is made operational in part by whether the text contains comitology provisions. This is used to indicate the implementation capacity of the act. The presence of comitology ensures a closer monitoring of enforcement by all parties, with a better exchange of information and mechanisms to ensure that when implementation decisions are made, the relevant implementing bodies are more likely to comply with the provisions and to have a common understanding of what implementation should take place.¹⁶

The importance and novelty of acts were controlled for in all models if statistically significant. For each working-hypothesis, the cohesion model was tested for explanatory power. To challenge the validity of this model, these values were then compared to the effects of enlargement and voting procedures separately.

Whilst this data and the data from other analyses give a wide range of trends, they primarily open a number of questions that need answering through interviews. Moreover, the data is limited to before the substantial institutional changes of the Lisbon Treaty, and does not include a variable indicating parliament's involvement in the process. Qualitative data is

¹⁶ Ellen Vos, 50 Years of Integration, 45 Years of Comitology, in: Andrea Ott & Ellen Vos (eds.), *Fifty Years of European Integration: Foundations and Perspectives* (The Hague: TMC Asser Press, 2009), p. 53.

used to balance these deficiencies. The sample of interviewees represented a broad range of perspectives, from different institutions, positions, fields, Member States and grades, in order to make the assumptions more generalisable.

The 13 practitioners interviewed are grouped into 3 ‘clusters’ depending on where they worked: the Council Secretariat, Commission and those from Permanent Representations (hereafter referred to as Representations). Each cluster contained individuals with experiences from a wide range of fields to avoid too many assumptions unique to a specific Council formation.

To avoid bias, the cohesion model was not mentioned until the end of the interview. Separate questions were asked on the effect of enlargement and voting procedures to offer data to test the model against alternatives. In analysing the interviews, views that were consistent across clusters and held by several practitioners¹⁷ were treated as stronger indications of the general trends.

III. Analysis

This section now analyses the hypotheses outlined in the first section using the methods set out above. It is divided according to hypothesis, with each hypothesis restated at the start of its analysis for clarity. A summary of the statistical data from the quantitative modelling is in the annex.

Procedural hypotheses

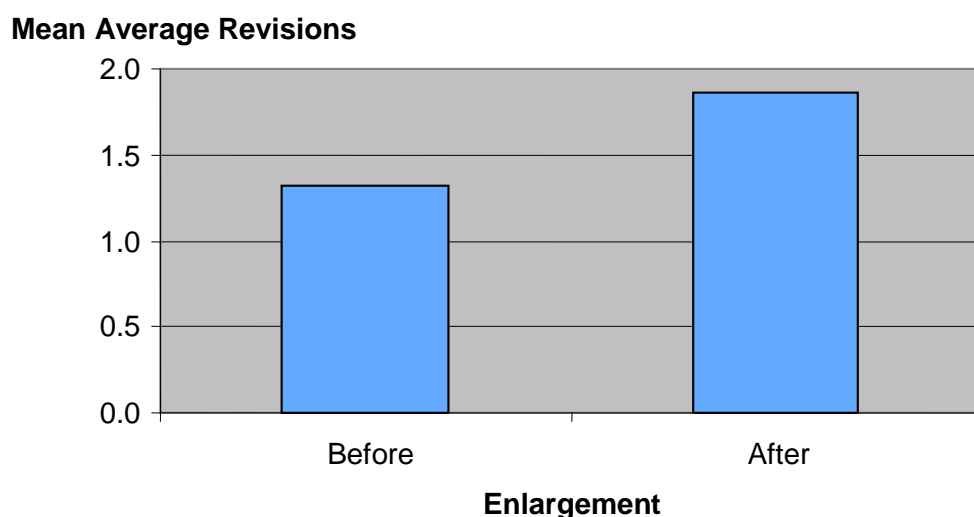
Main procedural hypothesis: Changes which increase cohesion increase the legislative efficiency

¹⁷ In order to protect the anonymity of interviewees, data is referred to by cluster.

The analysis supports this first hypothesis, with cohesion levels giving a significant level of explanatory power for the most important indication of legislative efficiency, duration. Whilst enlargement has not had a significant effect on duration when controlling for the importance and novelty of legislation, the voting procedure has. However, the cohesion model is better at explaining variations in duration than QMV alone, with cohesion providing a much more significant effect than just the voting procedure (table 2).

Cohesion is also significant to the number of revisions the Commission makes to its proposal before adoption. However, this is better explained by considering enlargement alone, and the voting procedure itself does not have a significant effect. This suggests that whilst the Commission has needed to revise its proposals more after enlargement, QMV has not managed to compensate for this increase. As shown in graph 1, on average, proposals made after enlargement are likely to be revised 0.7 times more than those before enlargement after controlling for importance and novelty. This implies that the Commission may find it more difficult to accommodate a wider range of Member State preferences.

Graph 1: Average Commission revisions



Source: Author's analysis ¹⁸

¹⁸ Settembri, Data-Set, *loc. cit.*

Nearly all interviewees supported hypothesis 1. From all 3 clusters, 7 out of the 13 interviewed spontaneously made the assumption that it was more challenging for them and took more effort to reach an agreement when more states had to be satisfied.

Moreover, research by Deloch-Gaudez and Beaudonnet suggests that following enlargement, the number of acts adopted under unanimity dropped, whereas those using QMV, if anything, increased slightly.¹⁹ This suggests, in accordance with the procedural hypothesis, that whereas agreements under unanimity may have become more difficult, QMV managed to compensate more effectively for these negative influences on efficiency.

1. Procedural hypothesis (enlargement): Enlargement reduces efficiency by reducing cohesion.

Practitioners generally asserted that the decision making was much more complex after enlargement. Whilst it was stressed that this had not led directly to deadlock, most believed that it did make work more intense than before. Interviewees indicated that enlargement has led to more resources being used to deliver the same results. Whilst one Member State may demand an amendment to be brought on board, this amendment may in turn alienate another Member State, becoming more problematic as the size of Council increases.²⁰ Most interviewees were not surprised by the increasing need for proposals to be reviewed, with some from each cluster indicating that more amendments and draft proposals have to be made to account for the increasing range of views.

Whilst the data shows that enlargement did not have an influence on the number of days to agree legislation, a majority of interviewees from both the secretariat and representations clusters commented that the amount of time negotiators spent in working groups, both the number of meetings held and the time spent in each, has increased a great

¹⁹ Deloche-Gaudez & Beaudonnet, *op. cit.*, p. 17.

²⁰ Senior staff member, Council Secretariat, Interview, Brussels, 16/Apr/2012.

deal since enlargement. This suggests that the decline in duration could, in fact, mask a compensation mechanism whereby employees are expected to put in more effort to find solutions in the same time as before enlargement.

Several interviewees also stressed that Council had adapted in the lead up to enlargement due to the fear of an increase in inefficiency, pointing to the positive effects that the Seville reforms and greater use of technology have had in how Council organises itself and runs meetings.²¹ These compensation mechanisms help explain why, despite the increased difficulties reported in negotiations, the duration for agreeing texts has not increased after enlargement.

2. Procedural hypothesis (QMV): QMV switch increases efficiency.

The data shows that when QMV is being used, the legislative duration is likely to be reduced by an average of 87 days. Whilst not a significant as the total change in cohesion, this result is still strongly suggestive that a large part of the results explained in the cohesion model come from the change in voting procedures. In terms of proposal mortality, it was pointed out that there are several agreements which simply would not have been agreed under unanimity. One example is the recent reforms to financial service regulation (QMV).²² In turn, areas concerning tax (unanimity), such as the Common Consolidated Corporate Tax base, have been prevented from being dealt with by a small minority.

There is no significant change between the two procedures to the number of revised versions of the text the Commission proposes. Thus, the first assessment from the data is that changing the voting procedure has a positive influence on efficiency, although it does not appear to reduce the likelihood that there will be greater internal legislative activity.

²¹ Secretariat and Representation clusters; Council of the European Union, Seville European Council 21 and 22 June 2002, Presidency Conclusions, 13463/02, 2002, pp. 22-26.

²² 2 respondents from Representations cluster.

Under unanimity, conforming to our expectations, it is more difficult to find an acceptable level of agreement lower down Council's structure, requiring a larger number of issues to be sent "up the chain" from working groups towards Council.²³ Under QMV, when a QM was reached, presidencies in working groups would be more willing to send the issue up, suggesting that the issue has mostly been resolved and that the minority would have to have serious cause to push the issue further.

Some from the Justice and Home Affairs (JHA) field suggested that these difficulties of working under unanimity had become slightly ameliorated after the switch to QMV, although there was still a strong expectation that consensus was found during meetings. However, it was suggested that this field is changing as the implications of switching to QMV after the Lisbon Treaty are being realised.²⁴

What are the reasons behind calling votes? It was consistently stressed by all those interviewed that the presidency aimed at reaching consensus under QMV, and that voting only took place as a 'last resort'. This would suggest that, all things equal, there should be a consistent and low level of use for QMV over time, and that the cohesion model should not be able to explain a great deal of variations in the procedure.

However, data from other studies have shown that following enlargement, there has been a continual increase in the use of QMV to pass agreement.²⁵ Moreover, presidencies are proving increasingly likely to accept larger minority coalitions before calling a vote.²⁶ This indicates that the consensus norm is gradually being eroded, and increases the likelihood that the differences between the voting procedures are increasing and that the cohesion model will grow in importance as a result as Council becomes more likely to pass proposals as soon as they obtain a majority.

²³ Senior staff member, Council Secretariat, *loc. cit.*

²⁴ One respondent in each of the representation and secretariat clusters.

²⁵ Deloche-Gaudez & Beaudonnet, *op. cit.*, pp. 20-23.

²⁶ Renaud Dehousse & Florence Deloche-Gaudez, Voting in the Council of Ministers: the impact of enlargement, in: Ott & Vos (eds.), *op. cit.*, p. 30.

So if Council still seeks to accommodate all actors, why is the willingness to call votes increasing? The best explanation is that Council under QMV is evolving to compensate for the increase to the number of Member States. Rather than a shift to majoritarianism, this represents a consequence of the increased pressure for efficiency in a less cohesive policy environment following enlargement with the growing pressure for council presidencies to deliver agreements.²⁷

It must be noted that for most decisions made under QMV, the Parliament also has an important role to play and a strong influence over the final outcome, especially under the Ordinary Legislative Procedure. Differing from adding new Member States through enlargement, the addition of Parliament in to the decision making of Council has had an accelerating effect on the speed with which decisions are made. Internally, Council now finds itself being encouraged to find a more cohesive and united position earlier in the negotiations so that it can face Parliament with a more united front.²⁸

3. *Procedural hypothesis (fluidity): The increase in cohesion under QMV is caused by increasing fluidity in the policy environment.*

In agreement with the hypothesis, practitioners from all clusters suggested that under QMV, Member States needed to work more to make coalitions and justify their positions, and they had to be more willing to compromise. Member States will seek to build sympathy for their positions or exchange support on other issues to enhance their position. The onus of protecting a position is therefore placed on the Member States concerned with threats to their preferences.

In contrast, under unanimity, this activity was reported by those with experience of both procedures as being much less important. Luxembourg and Ireland for instance did not

²⁷ Two from Secrétariat cluster.

²⁸ Olivier Costa, Renaud Dehousse & Aneta Trakalova, La codécision et les «accords précoces»: Progrès ou détournement de la procédure législative?, *Notre Europe, Etudes & Recherche* 84, 2011, p. 29.

have the same level of incentives to build coalitions on tax issues (unanimity) as they would under QMV, and so their level of activity was lower in these areas. Again, this supports the fluidity procedural hypothesis. In contrast to QMV, the onus for finding a resolution to such a blockage is shifted to the agenda-setters and the Member States that want an agreement.²⁹

Unlike unanimity, where proposals are altered to accommodate fairly fixed positions, under QMV, proposals are altered to gain the support of changing coalitions and sometimes to reduce the size of blocking minorities. This more fluid approach to using proposals as a means of diminishing minorities may go some way to explaining why, contrary to our working-hypothesis on revisions, the Commission is equally willing to revise its proposals under the different procedures as our data suggests.

The added pressure from QMV to build coalitions and the change in the responsibility of finding solutions leads to a more 'creative' approach by all actors to find resolutions.³⁰ Within the coalitions, Member States will 'pragmatically' alter their positions to build support amongst the other coalition members.³¹

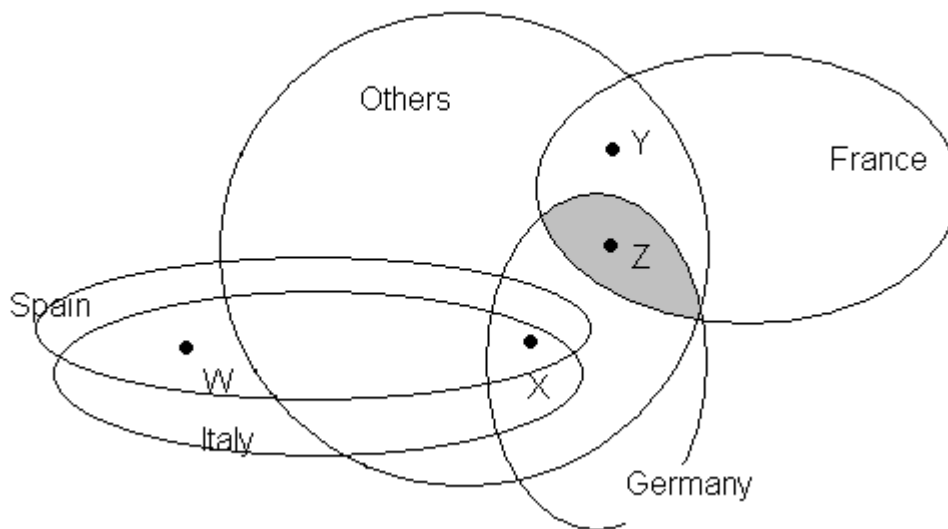
²⁹ At least one respondent from each cluster.

³⁰ Representations and Secretariat clusters.

³¹ Three from Representations cluster.

Short case study: EU Patent (unanimity)

Figure 7: EU Patent negotiating environment



These strands of the analysis can be drawn together using a veto player analysis of the single EU Patent, outlined as a useful illustration by more than one interviewee³². Initially, EU patents were governed by a decentralised system requiring translation into all languages where the patent was to have force. Most Member States agreed that a simplified and more centralised system with a patent in just English would have been the most practical solution, shown by position X on diagram 7, improving on the status quo. However, using its veto power under the unanimity procedure, France insisted (with political costs) that French was also added, but suggested that to maintain the benefits of the proposal, only French and English should be used (Y). The onus was placed on other Member States to concede to the French demand. However, once France was satisfied, Germany insisted that if French was used, German should be as well (Z). But this led to similar demands from Italy and Spain (W).

Because of the unanimity requirement for the proposal, the only feasible solution of requiring translation into at least five languages became impractical and would not have

³² Secretariat and Representations clusters.

resolved the problem of translation costs for the patent. As a result, it was outside of the acceptable range of policies for most of the other Member States, leading to the failure of the proposal, and deadlock in finding a resolution despite consensus on the need for reform.

The solution eventually involved a change to the ‘rules of the game’, whereby a majority effectively de-vetoed Spain and Italy through enhanced cooperation, producing a result at Z, de-vetoing the outliers. Faced with only empty win-sets the enhanced cooperation group switched to a QMV rule and opened up a new win-set in the shaded area.

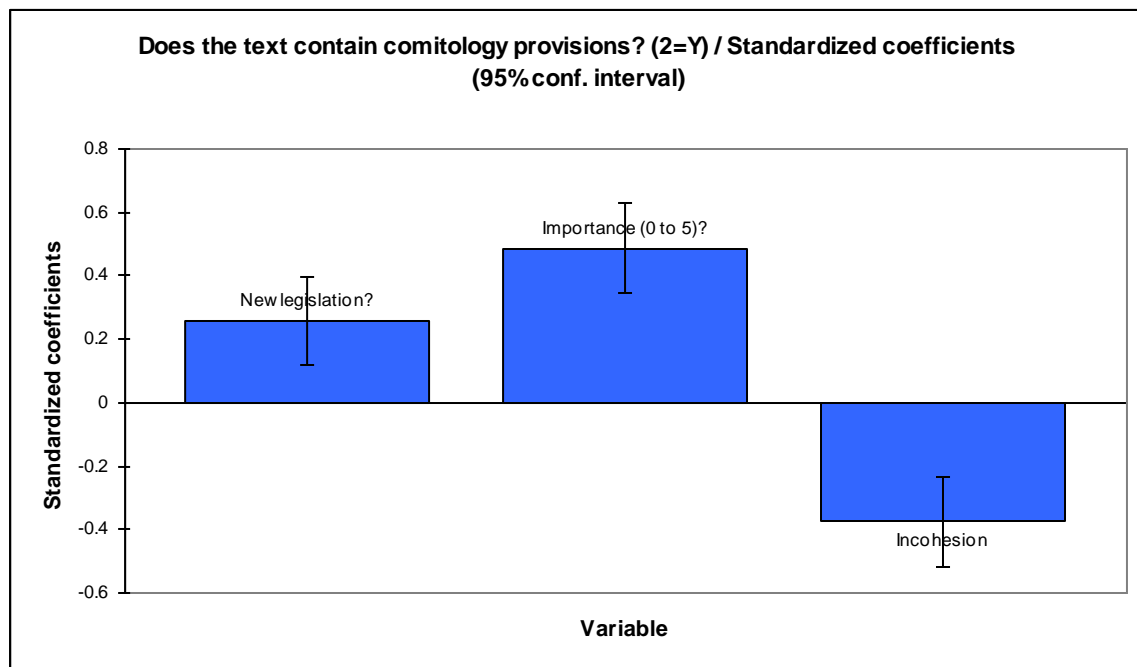
Output hypotheses

4. Depth output hypothesis: an increase in cohesion increases depth of legislation

The analysis lends weight to this hypothesis with some important reservations. The variable indicating depth, comitology use, conforms strongly to our hypothesis. The cohesion model presents by far the strongest model to explain the inclusion of comitology within a text. Whilst both enlargement and unanimity significantly reduce the likelihood of comitology being included, the cohesion model is more powerful at explaining variation than both factors separately, with a much more significant outcome. As shown in graph 4, an increase in incohesion is likely to reduce the probability of comitology being included by around 40% from the previous cohesion level.³³

³³ The nominal status of the cohesion variable means this figure can only give us a broad indication of the effects of changing cohesion.

Graph 2: Influences on whether comitology provisions are included



Source: Author's analysis³⁴

This finding surprised most practitioners, with most explaining the trend in conformity with the hypothesis, that it was easier to add to a text and introduce provisions such as comitology if fewer Member States were needed to agree to it. Comitology can be a highly sensitive issue, and if a Member State objects under unanimity, then the provisions are likely to be removed and more flexibility over implementation given.³⁵ It has also become easier after enlargement for Member States that do not want decisions to be made outside of Council to block the inclusion of comitology provisions.

Adding to the weight of the hypothesis, most interviewees from all clusters suggested that the substantial depth of legislation had decreased with enlargement, but that this had been more pronounced under unanimity. The familiar 'shallowing' amendments of softening the language in texts, such as changing the word 'shall' to 'may' or 'the Commission will coordinate' to 'the Commission will facilitate the coordination of Member States', were

³⁴ Settembri, Data-set, *loc. cit.*

³⁵ Desk Officer, European Commission, Bruges-Brussels (telephone), 18/Apr/2012 ; EU diplomat, Councillor, Post-2004 Enlargement Member State, Interview, Brussels, 16/Apr/2012.

reported as being more likely to appear under unanimity than under QMV.³⁶ Although this varied depending on the ambitions of the presidency, under QMV, presidencies and the Commission would be able to resist these sort of changes unless absolutely essential to Member States, whereas under unanimity the agenda-setters were more likely to accept these amendments.

A greater need to accommodate the concerns about depth of Member States under unanimity means that the texts are likely to lead to a “lowest-common-denominator” result, with several suggesting that the outcomes can often have very little value and be “low in ambition”.³⁷ Even when more ambitious proposals were accepted as being necessary, unanimity would often force compromises which would weaken the text and leave few actors satisfied with the lack of ambition. For instance, Framework Directives agreed in the JHA field prior to Lisbon often involved a considerable investment of resources with little substantial change to the policy environment at the end of it, according to respondents from the secretariat and representations clusters.

Thus, whilst ambitions have increased, enlargement made it much more difficult to successfully pass deeper and more ambitious projects. Respondents working on JHA issues suggested that a new willingness to consider votes has resulted in more ambitious proposals, and is having a ‘spill-over effect’ into JHA areas where QMV could have been used before Lisbon, but where strong consensus norms existed.

New Member States hold substantially different opinions from a majority of pre-2004 Member States on a number of dossiers, such as on the environment and energy. It is worth noting that one of the several respondents supporting this view was from the representation of a new Member State.³⁸ This has meant that it has become increasingly difficult to come to agreement on issues that would have been much easier before

³⁶ Two from Representations cluster.

³⁷ These phrases were used repeatedly by interviewees from all three clusters.

³⁸ EU diplomat, Post-2004 Enlargement Member State, *loc.cit.*

enlargement. For example, the Europe 2020 goals and limitations on CO₂ production under the Emission Trading Scheme, both came across considerable resistance from the new Member States, meaning that the final agreements were less ambitious than is likely to have been the case pre-2004.

Thus, confirming our hypothesis, as these consensus norms are eroded, the Council is managing to adapt to the drop in ambition caused by enlargement, by looking increasingly to the ambition raising influence that the pressures of QMV can have.

5. *Scope outcome hypothesis 1: An increase in cohesion increases the scope of legislation*
6. *Scope outcome hypothesis 2: Enlargement results in a shift in the potential scope of legislation under QMV*

The findings are more nuanced in terms of the scope of legislation, and do not immediately support the first hypothesis, instead lending more weight to the second. Although cohesion provides a good indication of the length of texts suggesting that higher levels of cohesion lead to longer texts, the voting procedures model has a stronger explanatory force than cohesion alone. However, on closer inspection, this can be explained by the influence of enlargement, which is the reverse of what we may have expected from the hypothesis.

The second indication of scope, novelty, moves in the same direction. The cohesion model is highly significant, but whilst proposals discussed under QMV are approximately 28% more likely to be exploring new areas of legislation, deepening the integration process and scope of the *acquis*, enlargement led to an 18% increase in the chance that new legislation would be discussed. Is the similar direction of both variables hinting at a similar influence?

Conforming Scope Outcome Hypothesis 2, there is evidence to suggest that enlargement has led to a change in possible the win-sets, moving integration into new areas. Practitioners in both the representations and Commission clusters reported that the arrival of the new Member States changed the sort of issues that were discussed, as the new states had differing expectations of what the EU should work on. Interviewees in both the secretariat and representations commented on the need to include more provisions to accommodate the new Member States following enlargement, with the longer texts resulting from the need to accommodate more concerns.

Assumption 8 in part 1 explains how enlargement under QMV may alter the location of the win-set, and whilst eliminating some potential policy changes, it can also create some. Since existing policy will remain unchanged unless agreement can be found, these new win-sets will simply add to the scope of total legislation in the EU, expanding into new areas whilst not withdrawing from old ones.

For example, it was stipulated by practitioners in the representations and Commission clusters that more market liberal states from the pre-2004 EU such as the Netherlands and the UK found it easier to built support and alliances in favour of more market liberal approaches after enlargement because of the addition of the new states. This meant that less market liberal states found it more difficult to resist proposals that moved in a slightly more 'pro-market' direction. This could lead to both new proposals and longer texts which cover more issues and was reported as being greater under QMV. This evidence rejects the initial hypothesis Scope Outcome Hypothesis 1 and instead validates Scope Outcome Hypothesis 2.

Conclusion

Through a veto player analysis, this paper suggests that changes in the institutional structure have an influence over how cohesive Council could be when deliberating policies. This cohesion in turn should have an influence on the efficiency of the legislative procedure and its outputs, with enlargement reducing cohesion, and switches from unanimity to QMV compensating for this effect .

It was shown that the 2004 enlargement led to a moderate decline in efficiency, but on first look, this decline had been largely compensated for through internal changes to how the Council operated. However, the increased time spent in Council meetings and on discussions to find resolutions suggests that more resources are still required to find solutions following enlargement. Enlargement has meant that there is now an increased difficulty for actors to find agreement amongst a broader (less cohesive) range of interests.

It was shown that QMV presented more pressures to compromise, encouraged more flexible behaviour, and made actors more motivated and able to find agreement, focussing more on priority issues and seeking resolutions to problems to avoid being outvoted. Thus, QMV is likely to improve the efficiency of the process. In this sense, QMV acts as the lubricant of the legislative wheels of the EU, making negotiations more fluid.

The evidence suggests that enlargement has had a varied influence on the overall scope of European legislation. On the one hand, the new Member States have brought with them new expectations about what areas the EU should deal with, extending the policy scope. This has been more pronounced under QMV, where, in accordance with the theoretical framework but against the general direction of the cohesion model, new potential areas for policy action have been created where they were not previously possible. On the other hand, the larger number of Member States has increased the likelihood that the scope and ambition in laws will be more limited, as the concerns of the new Member States are

addressed. Conforming to the cohesion model, this compromise is more pronounced under unanimity.

Finally, the analysis suggested that a more cohesive policy environment increased the chances of legislation having a deeper impact on policy. Agreements reached in a more cohesive environment were more likely to have stronger implementation powers, and a higher chance of placing obligations on Member States and being a stronger legislative text as a direct result of the more cohesive processes.

In sum, the analysis shows that a cohesion model of the institutional environment in Council can provide some useful insights. As with all theoretical explanations, this will of course only be partial and indicative. However, the theory can help us explain part of the picture of what effects enlargements and changes to voting procedures are likely to have.

Annex: Analytical model comparisons

Model:	(In)Cohesion	Voting Procedure	Enlargement
Main procedural hypothesis: Cohesion increases legislative efficiency			
Duration	.208 (0.0078)	.204 (0.0257)	*
Revisions	.076 (0.0004)	*	.127 (< 0.0001)
Output hypothesis (scope): Cohesion increases the scope of legislation			
Length	.053 - (0.0354)	.065 - (0.0288)	.055 (0.0010)
New legislation (log)	11 - (0.001)	26 - (< 0.0001)	10 (0.002)
Output hypothesis (depth): Cohesion increases the depth of legislation			
Comitology (log)	31 (< 0.0001)	19 (0.0010)	6 (< 0.0001)

Source: Author's analysis, Settembri 2007 data-set³⁹

* ($p > 0.05$)

The results of the linear regression models above give R^2 value, followed by p-value of explanatory variable in brackets.

Logistical regression results above give difference between the model's likelihood ratio statistic and that of the base model without the variable, followed by p-value of the variable.

³⁹ Settembri, Data-Set, *loc. cit.*

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