2012:2

Wim Van Aken

# Voting in the Council of the European Union

## Contested Decision-Making in the EU Council of Ministers (1995-2010)

Sieps
Swedish Institute for European Policy Studies

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- SIEPS 2012:2 –

Report No. 2
September 2012

Published by the Swedish Institute for European Policy Studies

The report is available at www.sieps.se

The opinions expressed in the report are those of the author.

Cover: Svensk Information AB
Print: EO Grafiska AB
Stockholm, August 2012
ISSN 1651-8942
ISBN 978-91-86107-32-1

# Preface

The Council of the European Union is certainly the most powerful institution of the European Union, as a major Community legislator – alone or with the European Parliament – and as an executive body. It is therefore somewhat problematic that there is only limited knowledge of the Council's decision-making and how the Council reaches an agreement.

The present report by Dr. Wim Van Aken focuses on the Member States' voting behaviour, based on a robust collection of data stretching over a period from 1995 to 2010, together with qualitative material from interviews with practitioners in the Council Secretariat and the Member States' permanent representations.

The author's findings suggest that in a context of significant institutional changes and enlargements, the Council has adjusted well to the new reality. As part of SIEPS' research project *The political system of the European Union,* it is our hope that the present report will shed light on the political processes and the institutional developments in the EU.

Anna Stellinger
Head of Agency

SIEPS carries out multidisciplinary research in current European affairs. As an independent governmental agency, we connect academic analysis and policymaking at Swedish and European levels.

## About the author

*Wim Van Aken* is Postdoctoral Fellow at the Economics Department of the HEC-University of Liège and visiting scholar at the Faculty of Political and Social Sciences of the University of Antwerp. He was employed at the European Institutions and Fora Division at the European Central Bank, where he gained first-hand experience in dealing with the EU Council of Ministers and the European Council. He built and analysed one of the first datasets on explicit voting in the EU Council at the Robert Schuman Centre for Advanced Studies (Florence) which resulted in the analysis 'When and Why the EU Council of Ministers Votes Explicitly' (2004, 2006). Simultaneously, he completed his Ph.D. in Political and Social Sciences from the European University Institute (EUI) on the political economy of the 2004 EU enlargement negotiation process: sectors, states and strategies.

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## List of abbreviations

| | |
|---|---|
| EU | European Union |
| CAP | Common Agricultural Policy |
| CFP | Common Fisheries Policy |
| CFSP | Common Foreign and Security Policy |
| ECB | European Central Bank |
| EP | European Parliament |
| EC | European Commission |
| QMV | Qualified Majority Vote |
| RMV | Reversed Majority Vote |
| RQMV | Reversed Qualified Majority Vote |
| RSMV | Reversed Simple Majority Vote |

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## Executive summary

The Council of the European Union (EU) is the EU's main decision-making body and the most important EU institution. Despite its importance uncertainty prevails about the Council's legislative politics and little robust evidence is available about Council decision-making. This paper contributes to a growing body of research that sheds light on the underlying dynamics of Council decision-making and more specifically contested decision-making.

The paper is based on a new database representing *the total population of explicit votes and public roll calls between 1995 and 2010 in the EU Council.* The explicit votes are the outcome of contested decisions taken by ministers and their variation over time and across policy domains tells us something about Council (contested) decision-making, the issues to which they apply and the Member States' preferences.

The paper is made up of two parts. *Part One* describes the procedures and practices according to which Council roll calls are held and concludes that:

- The dynamic of majorities and minorities in the Council is key to understanding Council decision-making and also consensual agreements;

- Roll call analysis exposes the dynamics of explicit contestation in the Council, but also contributes to our understanding of Council legislative politics at large.

*Part Two* delivers an empirical analysis of the new data and reports five main findings:

- Annual Council legislative activity is characterised by upswings and downswings with roll calls running in parallel. The timing of these 'humps' coincides with European treaty reform and EU enlargement. During the ups EU Member States pass more legislation eliminating the risk of bottlenecks subsequently. During the downs the Council digests change, leaving room for adjustment to a new institutional environment.

- Overall Council legislative and roll call activity is stable over the entire period of 16 years despite the growing diversity of Member States. New procedures, changing voting behaviour, reinforcement of existing

coalition patterns and the successful adjustment to the Council of newer Member States have functioned as shock absorbers. The combination of these factors has contributed to the Council's decision-making capacity over the last 16 years.

- Policy domains: explicitly contested legislation is present in all EU policy areas but more distributive policies attract more contestation and result in stronger preference formation among Member States.

- Geography: larger and more northern Member States contest more often and hold stronger preferences whereas countries from the South and East in Europe contest less frequently and hold fewer strong preferences – the notable exception being Italy.

- Coalition formation: before 2004 the data indicate the existence of three recurrent coalitions in the Council. The first is a silent majority of more proximate Member States that contest less frequently and are generally supportive of EU legislation. The second group comprises a vocal minority of countries which are less proximate to each other and are regularly outvoted. Germany (what we may call the third coalition) is the only country that stands out as it contests frequently but more often on issues that attract less opposition from other Member States. After 2004 most of the newer Member States joined the silent majority in the Council and Germany also became more proximate to this group. Finland, Czech Republic and Malta joined the vocal minority. The UK is the only country in the EU to have moved away from existing coalitions and stand apart, which indicates that there is growing divergence.

Despite the turmoil of the last few years these findings paint a rather positive picture of Council legislative politics between 1995 and 2010 and take issue with the more pessimistic analyses of EU integration subsequent to the Big Bang enlargement.

This research shows that observing explicit contestation in the EU Council provides much information about the EU Council and EU integration. The flexibility of the European treaties, however, has a substantial impact on explicit contestation. It influences the interests and preferences of the Member States and their articulation in the Council of Ministers. More research is needed. The paper concludes with notes on the data for this study.

# 1 Introduction

The Council of the European Union (EU) is the EU's main decision-making body and the most important EU institution. It is a major Community legislator (alone or together with the European Parliament) and an executive body. It is known as the EU Council, the Council of Ministers or simply the Council. The Council of Ministers convenes in various thematic formations and is composed of one representative from each EU Member State for each policy domain, usually a minister, who can commit the national government to decisions taken collectively.

Despite the Council's importance there is still some uncertainty about the Council's decision-making and how it comes to an agreement. Usually consensual agreements among the Member States prevail in the Council but sometimes Member States cannot find a consensus and their representatives resort to calling a vote they subsequently decide to publish. During those public roll calls Member States cast an explicit vote and reveal their preferences publicly. The Council's traditional consensual manner of taking decisions behind closed doors makes these public roll calls and their outcomes all the more telling. Roll calls and explicit votes provide the empiricist with an entry point for the analysis of EU Council legislative politics because they shed light on overt disagreements, the formation of majorities and minorities and explicit modes of decision-making in the Council.

To that end a growing number of scholars have been analysing Council decision-making processes and contestation within the Council. Their findings conclude that the level of explicit contestation is low (20 to 25%)[1] and concentrated on a limited number of EU policy domains; that on the basis of Member States' voting behaviour it is possible to distinguish an emerging political space in the Council; and that this political space can be explained by means of the geography and domestic factors of the Member States. These findings are the result of observations drawn from shorter time spans and they are more reliant on the period from which the data are drawn. They also

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[1] The range derives from the different calculation methods depending on the voting procedure and accounting method of total Council legislative activity. According to our own calculations explicit contestation represents 20% on average (with substantial variation for individual years) calculated as a percentage of contested decisions of total definitive legislative acts.

present a rather static picture of contestation in the Council (see Table 4: Overview of selected data sources in the literature).

The present research builds upon these studies but introduces a temporal element to the analysis by using a new dataset representing *the total population of public rolls calls and recorded votes* covering the period between 1995 and 2010. The data were collated from the *Council minutes* (1999-2010) and *press releases* (1995-2010) of individual Council meetings, *the summary statistics from the Council Secretariat (1996-2010)* and the monthly *summaries of Council acts* (1999-2010). The triangulation of the individual roll calls from these publications allows us to access 16 years of roll calls for each vote in more detail. The data were supplemented with qualitative material from interviews with practitioners in the Council Secretariat and the Member States' permanent representations.

Subjecting these robust data to a more dynamic analysis contributes to a better understanding of the Council's contested decisions and the legislative and roll call activity in the Council. The analysis presents the Member States' voting behaviour and the degree to which EU policy domains attract contestation. More importantly, the research highlights the remarkable stability of Council legislative and roll call activity against the background of profound institutional change defined by four consecutive European treaty reforms and the growth of EU membership from 12 to 27 Member States. This raises the question of *how and why the Council has been so successful in guaranteeing legislative and roll call stability.* In explaining the apparent contradiction between institutional change and Council legislative and roll call stability the study improves our knowledge of the functioning, the decision-making processes and the geography of contestation in the EU Council. Surprisingly, the implications of the research paint a rather positive picture of EU integration in the Council and suggest that the Council has adjusted well to the new reality, contradicting accounts of legislative gridlock. One can paraphrase these findings by means of the bicycle metaphor of the EU: *despite a road full of pits and bumps the bicycle has moved forward and at a fairly constant speed between 1995 and 2010.*

The findings are the result of an empirical analysis guided by descriptive statistics and cluster analysis supplemented with interviews and specialised literature. The objective of the methodology and statistical techniques

is to avoid an analysis based solely on a rudimentary rational and logical count of Council roll calls and contested legislation without considering the institutional setting in which Council votes arise. In short, this paper studies the EU Council legislative politics through the lens of the Council vote but without losing sight of the wider Council decision-making processes and procedures. Therefore, the findings talk to both the EU scholar and EU practitioner.

The remainder of the paper is structured as follows. Part One explains the uses of roll calls for analysing Council legislative politics and describes the procedures and practices according to which roll calls are held. This part of the study highlights the dynamic of majorities and minorities for understanding Council legislative politics. Part Two delivers an empirical analysis with an overview of the Council's legislative and roll call activity (1995-2010) followed by a description of the structure of contestation in the Council (Member States, policy domains and procedures). The final section deals with a before-and-after analysis looking at the effect of the Big Bang enlargement (2004) on contestation, voting behaviour and coalitions in the Council. The conclusions sum up the main findings followed by some thoughts on areas for future research and an annex with notes on data.

# 2 Roll Calls, Procedures and Practices

## 2.1 Why analyse roll calls in the EU Council?

Studying the EU Council through the lens of roll calls[2] has advantages: they are instantly observable, may represent an accurate reflection of Member States' preferences and contribute to our understanding of consensual agreements in the Council.

### 2.1.1 Instantly observable

This paper is interested in the legislative politics of the Council of the EU. To analyse the legislative politics of the Council one needs to study its attributes such as the legislative processes, legislative output, Member States' preferences, contestation and the structure of contestation including coalition behaviour. These attributes are notoriously hard to measure and are seldom directly observable, particularly in the EU Council of Ministers.

In contrast, roll calls generated by the legislative process are instantly observable and are a direct reflection of the attributes of legislative politics. For the empiricist they represent an opportunity and a handle on the otherwise conceptually and analytically elusive process of legislative politics in the EU Council. The variation of roll calls in the EU Council over time and policy domains tells us something about Council decision-making, the policy domains and issues to which they apply and the Member States' preferences.

### 2.1.2 Voting and Member States´ preferences

The votes in the Council that make up the outcome of every public Council roll call can be the result of an accurate reflection of the Member States' true preferences, but it is important to acknowledge that they may also reflect a strategic calculus on behalf of the Member States.

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[2] The literature on contested decisions in the Council of Ministers uses the concept of a 'roll call' indiscriminately. For instance, little distinction is made between roll calls and votes on legislative acts. As a result of different accounting methods this sometimes results in annual discrepancies with respect to the numbers (see Annex: Notes on Data). Whereas roll calls usually denote the obligation of participants to say 'yes' or 'no' and in the event 'abstain' the records show that the EU Council has not consistently applied an established practice in this respect. The records show variation and much appears to depend on the EU Presidency and perhaps on the note-taker of the specific meeting. In recent years the practice of holding and recording roll calls has become more consistent, particularly with the entry into force of the Lisbon Treaty (see Annex: Notes on Data).

The reasons for accepting that votes represent an accurate reflection of Member States' preferences relate to the considerable risks involved in voting against the majority. These risks relate to a loss of influence during the negotiations on a particular subject and to upsetting the EU Presidency and fellow Member States.

During Council negotiations outright opposition to a particular proposal might function as a signalling device indicating that the opposing Member State is not interested in advancing the proposal. At that point the Member State runs the risk of not being involved in further negotiations (Chalmers et al., 2010b, p. 72). As a result, the Member State might forgo any influence on the eventual content of the proposal. The opposing Member State also risks upsetting the EU Presidency that wants to see a proposal approved. Almost all legislative proposals that the EU Presidency puts forward are part of its six-month working programme. For reasons related to its relative standing and its self-interest the EU Presidency is keen on having as many proposals approved as possible during its six months in office (Tallberg, 2004, p. 1005-1006, Niemann and Mak, 2010, p. 729, Tallberg, 2010). A Member State will pay particular attention when contesting, knowing that the EU Presidency rotates every six months and that opposition today always involves the risk of having proper agenda proposals blocked tomorrow. Against this background, the EU Presidency will not appreciate unnecessary opposition and Member States will try to avoid contestation by calling for a roll call in the Council.

Moreover, when a roll call is held Member States are unlikely to oppose measures in the Council on grounds that do not reflect serious interests. Member States will not cast their votes lightly because a negative vote might upset fellow Member States whose interests are served by the measure on the table. Unless the contesting vote is used as a signalling device for 'strong national interests' or 'domestic negotiation constraints' a Member State has little to gain from voting against a proposal. From this perspective the outcome of a roll call is unlikely to be the effect of a strategic calculation but instead is a reflection of the Member States' interests and preferences with respect to the issues under discussion (Mattila, 2009, p. 843, Hagemann and De Clerck-Sachsse, 2007, pp. 20-21).

Nevertheless, Member States could decide not to contest a proposal with a vote because the costs would be higher than the gains they would receive. Despite

the fact that they have clear interests and hold 'true preferences' regarding a specific issue they might decide not to mobilise politically by expressing a vote. In this context Council voting would entail a strategic calculation on behalf of the Member States highlighting that the relationship between interests, preferences, political mobilisation and institutional outcomes (i.e. votes) is not always automatic.[3] A better understanding of the specific and more detailed issues on which explicit contestation is made, would improve our knowledge of this relationship. It would clarify the conditions under which interests translate into true preferences that Member States hold on the one hand and their strategic decision whether to contest explicitly in the Council on the other.

### 2.1.3 Roll calls contribute to the understanding of consensual agreements

Roll calls can be regarded as a critical case for the better understanding of consensual agreements that make up the bulk of Council decisions. In its workings the Council usually proceeds by consensus and legislative proposals are put forward and fashioned in numerous Council workings parties and committees (General Secretariat of the Council, 2011).[4] Within these working parties and committees the chairpersons attempt to accommodate the Member States' individual preferences as represented around the table. Usually, a final decision reflects the consensus within the Council and only in a smaller number of cases are the Member States unable to reach such a consensual agreement. In those instances contestation, majorities and minorities may be recorded, forcing the hand of Member States in terms of revealing their individual position and showing whether they stand alone or in coalition in the Council.

These instances of roll calls do not represent the typical decision-making method and can be regarded as a type of outlier. Calling for a vote is a measure the Council may exercise when there is no consensual agreement. For the empiricist the relationship of these outliers (roll calls) with the majority of decisions (consensual agreements) taken in the Council is crucial because it

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[3] Against this background one cannot exclude the possibility of interpreting a 'no-vote' as a protest vote.

[4] The Council Secretariat publishes an overview of all working groups in the Council in its annual list.

determines whether roll call analysis is useful for the understanding of the Council's legislative politics at large. However important, that relationship is not as much influenced by the relative proportion of explicit voting to the entire legislative activity (based on our own calculations 20% on average depending on the accounting method and with considerable variation for individual years) but rather by the role that majorities of Member States play as a common element in the analysis of both explicit voting and consensual decision-making. In other words, if majorities matter for Council legislative politics, roll calls and explicit votes tell us something about the general dynamics of Council decision-making.

## 2.2 Why do majorities matter in the Council?

Majorities in the Council matter for legislative politics with respect to the voting procedures, the legal bases under which legislative acts are adopted, the underlying dynamics of consensual agreements and the negotiation mandate for co-decision.

### 2.2.1 The expansion of majoritarian legal bases

Majorities in the EU Council are needed to pass proposals under the different voting procedures. These majorities become explicitly public when a vote is called and the majority within the Council carries the vote. Such a majority excludes the possibility of a blocking minority and limits the number of votes and Member States that may oppose a measure. The size of the majority is determined by the legal basis of a legislative proposal which sets the legislative and the voting procedure according to which a proposal must be adopted.

These legal bases have been subject to European treaty reforms that underline the growing importance of majorities in the Council. The entry into force of the Maastricht Treaty in 1993, the Amsterdam Treaty in 1999, the Nice Treaty in 2003 and the Lisbon Treaty in 2009 progressively expanded the scope for majority voting in the EU Council. Although the institutional changes between Treaties have been rather incremental their tendency has been towards more majoritarian decision-making. More policy areas usually subject to unanimity moved to a qualified majority. The last Treaty reform alone has extended qualified majority to more than 40 areas (Chalmers et al., 2006, pp. 178-188, Chalmers et al., 2010a, pp. 137-141, Piris, 2010, pp. 212, 383, 369 ).

### 2.2.2 Underlying dynamics of consensual agreements

Majorities also matter when the Council adopts a proposal by consensus and no roll call is held. In principle, under the consensual decision-making mechanism all the Member States represent the majority in the Council. That is to say, contesting Member States might decide to drop their opposition once a clear majority in favour of a proposal has been established (Hayes-Renshaw et al., 2006, Novak, 2011, p. 17). They are motivated by the high costs involved in the short and long run of continuous opposition or by the mere fact that any additional opposition will not prevent the proposal from being adopted. In other words, *the virtual existence of a majority or the absence of a blocking minority* in the Council provides momentum for consensus-building. The general thrust comes from the continuous functioning of the 'shadow of the vote' (Golub, 1999, p. 732) under the formal and informal Council procedures.

### 2.2.3 Negotiation mandates for co-decision

This assumption gains weight considering that final decisions (including public votes) are always prepared at the group and committee level (Häge, 2007, Olsen, 2010). In these working groups the Member States' individual positions are informed, shaped, recorded and weighed against achieving a majority. During those preparatory meetings the EU Presidency (in) formally gauges the range of Member States' positions. To move a proposal forward the EU Presidency assesses whether a proposal has achieved a certain maturity. It will work towards a majority of Member States in favour while attempting to soften any opposition. *Once a majority has been established the opposition is likely to subside and joins the majority under consensus.* The notable exception to this rule is opposition from pivotal legislators whose support is necessary for the passage of new legislation.[5]

The growing importance of co-decision in particular has reinforced the role of majorities in assisting consensus-building in the Council. With the entry into force of the Lisbon Treaty the co-decision procedure has become the ordinary legislative procedure and has been extended to over 40 areas (Piris,

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[5] Pivotal legislators influence the outcome of the final legislation in important ways because their support is necessary to produce legislation. Their co-operation is vital for compliance as EU legislation needs to be implemented in domestic law.

2010, pp. 365-368).[6] During a co-decision procedure the Council negotiates with the European Parliament (EP) over legislative proposals. To conduct the negotiations with the EP on behalf of the Council the EU Presidency needs a Council negotiation mandate. The mandate informs the EP about the Council position but it also provides an indication of the level of support among the Member States. Paradoxically, under co-decision the bigger the majority underpinning the consensus within the Council the stronger the Council position becomes vis-à-vis the EP.

More precisely, according to Schelling's paradox of weakness (Schelling, 1960) a Council negotiation mandate that is the result of a consensual agreement among Member States would constrain the Council negotiators' room for manoeuvre when bargaining with the EP. This type of weaker negotiation mandate, however, would paradoxically be useful for extracting concessions from the EP during the formal and informal co-decision negotiations. According to Schelling: *'the power to constrain an adversary may depend on the power to bind oneself; that, in bargaining, weakness is often strength, freedom may be freedom to capitulate […]'* (Schelling, 1960, p. 22). Conversely, discord among the Member States in the Council would give Council negotiators more leeway to negotiate and allow the Council's negotiation position as a whole to move vis-à-vis the EP. Under such a scenario the EP might have a better chance of changing the text of a proposal in its favour as Council negotiators would be 'less bound' because some Member States were expressing their disagreement vis-à-vis the majority in the Council. This in turn would change the dynamic of the inter-institutional bargaining between the Council and the EP.

As a result of this dynamic the EU Presidency has a strong motivation to obtain a consensual agreement within the Council when it negotiates with the EP. To that end it will soften any existing opposition and work towards a large majority of Member States while simultaneously binding itself to the majority under consensus. That reasoning also means that contesting Member States in the Council have a strong incentive to drop their opposition on a proposal under co-decision and join their fellow Member States once a majority has been established within the Council.

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[6] With the entry into force of the Lisbon Treaty co-decision has become the ordinary legislative procedure. This procedure has been extended to over 40 areas.

Knowing that majorities matter for roll calls and consensual decisions alike it can be argued that roll call analyses are useful for understanding the broader dynamics of Council legislative politics. Treating roll calls and explicit votes in their crude and elementary form without understanding the institutional framework in which they are triggered might, however, lead to the wrong interpretation of a roll call analysis. Roll calls and votes are subject to specific Council procedures and practices that regulate who may call a vote, the conditions and majority thresholds under which a vote is held and how roll calls are managed.

## 2.3 The procedures: voting in the Council

### 2.3.1 Who calls a vote?

The EU Council Presidency calls a vote either on its own initiative or when a Member State or the Commission requests a vote with the support of the majority of the Council. A roll call is only valid when a majority of the Member States (a quorum) is present. The Council almost always reaches a quorum because a minister's absence can be compensated for in a number of ways. Ministers may be represented by other officials following national governance practices. Any Member State may vote on behalf of only one other Member State; and, the Permanent Representative (or her/his Deputy) may also articulate the vote by means of the Member State's position. Such a position is considered to be the equivalent of a vote by a member of the Council. The actual voting in the Council takes place in the order that is unanimously decided and begins with the Member State that sits next to the EU Presidency.

For an urgent matter and provided all the Member States agree the EU Presidency or the Permanent Representative may also call for a vote by *written procedure.*[7] Written procedures are managed by the Council Secretariat and Member States need to send their votes (usually by e-mail) before a certain deadline. Once a written procedure has been decided the Member States explicitly resort to the *majority thresholds* to adopt a proposal. That is to say, a legislative act is deemed to be adopted as soon *as the number of positive replies equals the number of votes required.* Written procedures are the only

[7] When a written procedure deals with a Commission proposal the Commission must also agree.

instance in which a vote is not carried out during a formal meeting of the Council. *For the researcher written procedures are interesting because they explicitly refer to the majority threshold in the Council and because the institutional setting in which a vote is held, varies.*

Surprisingly, the roll call analysis of written procedures results in a number of interesting findings. Roll calls by written procedures represent 6.6% of the total roll calls between 1995 and 2010. They have been used twice as much after 2004 than before with approximately 40% (on average 3% annually) of the total launched during the period before the 2004 enlargement. Around 60% (on average 6% annually) of the total written procedures were launched after 2004. The use of written procedures peaks during the period of the annual summer recess with around 40% being launched during the months of July, August, and September followed by the period around Easter (20% - April, May) and the Christmas break (20% - December, January). Also, the content of the acts on which a vote was taken by written procedure yields some interesting findings. Contestation by written procedure measured by the number of Member States is higher and sometimes results in public contestation in the areas where one least expects it such as CFSP (see Annex: Notes on Data; Public Roll Calls and Votes) or where the Franco-German tandem is exceptionally outvoted[8] by a majority of Member States.

### 2.3.2 Majority thresholds

The Council makes decisions under different majority thresholds depending on the legislative proposal. The thresholds are laid down in the European treaties and have been updated from time to time to accommodate the EU's growing membership. Three majority thresholds have been used: unanimity, qualified majority and simple majority with a reversed majority rule as a variation on the simple and qualified majority rule.

Under **the unanimity rule** a legislative proposal can only be adopted if no Member State votes against, with one Member State counting as one vote. A proposal is only approved when all Member States' preferences are taken into account. As a result, the unanimity rule usually represents the lowest common denominator solution. Unanimity, however, still allows for some

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[8] Being outvoted does not necessarily mean that one has lost in the Council and should not be interpreted from the perspective of 'winners and losers'.

form of dissent without blocking the proposal; that is, an abstention by one or several Member States does not prevent a proposal from being adopted under unanimity.

**A qualified majority vote (QMV)** is a combination of thresholds of weighted votes, the number of Member States and a percentage of the EU population. The EU Treaty predetermines the number of votes attributed to each Member State and applies a scale ranging from 29 votes each for the four largest Member States to three votes for the smallest (see Table 1). Over the last fifteen years these voting weights have been adjusted to accommodate three consecutive enlargements (1995, 2004 and 2007) and a total of 15 new Member States. Until November 2014 a QMV continues to operate according to the thresholds laid down in the Treaty of Nice (2004). To pass a Commission proposal a Council of 27 Member States requires a majority of 255 out of 345 weighted votes or 73.91% of the Member States' weighted votes. The proposal is not adopted if a blocking minority of Member States represents at least 90 out of 345 weighted votes. A proposal also requires the support of a majority of the Member States (14 Member States out of 27) and a Member State can always request verification that the majority represent at least 62% of the total EU population.[9] Also, an abstention under a QMV is considered to be a negative vote because only positive votes are counted for reaching the majority threshold. This appears to suggest an absence of a degree of opposition, as an abstention would not express feebler preferences relative to a negative vote. When a decision is not taken on the basis of a Commission proposal the threshold rises to two-thirds of the Member States (or at least 18 Council Members).

According to the Lisbon Treaty (2009) the modalities for a QMV will change as of 1 November 2014 with a transition period until 31 March 2017.[10] The QMV under Lisbon will become the default voting method of the Council and will be based upon a double majority of Member States and the EU population. It will represent a majority of 55% of the Member States and 65% of the EU population. The majority threshold rises to 72% when the Council

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[9] To that end, the EU population figures are updated annually according to the figures provided by Eurostat (the EU's statistical office).

[10] During the transition period any Member State may request that the current voting system be applied instead of the new double majority system.

**Table 1 Evolution of QMV in the EU Council (1995-2017)**

| | 1995-2004 EU-15 01/01/1995 | 2004-2007 EU 25 01/05/2004 | 2007-2014 EU 27 01/01/2007 | 2014 onwards | |
|---|---|---|---|---|---|
| | | Nice 01/11/2004*-31/10/2014 | | Lisbon 01/11/2014** | Pop (000,0) |
| AT | 4 | 10 | 10 | 1 | 8,404,252 |
| BE | 5 | 12 | 12 | 1 | 10,951,665 |
| DE | 10 | 29 | 29 | 1 | 81,751,602 |
| DK | 3 | 7 | 7 | 1 | 5,560,628 |
| ES | 8 | 27 | 27 | 1 | 46,152,926 |
| FI | 3 | 7 | 7 | 1 | 5,375,276 |
| FR | 10 | 29 | 29 | 1 | 65,048,412 |
| GR | 5 | 12 | 12 | 1 | 11,309,885 |
| IE | 3 | 7 | 7 | 1 | 4,480,858 |
| IT | 10 | 29 | 29 | 1 | 60,626,442 |
| LU | 2 | 4 | 4 | 1 | 511,840 |
| NL | 5 | 13 | 13 | 1 | 16,655,799 |
| PT | 5 | 12 | 12 | 1 | 10,636,979 |
| SE | 4 | 10 | 10 | 1 | 9,415,570 |
| UK | 10 | 29 | 29 | 1 | 62,435,709 |
| CY | | 4 | 4 | 1 | 804,435 |
| CZ | | 12 | 12 | 1 | 10,532,770 |
| EE | | 4 | 4 | 1 | 1,340,194 |
| HU | | 12 | 12 | 1 | 9,985,722 |
| LT | | 4 | 4 | 1 | 3,244,601 |
| LV | | 7 | 7 | 1 | 2,229,641 |
| MT | | 3 | 3 | 1 | 417,617 |
| PL | | 27 | 27 | 1 | 38,200,037 |
| SK | | 7 | 7 | 1 | 5,435,273 |
| SL | | 4 | 4 | 1 | 2,050,189 |
| BG | | | 10 | 1 | 7,504,868 |
| RO | | | 14 | 1 | 21,413,815 |
| Qualified Majority | 62/87 | 232/321 and 13 MS 62 % pop. | 255/345 and 14 MS 62 % pop. | 15/27 and 65% pop. | 502,477,005.000 62%(311,535.74) 65%(326,610,05) |
| Qualified Majority*** | 10/15 MS | 17/25 MS | 18/27MS | 20/27MS | |
| Blocking Minority | 26 | 90 | 91 | at least 4 MS or 35% of participating MS+1 MS | |

**Legend:** * transition period from 01/05/2004 to 01/11/2004 whereby a QMV represents 88 out of 124 votes under the previous voting weights; **transition period from 01/11/2014 to 31/03/2017: a Member state can request that the voting rule for a particular decision reverts to the rules under the Nice Treaty; *** QMV for an act not proposed by the Commission; MS=Member States, pop.=population

**Sources:** population data on 1 January 2011 from Eurostat (2012).

does not act on a proposal from the Commission or the High Representative.[11] A blocking minority constitutes at least four Member States representing more than 35% of the participating Member States plus one Member. The latter is designed to prevent the larger Member States (France, Germany, Italy and the UK) from being able to block a Commission proposal.

Until 2014 the **simple majority** rule remains the default voting method in the Council. It is frequently used for administrative proposals such as the adoption of the agenda, approval of the minutes or to give public access to Council documents. A simple majority requires the approval of at least 14 out of the total of 27 Member States, with one member representing one vote.

Between 1995 and 2010 there have been numerous occasions whereby roll calls were held under **a reversed simple majority vote (RSMV).** Under the RSMV a proposal is automatically adopted unless the Member States oppose its passing with a blocking minority.[12] The RSMV has been applied in the area of EU trade policy, the Council's policy on transparency and in 2011 the reversed majority was adopted as the preferred voting rule in the context of the new economic governance package. A RSMV increases the likelihood of adoption as it raises the threshold to block a proposal in the Council.

Until 2004 a Commission proposal advising the use of a trade defence instrument was only adopted if a simple majority of Member States voted in favour. These proposals were frequently blocked owing to the number of abstentions effectively counting against the Commission proposals. In 2004 the Council – Denmark and Sweden voting against – introduced the use of RSMV in the so-called 'Basic Regulations' for imposing anti-dumping and countervailing measures (Council press release, 09/03/2004). Under the RSMV a Commission proposal is adopted unless the Council decides by a simple majority to reject the anti-dumping or countervailing measures within a period of one month after its submission. As a result of the RSMV the threshold for blocking a Commission proposal has effectively been

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[11] The High Representative of the Union for Foreign Affairs and Security Policy.

[12] A 'reversed majority rule' is also in use in the World Trade Organization (WTO). Decisions of WTO panels are considered to be adopted unless all its Member States reject its findings. Since there is always a winner in a trade dispute it has become more difficult to block a decision made by WTO panels.

raised. A RSMV has also been used in the area of the Council's policy on transparency whereby a Council Secretariat proposal on confirmatory replies is automatically adopted unless it is blocked by a simple majority.

A different version of the reversed majority rule, the so-called **reverse qualified majority voting procedure (RQMV),** will be used in the context of enforcement of the new economic governance package or the so-called 'Six-Pack' (Council press release, 12/12/2011). Under RQMV a Commission recommendation to impose a sanction on a Member State is deemed to be adopted unless the Council decides by a QMV to reject the recommendation within a specified period. This semi-automatic decision-making procedure makes it very difficult for Member States to form a blocking majority because of the high majority threshold, as the evidence on RSMVs in other EU policy domains suggests. The strengthened enforcement mechanism backed by a RQMV has partly been motivated by the failure in 2003 of the excessive deficit procedure for France and Germany (Council press release, 25/11/2003, Council press release, 09/03/2004). At the time sanctions could not be imposed on France and Germany because of the existence of a blocking minority rejecting the Commission's recommendations. Germany, France, Ireland, Italy, Luxembourg, Portugal, the UK and Sweden opposed the measures.[13] Within the group of countries that had adopted the euro, the measure on France was opposed by Germany, Ireland, Italy, Luxembourg and Portugal, who also represented a blocking minority. Finland strengthened this blocking minority for the vote on Germany.[14]

The three majority thresholds (simple majority, unanimity and QMV) and their variants (RSMV and RQMV) play continuously in the background during the Council decision-making processes. They influence the eventual adoption of a proposal but their rudimentary impact based on a purely rational calculation of votes is diluted and mitigated by the institutional setting and more specifically the practice of the vote that leaves little room for surprises in the Council.

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[13] Under Article 104(8) of the consolidated Treaty on the EU, France or Germany individually could not participate in the vote when the measure applied to them.

[14] Under Article 104(9) of the consolidated Treaty on the EU only Euro Group members were allowed to vote and France or Germany could not participate when the measure applied to them.

## 2.4 The practice: probable voting results

Explicit votes at the ministerial level are prepared well in advance and their outcome is probable. It is unlikely for the Council to hold a roll call without already knowing the outcome. The explanation for roll calls' probable outcomes in the Council is related to the provisional agenda of the meeting, the role national parliaments play and the measured approach to decision making as well as the formalistic character of the Council meetings.

### 2.4.1 The provisional agenda

The provisional agenda of a Council meeting is adopted with a simple majority and prepared at least 14 days in advance of the meeting. The conditions for additional items outside that deadline are stringent and only a unanimous agreement among Member States may allow substantive items to be added. The agenda indicates for each item whether the Presidency, a member of the Council or the Commission may request a vote. In other words, a vote is scheduled at least two weeks in advance, giving Member States ample time to prepare and as a rule to know the Council's position as a whole on the proposal.

### 2.4.2 National parliaments

In reality, Member States have more time to prepare a vote particularly in view of the role that national parliaments play in Council decision-making. To allow national parliaments to have a say on matters of specific interest the Council cannot adopt a legislative act before they have had the time to study the text.[15] The Council may only place a legislative proposal on the agenda for adoption, that is a final adoption or common position in case of co-decision, once six weeks have elapsed between submission of the proposal and its final adoption. Only for emergency purposes may the Council unanimously depart from this rule. These stringent conditions for setting the provisional agenda and adopting changes to it outside the deadlines almost preclude the possibility of surprise outcomes in a possible roll call.

### 2.4.3 The frontloading of votes

More critical to the explanation of probable outcomes of Council roll calls is the measured and stacked approach towards decision-making in the Council. Such an approach makes the outcome of a roll call predictable owing to earlier

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[15] See the protocol on the role of national parliaments in the EU of the EU Treaty.

discussions among ministers or owing to the groundwork completed within the working parties and the committees where the Member States inform, compare and fashion their national positions (General Secretariat of the Council, 2011).[16] More precisely, the result of a vote recorded in the Council documents is the last step in a long decision-making procedure prepared by previous discussions in the Council. Most of the preparatory work is done in the Council working parties and committees with some variation regarding the individual policy domains (Häge, 2007, Olsen, 2011, pp. 216-217). Once the possibility of a formal roll call is on the agenda of the Council, Member States are no longer expected to change a previously established position. In other words, *by establishment of the Member States' positions in advance votes are frontloaded as it were and no longer represent a surprise to the Council when they are tabled.*

The legislative process in the Council working parties and committees, particularly in COREPER and the Special Committee for Agriculture (SCA), is crucial to the comprehension of Council roll calls and the practice of voting. In the EU Council the preparations for a formal decision are organised at the lower and more technical levels of the hierarchy. At these levels the members are not allowed to take a final decision. They cannot hold a formal roll call registered either electronically or by a show of hands. Instead, the chairperson of the working party may hold an informal poll of the position of the individual delegations. For her/his agenda preparations the chairperson has a detailed knowledge of the individual position of each Member State on all items. Member States' positions are formulated either through discussions, bilateral contacts among Member States or the numerous written documents that accompany each point on the agenda (Tallberg, 2004, p. 1001).

At the end of each meeting the chairperson will have a good idea about the maturity of the dossier. The chairpersons are expected to sum up the points of agreement, the potential political and horizontal questions that warrant discussion in COREPER and the need for further debate in the working party. The chairperson may only submit an item to COREPER when there is a reasonable prospect of progress. Similarly, a dossier will only be referred

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[16] National experts and officials from the Member States make up the working parties. They form the lower hierarchy in the Council. The committees form the middle layer of the hierarchy and only COREPER I and II and the Special Committee on Agriculture (SCA) have a direct line to the ministers.

to a lower-level working party in order to find a clearly defined solution. The practice was designed for efficiency and was reinforced following the 2004 enlargement (Council of the European Union, 2003).[17] Items on which agreement has been reached are placed on the agenda of the senior Committees as a so-called 'roman I-point' and subsequently as a so-called 'A-item' at the ministers' level in the Council. Items requiring further clarification appear as a 'roman II-point'; and, assuming no agreement prevails, as a 'B-item' for discussion at the political level of ministers (Westlake and Galloway, 2004).

During the entire process the Council Secretariat, the chairpersons of the working parties and the EU Presidency will continuously explore and verify the Member States' position in search for a majority in favour of a proposal. The discussions may follow different formal, informal, multilateral and bilateral formats and Member States are encouraged to compare their positions, even out differences and forge a compromise. The Presidency is decisive in driving the proposal forward and guides the text through a series of compromises on a technical level and political level (Tallberg, 2004, pp. 1001-1005).

At this stage of the decision-making process a number of factors are at play. It matters for the weight of a majority whether the larger Member States (France, Germany, Italy and the UK) and the legislative pivots are on board (Tsebelis, 2002, Hagemann, 2007, p. 283).[18] These factors are even more important when the opposition has the potential of forming a blocking minority. As a rule, the Presidency will not hold a roll call when a blocking minority is present. Over the entire period only a limited number of recorded cases were found whereby a roll call was held under a blocking minority and failing the required majority to adopt a proposal. Four of those proposals dealt with the prominent rejection in 2003 of the Commission's excessive deficit recommendations for France and Germany (Council press release, 25/11/2003). Other instances were the result of comitology procedures in the area of agriculture. One example was a failed roll call in 1998 under

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[17] Before the 2004 enlargement the general practice of referring reports up and down the Council hierarchy between the Council's preparatory bodies was more widespread. In the light of the 2004 EU enlargement the Council approved on 18 March 2003 a Code of Conduct aimed at improving the efficiency of the preparation and conduct of meetings.

[18] Legislative pivots are partisan actors whose consent and support is needed to generate a policy change. They are specified by the legislative process.

the Austrian EU Presidency, which allowed the Commission to adopt emergency measures in the fight against the so-called 'mad cow disease' (Council press release, 23/11/2003).[19] The Presidency's compromise proposal on a Community patent in 2004 is one of the most symbolic negative roll calls on record. Despite the presence of a strong blocking minority under a unanimity rule for a Presidency compromise text the Irish EU Presidency called a vote and the German, French, Spanish and Portuguese ministers voted against while the Italian delegation abstained. In the event the Irish EU Presidency noted that 'all conceivable compromise solutions for the only outstanding issue, which concerned the translation of patent claims, had been tried' (Council press release, 18/05/2004). These cases, with the exception of certain instances in the area of the comitology procedure, illustrate why the EU Presidency has little to gain from a vote when a blocking minority survives the Council legislative politics.

The EU Presidency will also tread carefully when an opposing Member State makes reference to the *Ioannina Compromise,* reflecting that 'vital national interests' are at stake (Hayes-Renshaw et al., 2006, Piris, 2010, p. 223). Such emergency measures are seldom used (Golub, 1999, p. 751) and have only been publicly referred to once over the observed period. In October 1995 the EU Member States had a long discussion on whether national aid could be granted to compensate for losses of agricultural income as a result of monetary movements in other Member States. Despite the reference to the Ioannina Compromise the Spanish EU Presidency decided to move forward and adopt the proposal under a QMV with Italy voting against and the UK abstaining (Council Press release, 25/10/1995). The exceptional nature of such instances relates to a common negotiation strategy that allows the withdrawal of a text when vital national interests are at play. The EU Presidency may decide against putting the item on the agenda; alternatively, the Commission may withdraw its proposal before its final adoption but that rarely happens, only around 8% of Commission proposals being withdrawn at some point between 1975 and 2007 (Häge, 2011, p. 470). In short, the text is unlikely to come to a vote.

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[19] For this type of decision the Council cannot reach a QMV in favour or against a proposal. If the Council does not act the decision is subsequently referred back to the Commission, allowing it to finalise the procedure as part of its implementing powers. Such cases are also not uncommon in the area of agriculture for the placing on the market of products related to genetically modified organisms.

More often than not a proposal moves forward and is eventually adopted in the Council. The presence of a clear majority, or the absence of a blocking minority, influences the moment when the EU Presidency decides to propose the adoption of the proposal. The prospect of adoption encourages the opposition to join the majority and reach a consensual agreement whereby nobody objects (Tallberg, 2004, p. 1006, Novak, 2011, p. 1, 16). Otherwise, when a number of Member States neither side with the majority nor add up to a blocking minority the EU presidency may decide to adopt the proposal and call for *an informal poll.* The Member States and the Commission may also trigger such an informal poll. The outcome of such a poll has no legal meaning and is not formally noted unless the informal poll is held at the level of the senior Council Committees (COREPER and SCA). Depending on the policy domain the senior committees subsequently inform the delegations of the outcome. The item then moves onto the agenda of the Council of Ministers as an A-item for formal adoption, possibly with a vote. Similarly to such informal polls the Council may call for an indicative vote at the ministers' level for items still under discussion. A *'test for a QMV'* or an indicative vote brings clarity to the positions of the Member States. Like informal polls they have no legal effect and the act must be formally adopted at a later time. One instance of an indicative vote dealt with a regulation regarding the use of antibiotics in animal feeding stuff (Council Press release, 14/12/1998). Usually such indicative votes are not made public but their existence reaffirms the role majorities play in consensus-building.

### 2.4.4 Efficiency and formalism

Probable outcomes are also realistic in the context of an institution concerned about the capacity and efficiency of its legislative politics, particularly in view of growing EU membership. That concern is reflected in the adoption of a code of conduct in 2003 (Council of the European Union, 2003) encouraging Member States and the EU Presidency to work towards more efficient decision-making. For any Council meeting the total number of people around the table almost always exceeds 27 members. The meeting can easily run to a 100 people as five persons per delegation are allowed.[20] As a result of

[20] The meetings are characterised by a constant coming and going of officials. The delegates are allowed to speak only for a limited time, reducing the opportunity for real dialogue. A similar process occurs in COREPER where the permanent representatives (COREPER II) or their Deputies (COREPER I) are accompanied by the Antici or Mertens group. Together with the Council Secretariat and the Commission up to three backbenchers per delegation may be present at any time. At the group level the 27 Member States' delegates are reinforced with national experts and delegations may include up to five people.

the sheer numbers, meetings have become more formalistic and are steered according to a strict timetable (Hagemann and De Clerck-Sachsse, 2007, pp. 12-13). The task of the EU Presidency to keep an oversight of the meetings, steer the discussions and seek a majority that can assist the consensus has become more complex. Under the unanimity and simple majority rule each Member State represents one vote. The exercise becomes more intricate, however, when votes need to be pondered according to the voting weights that are assigned to the individual Member States under the qualified majority voting rule. In a larger EU the Presidency is more likely to use an automatic voting calculator for exploring a qualified majority.[21] Other practical means aiding the calculation of roll calls are the electronic display in the Council of formal and indicative votes at the ministerial level (Novak, 2011, p. 30) and the frontloading of votes.

In short, there are no surprises: the agenda provisions, the legal obligations towards national parliaments, the stacked approach towards Council decision-making and concerns about efficiency result in probable outcomes at the ministerial level.

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[21] The voting calculator is readily available on the Council website (www.consilium.europa.eu/council/voting-calculator).

# 3 The Empirics

## 3.1 An overview of voting in the Council (1995-2010)

For a number of years empiricists interested in Council legislative politics have had access to the total population of recorded roll calls that the Council Secretariat decides to publish. The publication follows the legal obligation to make specific types of roll calls available to the public (Commission of the European Communities, 1993, Miller, 26 October 1994). These roll calls have been published in the Council minutes and press releases of individual Council sessions, in the summaries of Council acts and in the summary statistics of the Council Secretariat. The triangulation of the individual roll calls in these publications allows us to access 16 years of roll calls (1995-2010) with more detail for each recorded vote and distinguish roll calls (the public recording of a Member States position on *one or more* legislative acts) from a vote on a legislative act (the public recording of a Member State's position on a *single* legislative act). This distinction is no small matter as the number of legislative acts subject to explicit voting reinforces the effect of contestation relative to roll call analysis. The *average* dissonance between roll calls and legislative acts subject to a public vote reaches 5.5% with substantial differences for individual years.[22] The dissonance relates to the Council voting on legislative packages *within* a single policy domain, predominantly in the area of Agriculture, Trade and Health and Consumer Affairs.

The new database allows us to analyse the Council's roll call and legislative activity on which a public vote was held, the structure of contestation over policy domains including access to Council documents, the type of voting procedure and legislative act, Member States' voting behaviour and coalition formation and the effect EU enlargement has had on the Council.

### 3.1.1 Up- and downswings: uneven Council legislative and roll call activity

The Council's *annual* legislative output and public rolls calls have fluctuated considerably over the last 16 years and more so towards the end of the period. Measured as a percentage of the total over the observed period between 1995

[22] The data base comprises 1406 explicitly contested legislative acts with 27,107 observations (votes cast) or 1328 roll calls with 27,077 observations.

and 2010 the ups and downs of the data are easily distinguishable (Figure 1). This finding was also established for the period 1999-2005 (Dehousse et al., 2006, p. 37). The fluctuations are a reminder that results based on cross-sectional analysis or those based on panel data running over a limited number of years are largely influenced by the years from which the data are drawn. Despite the variance of the official measures of the Council's legislative activity (see Annex: Notes on Data) the observed fluctuations are not random but follow a pattern.

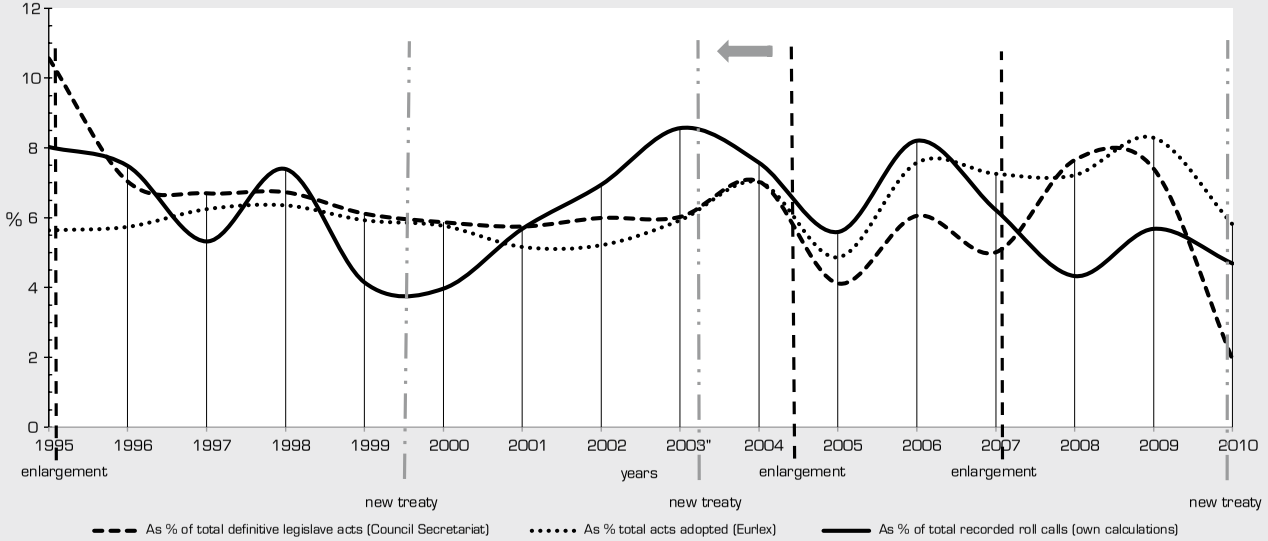
The Council's roll call activity runs parallel to its legislative activity but with a lag. Roll call activity is an indicator of contested legislation on which the Council cannot reach a consensual agreement. Contested legislation therefore takes longer to adopt because the Council might seek to soften any possible opposition before resorting to a vote. In other words, the lag between roll calls and legislative activity is related to the Council's efforts to reach an agreement on legislation for which real opposition exists and which requires more time to adopt (Golub, 1999, Dehousse et al., 2006, Häge, 2007).

The timing of the upswings and downswings of Council legislative and roll call activity is particularly revealing, with similar starting- and end-points of the 'humps' including for the period 2007-08. The ups and downs of the data coincide with consecutive European treaty reforms and EU enlargements. The upswings can be clearly observed before the enlargements of 2004 (Dehousse et al., 2006, p. 26, 35) and 2007 and the treaty reforms of 1999, 2003 and 2009. The downswings take place after EU accession (including the accession of Austria, Sweden and Finland in 1995) and the entry into force of new European treaties. Also, the Treaty of Nice reform (2003) and the Big Bang enlargement of 1 May 2004, originally planned for the end of 2003 (see the arrow on Figure 1), are a case in point. In short, Council legislative and public roll call activity go up before the entry into force of a treaty and EU enlargement; they decline subsequently.[23]

European treaty reform and EU enlargement bring about institutional change in the EU. It is not surprising that the EU institutional changes between 1995 and 2010 influenced the Council's legislative and roll call activity. The Council catered for the entry into force of four treaty reforms (the Maastricht

[23] A derived function confirms this observation both with respect to the timing and in terms of intensity.

**Figure 1: Annual Council legislative activity and public roll calls (1995-2010)**




**Legend:** Enlargement: accession AT, FI, SE (01/01/1995); accession CZ, CY, EE, HU, LT, LV, MT, PL, SK, SL (01/05/04); accession BG, RO (01/01/07); Entry into force of new EU treaties: Treaty of Amsterdam (01/05/99); Treaty of Nice (01/02/03), Treaty of Lisbon (01/12/2009). Country codes from two-letter ISO code (except Greece: EL, United Kingdom: UK).

**Sources:** Summary statistics from Eurlex (regulations, directives and decisions for EU Council, EU Council and EP) with figure for 2003 unavailable and extrapolated from 2002 and 2004; summary statistics supplied by the Council Secretariat (1995-2010), with figure for 1995 unavailable and replaced by 1995 data from MATTILA, M. & LANE, J.-E. (2001) Why Unanimity in the Council?, in: European Union Politics, 2, 31-52, p. 40; total public roll calls (except confirmatory replies) collated from the Council minutes (1999-2010) and Council press releases (1995-2010) of all individual Council sessions between the 1826th Council meeting for Agriculture (23 January 1995) and the 3061st Council meeting for Environment (20 December 2010). They were triangulated with the data from the monthly summaries of Council acts (1999-2010) and the Council Secretariat summary statistics (1996-2010).

Treaty in 1993, the Amsterdam Treaty in 1999, the Nice Treaty in 2003 and the Lisbon Treaty in 2009) and the accession of 15 new Member States more than doubling its membership over the observed period of 16 years. Although the changes were mitigated by built-in transition periods in the (accession) treaties they generally triggered procedural and legislative uncertainty. The uncertainty for the Member States and the Council decision-makers is related to changes in the legal bases of the different policy domains, new voting weights and ensuing Council majorities, and the adjustment of distributive outcomes for specific EU policy domains, to name but a few. Under such institutional uncertainty Member States tend to pass more EU legislation (and hence hold more roll calls) under the rules they are familiar with rather than to wait for the new rules to take effect and eliminate potential legislative bottlenecks. Such an approach allows the Member States and the Council to adjust to a new institutional environment before the pace of legislative activity picks up again in the following period.

This account goes some way to explaining one of the most interesting puzzles that the data expose. In contrast to general expectations the growth of EU membership from 12 to 27 Member States between 1995 and 2010 did not have any considerable impact on the overall level of legislative and roll call activity. The stability of legislative and roll call activity is puzzling because the growing heterogeneity of Member States generally has been associated with a more difficult decision-making environment. A larger Council is expected to encounter more difficulties in reaching agreement among the Member States because it needs to cater for a growing number of preferences represented around the table. If such a mechanism were to operate within the Council the likelihood of finding agreement would be smaller and one would expect a declining legislative output and/or more publicly contested legislation. The empirical evidence does not bear this out for the period 1995-2010 during which three EU enlargements took place. Also, the consecutive European treaty reforms appear not to have had any substantial impact on the numbers. Therefore it is safe to argue that in the longer run EU enlargement appears not to have had any substantial impact on the Council decision-making capacity measured by the overall legislative and public roll call activity. *These findings particularly contrast with the analysis that the EU has been paralysed, that EU enlargement has been too rapid and that the EU treaties are not functioning* (Piris, 4 November 2011, Piris, 2012).

### 3.1.2 The structure of contestation in the Council: EU policy domains

At a lower level of aggregation the research finds that contested legislation – a measure that reinforces the effect of contestation relative to roll call analysis – is present in all EU policy domains (see Figure 2, p.36), but that Common Agricultural Policy (CAP), Trade, Internal Market and Common Fisheries Policy (CFP) consistently elicit higher levels of contestation from the Member States (64% of the total)[24]. Environment, Transport, Health and Consumer Affairs, and Economy and Finance also feature prominently (25% of the total). In these policy domains between 1995 and 2010 one or more Member States regularly cannot side with the majority in the Council and are compelled to show their opposition publicly. On an annual basis contested legislation is scattered across all the policy domains and the trend between 1995 and 2010 is relatively stable. As a single policy domain CAP dominates every single year (23% on average over the entire period) except for the period 2004-06 when the records display more contested legislation in the area of Trade, Environment and Transport policy.

The long tail of explicit votes in Figure 2 includes legislative activity subject to a small number of unique votes. The most surprising of these is a vote in 2010 in the area of defence under the Common Foreign and Security Policy. For the final decision taken by a *written procedure* (see written procedures under the 'Who calls a Vote?' heading) Denmark and the Netherlands could not join their fellow Member States in a decision to send an EU military mission to train Somali security forces (Council Decision, 15 February 2010 (2010/96/CFSP)). The long tail consists of a whole set of these highly symbolic measures with the majority of roll calls held in the second half of the 2010s in areas considered to be traditionally part of the Member States' national sovereignty such as Justice and Home Affairs, Social Policy, Youth and Culture and Education policy.

Albeit contested legislation is present in all policy domains it is remarkable that the more distributive EU policy areas elicit most contestation representing more than 50% of the total. Member States' contestation is higher on issues

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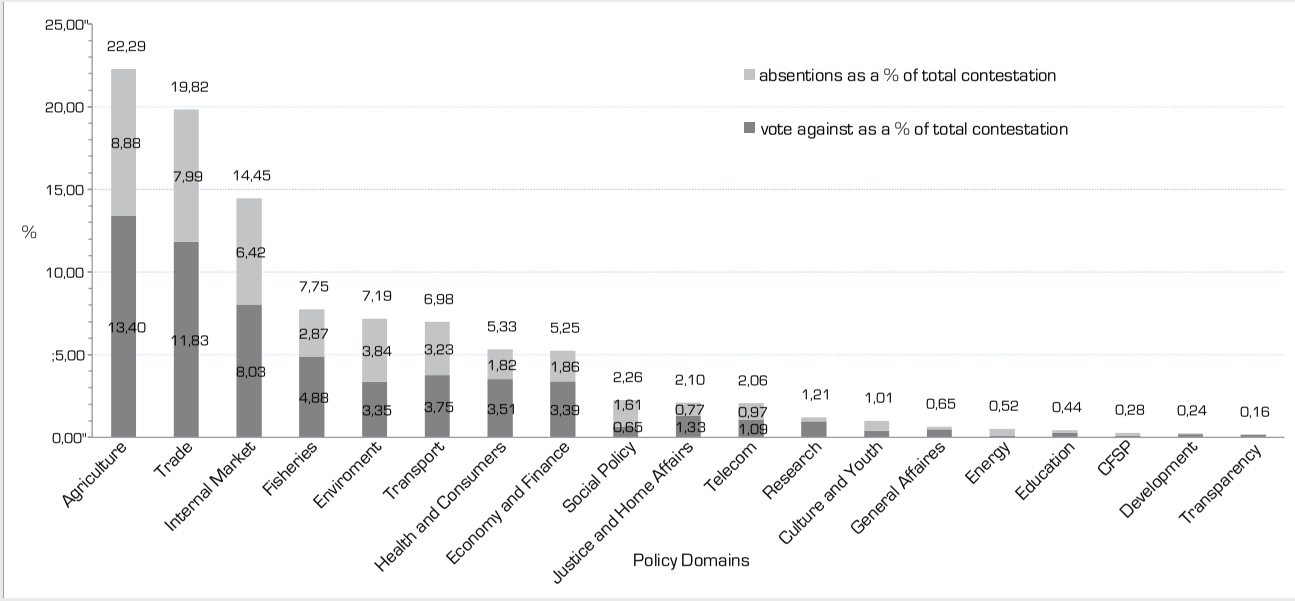
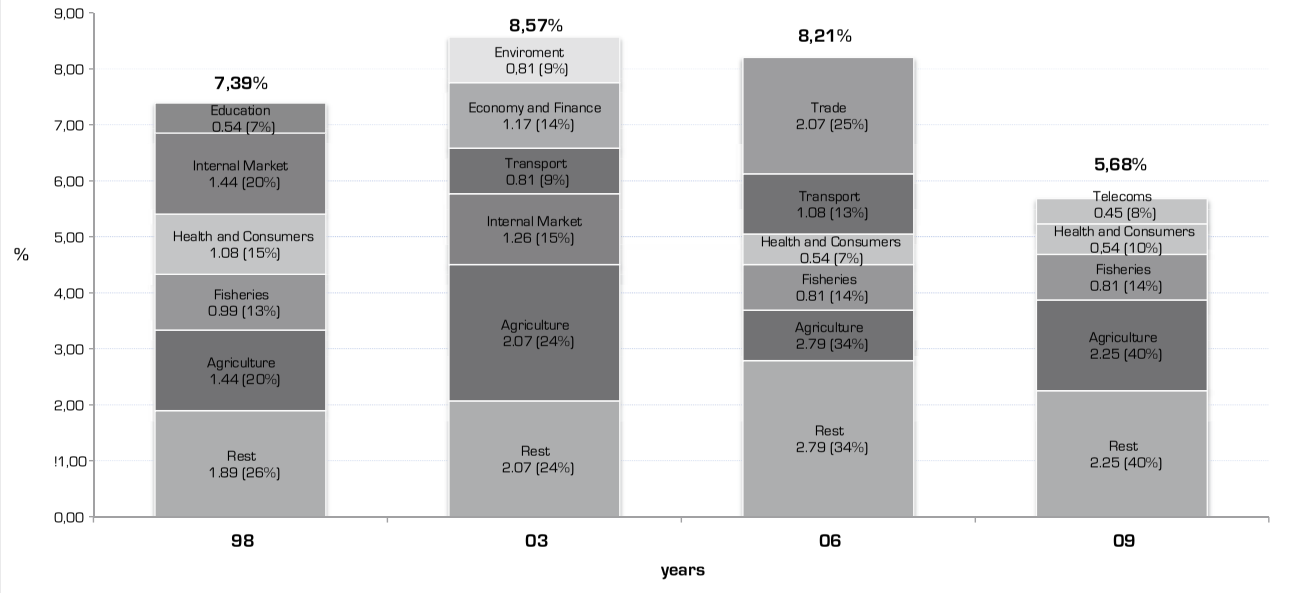
[24] Note that the total number of acts varies between policy domains with more acts for instance in the area of CAP and trade than in other sectors.

**Figure 2: Contestation by EU policy domain (1995-2010)**




**Legend:** As a % of total public contestation, i.e. public votes on legislative acts (except confirmatory replies), for the period 1995-2010.
**Sources:** All acts on which a vote was recorded (except confirmatory replies) from the Council minutes (1999-2010) and the Council press releases (1995-2010) of all individual Council sessions between the 1826th Council meeting for Agriculture (23 January 1995) and the 3061st Council meeting for Environment (20 December 2010). They were triangulated with the data from the monthly summaries of Council acts (1999-2010) and the Council Secretariat summary statistics (1996-2010).
**Note:** It is important to point out that this table is not intended to compare the level of contestation across policy domains as it is possible that more acts are agreed in the areas of for example agriculture and trade relative to economy and finance or health and consumers.

**Figure 3: Public roll call activity in the year before a new treaty and EU enlargement**




**Legend:** As a % of total public roll call activity for the period 1995-2010. Selected years represent the year of peak of roll call activity before the entry into force of a new treaty and/or an EU enlargement.

**Sources:** All recorded roll calls (except confirmatory replies) collated from the Council minutes (1999-2010) and the Council press releases (1995-2010) of all individual Council sessions between the 1826th Council meeting for Agriculture (23 January 1995) and the 3061st Council meeting for Environment (20 December 2010). They were triangulated with the data from the monthly summaries of Council acts (1999-2010) and the Council Secretariat summary statistics (1996-2010).

that have an impact on direct distributive budgetary policies (CAP and CFP) or indirect distributive policies such as EU Trade policy and the Internal Market. Furthermore, these policy domains attract more 'no votes' than abstentions, demonstrating that Member States carry stronger preferences over these issues and prefer to express a stronger negative vote relative to other areas.

As regards the years during which legislative activity peaked (1998, 2003 and 2006) it is not inconceivable to assume that rising membership has amplified contestation in these areas in anticipation of EU enlargement (see Figure 3). When focusing only on the five single most represented policy domains and group all the other areas in a separate category roll call activity remains concentrated in the area of CAP, CFP and the Internal Market. Health and Consumer Affairs, Transport, Education, Environment, and Telecom policy are the unexpected areas.

### 3.1.3 Transparency: confirmatory applications for access to Council documents

A considerable number of roll calls on public access to Council documents have not been included in the general analysis because of their special form. They are treated separately and refer to the 1993 Council arrangements for public access to Council documents.[25] Under these arrangements an EU citizen can apply for access to Council documents. The application is dealt within 15 working days from the registration of the application. The Council either grants or refuses access to the requested document. Applicants who receive a refusal have the right of appeal before the Council and make a so-called *confirmatory application* asking the Council to reconsider. The first recorded vote on a confirmatory application is found in the press release of the ECOFIN Council of 23 March 1996. Over the following years the Council held 224 public roll calls with the Member States casting a total of 4478 votes.

The votes are held under a RSMV (see reversed simple majority vote under the 'Majority Thresholds' heading) according to the following procedure. The Member States examine the citizens' appeal in a working party and

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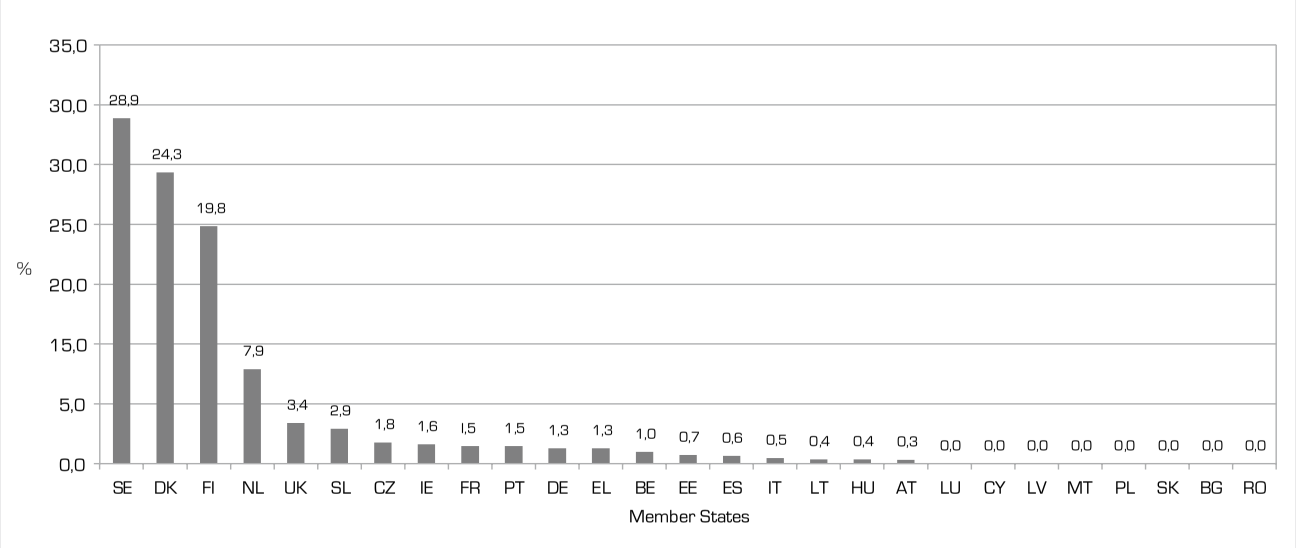
[25] The opportunity for the public to have access to unpublished Council documents on the basis of Council Decision 93/731/EC illustrates the general policy of openness and transparency outlined in the Birmingham Declaration in October 1992. The views expressed were reinforced by the Council in the following years.

**Figure 4: Contestation on access to Council documents (simple majority, 1995-2010)**




**Legend:** As a % of total public contestation, i.e. public votes against and abstentions on confirmatory replies, for the period 1995-2010. Country codes from two-letter ISO code (except Greece: EL, United Kingdom: UK).

**Source:** All recorded votes on approved confirmatory replies collated from the Council press releases of individual Council meetings between 1826th Council meeting for Agriculture (23 January 1995) and the 3061st Council meeting for Environment (20 December 2010).

**Note:** Measure of contestation calculated on the basis of total votes against and abstentions on confirmatory replies only for individual Member States controlling for the number of replies on which a vote was held over the observed period. Member States cast nine abstentions out of a total of 4478 votes representing 0.2% of the total votes. These abstentions were recorded between 1997 and 1999 for Belgium, Denmark, Finland, Sweden and the UK.

provisionally decide on a reply to the confirmatory application. The Council Secretariat prepares such a reply which the Member States can reject with a RSMV but they cannot change the content of the reply. For a substantial number of cases the Member States do not agree on the content of the reply that has been prepared and therefore oppose its passage.[26] The confirmatory application then appears as a roman I-point on the agenda of COREPER followed by a formal recorded vote at the ministerial level.

On the basis of frequent statements and their wish to make their position visible in Council documents Sweden (30%), Denmark (25%) and Finland (21%) formed a recurrent coalition on access to Council documents (see Figure 4). The Member States have different reasons for contesting these appeals and their positions on individual confirmatory replies are prepared in the respective capitals and send in advance to the Council working party. Sweden's position in the Council reflects a domestic bipartisanship regarding public access to government documents and transparency. It is part of the Swedish national identity. On the basis of the statements in Council documents Finland and Denmark share this view to a large extent. In that respect, the Member States' position on access to Council documents is related to the scope and level of openness of domestic transparency policies.

### 3.1.4 Types of legislative acts: regulations, directives and decisions

The Council adopts different types of measures, each with a specific legal objective and legal scope. The measures can be split into legislative and non-legislative acts. Within the category of legislative acts the Council adopts regulations, directives and decisions, recommendations and opinions. There is no formal hierarchy between the different types of legal acts and regulations are not superior to directives and decisions (Craig and de Búrca, 2008). The type of EU legislation is, however, different in its scope and applicability to

[26] Reasons for refusing access to Council documents range from protection of the public interest (public security, international relations, monetary stability, court proceedings, inspections or investigations) protection of the individual and of privacy to protection of the confidentiality of the Council's proceedings.

the laws of the Member States.[27] As a rule, regulations have greater scope and are more directly applicable than directives, decisions, recommendations and opinions respectively.[28] Over the entire period regulations are more contested relative to directives and decisions. The order of contestation for types of legislative acts remains when they are controlled for the total legislative acts in each category but interestingly the margin of contestation declines considerably. A comparison of the ratios of contestation to the total number of Commission proposals for each type of legal act for the period 1995-2010 (see Table 2) suggests that more opposition against EU directives might exist in the Council (Häge, 2011, pp. 466-467). The relative importance of EU directives compared with regulations and decisions appears to be related to their less routine character and their association with new policy initiatives (Golub, 1999, p. 738). Directives can also be considered as the most direct measure for the impact of EU legislative activities on domestic legislatures (Konig et al., 2012, p. 24, 34). They must be enacted, integrated and implemented by national legislative or executive means. Accordingly directives are likely to elicit more contestation from the Member States as the results from Table 2 suggest.

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[27] A regulation is binding in its entirety and has a general application to all the Member States without requiring a national act to transpose it. Regulations serve to ensure the uniform application of EU law in all the Member States. As soon as they enter into force regulations become part of the national legal order preventing the application of incompatible national legislation. In principle, directives are not directly applicable. They are binding upon the Member States to whom it is addressed and the national authorities are left with the choice of form and methods for applying the directive. Decisions are binding in their entirety upon those to whom they are addressed. Recommendations and opinions have no binding force but they may carry considerable political weight as they provide guidance on the interpretation and content of EU law.

[28] In many cases the Treaties lay down the required form of legal action; however, in many other cases, no specific type of legal action is stipulated.

| Table 2: Contestation by type of legislative act (1995-2010) | | | |
|---|---|---|---|
| **Type** | **Level of contestation** | **Total legislative actc** | **Ratio contestation/ total legislative acts** |
| Decisions | 19.87 | 4163 | 0.04 |
| Directives | 20.39 | 1587 | 0.10 |
| Regulations | 59.74 | 4323 | 0.11 |
| **Total** | **100** | **10073** | |

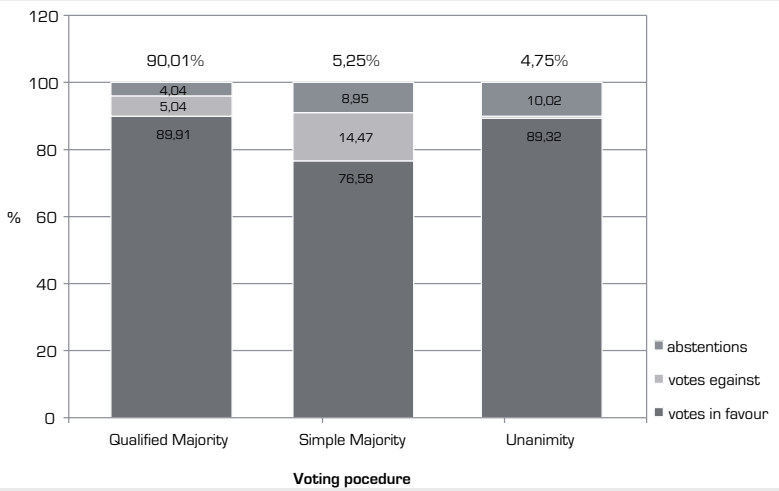
**Legend:** As a % of total recorded contestation, i.e. public votes on legislative acts comprising regulations, directives and decisions.
**Sources:** Summary statistics from Eurlex (regulations, directives and decisions for EU Council, EU Council and EP). All recorded votes collated from the Council minutes (1999-2010) and the Council press releases (1995-2010) of all individual Council sessions between the 1826th Council meeting for Agriculture (23 January 1995) and the 3061st Council meeting for Environment (20 December 2010). They were triangulated with the data from the monthly summaries of Council acts (1999-2010) and the Council Secretariat summary statistics (1996-2010).

### 3.1.5 The Member States' preferences and voting behaviour

That distributive EU policies attract most contestation and induce votes against rather than abstentions also reflects the Member States' voting behaviour and an inclination towards the use of 'no votes' rather than abstentions. Overall Member States prefer to vote against (54%) a legislative act rather than abstain (46%) during a roll call, but voting behaviour differs under the different voting procedures (see Figure 5) and they have a different effect. The QMV voting procedure represents the bulk (90%) of the total votes on legislative acts with the rest almost evenly spread between simple majority (5.25%) and unanimity (4.75%). Under QMV Member States predominantly express opposition with a vote against (6%). Nevertheless, abstentions (4%) can be considered to be a vote against because only the positive votes are counted and as a result they lower the probability of reaching the QMV threshold. Abstentions under unanimity indicate that a Member State is not entirely satisfied with the measure but does not want to prevent the majority from moving forwards. The simple majority procedure elicits the highest volume of contestation, which is almost twice as high as for QMV. Particularly, older Member States prefer to use negative votes whereas newer Member States cast abstentions to show their discontent.

By and large three groups of Member States with similar voting behaviour are present in the Council. In terms of the percentage of total public votes on legislative acts the first group is composed of Germany (7.7% of total contestation) and the UK (7.5%) who least prefer to join the majority in the

**Figure 5: Voting behaviour by voting procedure (1995-2010)**

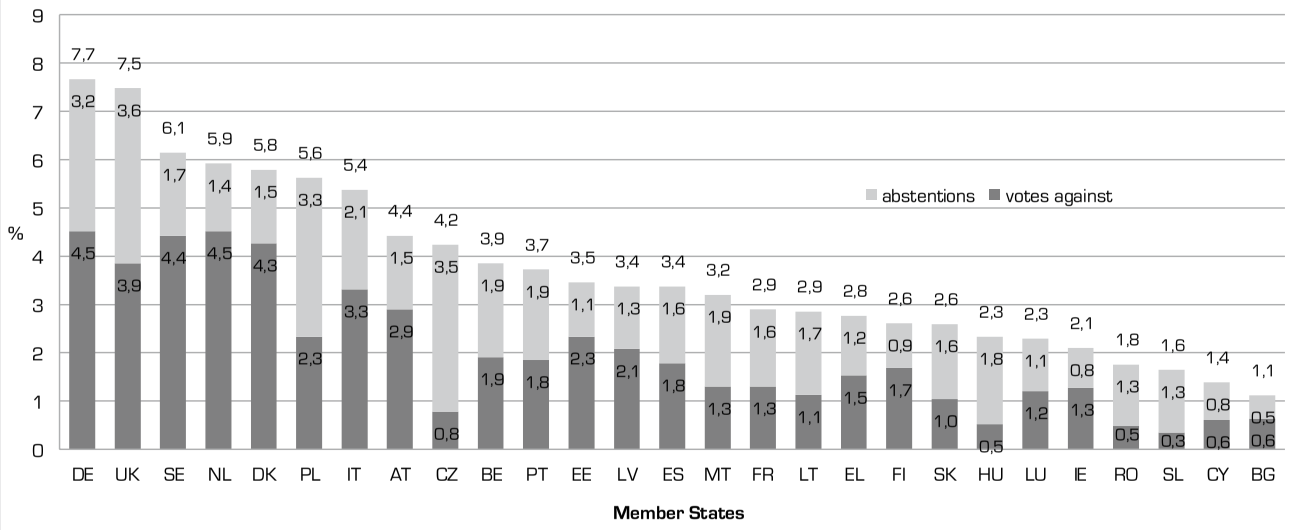



**Legend:** The values above the bar represent the % of all voting procedures (except confirmatory replies) for the period 1995-2010. The values in each bar represent the % of the voting behaviour for each individual voting procedure.
**Sources:** All acts on which a vote was recorded (except confirmatory replies) from the Council minutes (1999-2010) and the Council press releases (1995-2010) of all individual Council sessions between the 1826th Council meeting for Agriculture (23 January 1995) and the 3061st Council meeting for Environment (20 December 2010). They were triangulated with the data from the monthly summaries of Council acts (1999-2010) and the Council Secretariat summary statistics (1996-2010).
Note: Under the voting procedure unanimity we found failed public roll calls representing 0.66 % of the total (for more information see Probable Voting Results).

Council and assist consensual agreement (see Figure 6). They also prefer to vote against rather than abstain. The second group comprises Sweden (6.1%), the Netherlands (5.9%), Denmark (5.8%), Poland (5.6%) and Italy (5.4%) who share a preference for contesting regularly. Poland is a more recent Member State that often votes explicitly, albeit more often by means of abstention. Of the third group of countries Spain and France as rather large Member States vote less than half as much as their German and British counterparts and join the majority in the Council almost twice as often. They usually form part of the majority in the Council and rarely cast a negative vote. Their position is shared by 18 smaller Member States [29] which prefer in

[29] Austria, Czech Republic, Belgium, Portugal, Estonia, Latvia, Malta, Lithuania, Greece, Finland, Slovakia, Hungary, Luxembourg, Ireland, Romania, Slovenia, Cyprus and Bulgaria.

**Figure 6: Explicit contestation of EU legislation by Member States (1995-2010)**




**Legend:** As a % of total public contestation, i.e. public votes on legislative acts (except confirmatory replies) for the period 1995-2010. Country codes from two-letter ISO code (except Greece: EL, United Kingdom: UK).

**Sources:** All recorded votes (except confirmatory replies) under all voting procedures (QMV, Simple Majority and Unanimity) collated from the Council minutes (1999-2010) and the Council press releases (1995-2010) of all individual Council sessions between the 1826th Council meeting for Agriculture (23 January 1995) and the 3061st Council meeting for Environment (20 December 2010). They were triangulated with the data from the monthly summaries of Council acts (1999-2010) and the Council Secretariat summary statistics (1996-2010).

**Note:** Measure of contestation calculated on the basis of total votes against and abstentions (except confirmatory replies) for individual Member States controlling for the number of legislative acts on which a Member State could vote over the observed period.

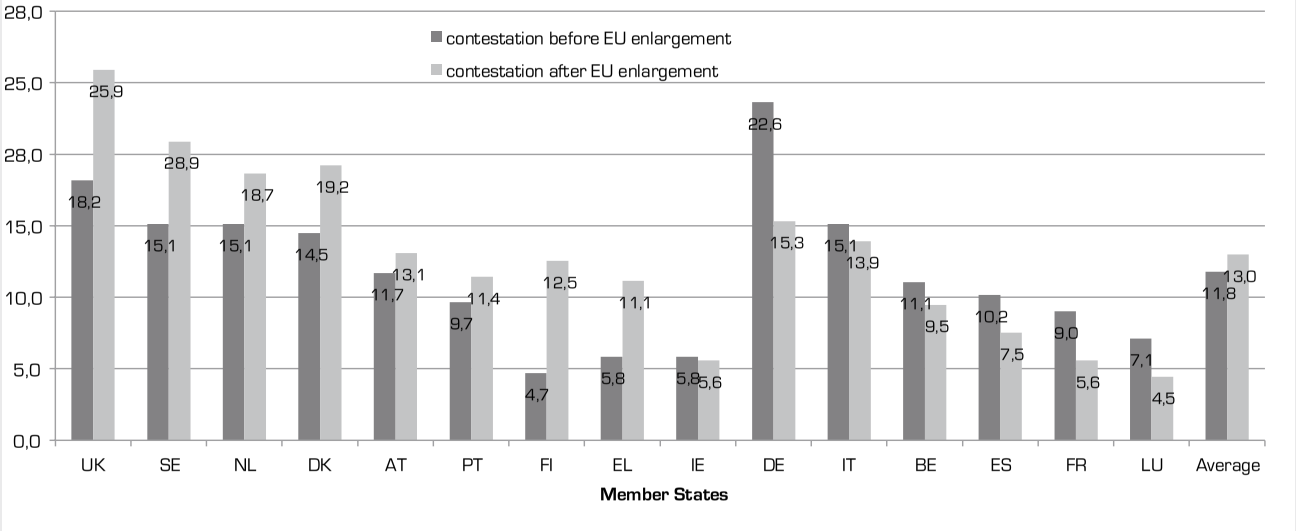
most instances not to use their explicit vote, prefer to abstain rather than vote against and find themselves more often in support of EU legislation rather than against it. These patterns confirm earlier findings that, on average, larger Member States and northern countries (Mattila, 2004, Hayes-Renshaw et al., 2006, Mattila, 2009, Thomson, 2009, Plechanovová, 2011b, Plechanovová, 2011a) are more likely to contest EU legislation explicitly whereas smaller and southern as well as eastern countries tend to be more silent (see also the dendrograms of Figure 9, 10, 11).

Over the entire period the majority of newer Member States refrain more from contesting than do the older Member States. Except for Poland and the Czech Republic the newer Member States have a lower inclination to contest, which is probably in part related to adaptation to the written and unwritten rules and norms prevalent in the Council legislative decision-making processes (Mattila, 2009, p. 845). Some relate this adaptation process to a socialisation process (Beyers and Dierickx, 1998, Beyers and Trondal, 2004, Trondal, 2010). These studies argue that the views of EU committee members converge on certain issues as a result of working together. The newer Member States' voting behaviour might also reflect a 'wait and see strategy', as the downswings of contestastion following EU enlargements suggest.

### 3.1.6 EU enlargement: changing patterns of contestation

So far the analysis depicts a rather static picture of contestation based on all contested decisions between 1995 and 2010. Similarly to most analyses measuring the EU enlargement effect on contestation in the Council it considers the behaviour of all 27 Member States together and fails to provide a dynamic representation of contestation by contrasting the decision-making environment in the Council before and after the Big Bang enlargement (2004). The effect of EU enlargement on Council legislative politics can be measured by comparing the Member States' voting behaviour before and after EU enlargement and the panel data of more than 27,000 individual votes over the entire period (1995-2010) is ideally suited for this exercise. A before-and-after comparison tells us whether the *15 older Member States behaved differently in the periods prior and subsequent to 1 May 2004 and permits an analysis of the variation of explicit contestation within a Council of 15 and 27 Member States.* The group of newer Member States are excluded from the analysis because it is not possible to establish their initial conditions ex ante. For the older 15 Member States the comparison is drawn on the basis of their

**Figure 7: Explicit contestation of EU-15 before and after EU enlargement**




**Legend:** Country codes from two-letter ISO code (except Greece: EL, United Kingdom: UK).

**Source:** All recorded votes (except confirmatory replies) under all voting procedures (QMV, Simple Majority and Unanimity) collated from the Council minutes (1999-2010) and the Council press releases (1995-2010) of all individual Council sessions between the 1826th Council meeting for Agriculture (23 January 1995) and the 3061st Council meeting for Environment (20 December 2010). They were triangulated with the data from the monthly summaries of Council acts (1999-2010) and the Council Secretariat summary statistics (1996-2010).

**Note:** Measure of contestation calculated on the basis of total votes against and abstentions (except confirmatory replies) for individual Member States as a % of total contested legislation before (1 January 1995 to 31 April 2004) and after (1 May 2004 to 31 December 2010) EU enlargement. On average Member States contestation has increased by 1.2%.

voting behaviour during the periods from 1 January 1995 to 1 May 2004 and from 1 May 2004 to 31 December 2010. Instead of normalising the Member States' voting behaviour according to the duration of membership the number of legislative acts for the two periods in which a public vote was recorded are used. The resulting indicator tells us whether the Member States are behaving differently in the new Council decision-making environment (see Figure 7.

The dog of EU enlargement does bark and old Member States' frequency of contesting a Council measure has increased. The 15 Member States cast on average 1.2% more votes after 1 May 2004 compared with the period before. When looking at the average for the EU-15 some large variations emerge and individual Member states are behaving quite differently in the new Council environment. Predominantly, smaller Member States and the UK (+8% of total votes cast), are publicly showing their opposition more often, with Finland (+8%), Sweden (+6%), Greece (+5%) and Denmark (+5%) followed by the Netherlands (+4%), Portugal (+2%) and Austria (+1%) casting more votes after 1 May 2004. Ireland sits in the middle and its voting record has not changed. In contrast, the larger EU Member States have voted less often after 1 May 2004 with Germany (-8%), Spain (-6%), France (-3%) and Italy (-1%) showing less opposition. The behaviour of Luxembourg (-3%) and Belgium (-2%) is similar to that of their two largest neighbours but it contrasts with the behaviour of the third member of the Benelux countries, the Netherlands.

At first sight these findings do not chime with analysis based on data that emerged shortly after 2004 covering a shorter time span (Settembri, 2007, Mattila, 2009, Hosli et al., 2011) but a closer look indicates that they are complementary. These studies look at aggregate patterns, concluding that the level of public contestation in the Council has not gone up unless one takes into account formal statements in the Council (Hagemann and De Clerck Sachsse, 2007). These analyses are largely dependent on observations immediately following EU enlargement (see Table 4: Overview of selected data sources in the literature) and might not reflect more structural patterns given the volatility of EU legislative activity (see Figure 1) that has been confirmed indirectly by other studies (Golub, 1999, pp. 740-741, Dehousse et al., 2006, p. 37, Häge, 2011, p. 466, 473).

Comparing the before-and-after analysis (Figure 7) with the overall frequency of explicit contestation (Figure 6) for the period 1995-2010 one can see that

predominantly smaller countries (Finland and Greece) have joined the group of countries contesting more often in the post-2004 period. Simultaneously, some larger countries (Germany and Italy, but not the UK) are moving in the direction of the other larger countries, France and Spain, characterised by less explicit opposition. In short, the frequency analysis indicates that subsequent to EU enlargement voting has risen slightly among the EU-15 in the Council. This development can be ascribed to explicit contestation by the smaller Member States of the EU-15 that have been opposing the majority more often and finding it somewhat more difficult to join the consensus within the enlarged EU. Simultaneously, the larger Member States, bar the UK, are explicitly contesting the majority less frequently and assist consensus-building more often in the larger EU Council. These findings confirm earlier results (Plechanovová, 2011b, p. 95) but appear somewhat contradictory with regard to larger Member States (Mattila, 2009, p. 845).

## 3.2 Coalitions in the Council

So far the research has looked at individual Member States' voting behaviour although Member States often vote in coalitions in the Council. The paper now turns to coalition behaviour and attempts to shed light on whether *EU enlargement has had an effect on the size of these coalitions, their composition and their recurrence.* Despite its regular appearance in the literature it is important to point out that one should be careful with the usage of the word 'coalition' in the context of the Council of Ministers. In the active meaning of the word Member States form a coalition because they share similar motivations resulting in similar positions. The more passive form of coalitions results in similar positions but for different reasons. Council records show mixtures of active and passive coalition formation.

### 3.2.1 Contesting alone or together: coalition formation

Of the total contested acts for the period 1995-2010, 52.6% were cast by individual Member States only, followed by a coalition of two Member States with 19.1.%, three Member States with 13.8%, four Member States with 7%, and five Member States with 3.6% (see Figure 8).

The picture changes dramatically, however, with a before-and-after analysis comparing the EU-15 (1995-2004) and the EU-27 (2004-2010). Within the EU-15 individual Member States accounted for 59.2% of all contested legislative acts (see Table 3). This number declines to 41.1% in the context

of the EU-27 but the pairwise contestation remains almost identical (from 19.6% to 18.4%) whereas the frequency of contesting legislation with three Member States or more rises substantially, confirming earlier research (Hagemann and De Clerck Sachsse, 2007, Mattila, 2009). In fact, the change is such that contesting individual Member States no longer represents the majority of contested decisions (Hayes-Renshaw et al., 2006, p. 169) and that *contesting coalitions of two or more Member States have become the norm.*

**Table 3: Size of coalitions in the Council (1995-2010)**

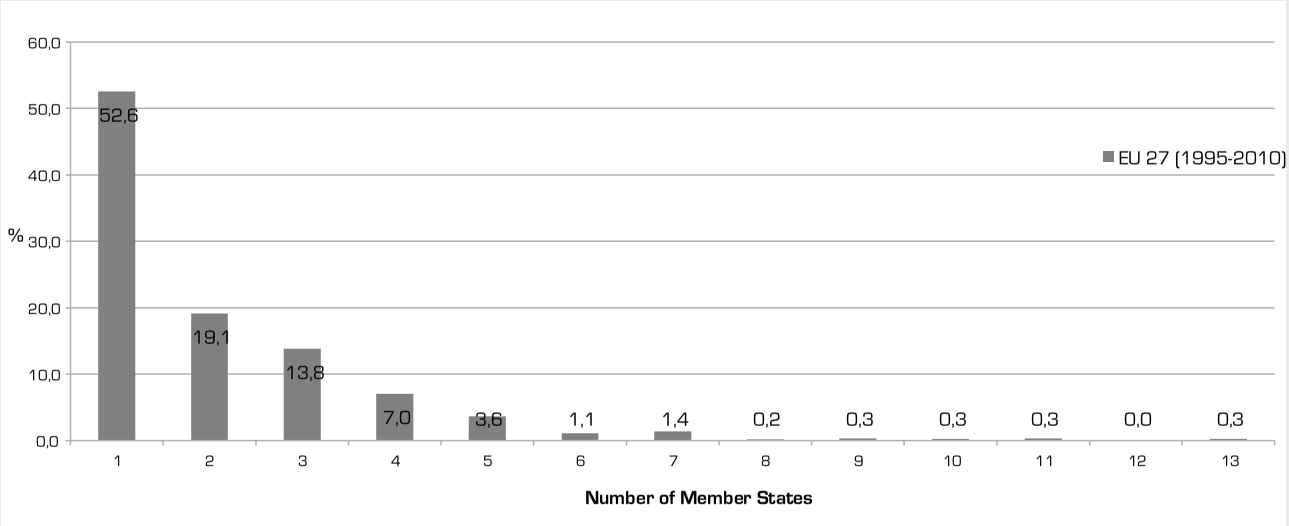
| Before (1995-2004) and after EU enlargement (2004-2010, as a % of total) | | | | | | | | | | | | | | |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| Number of Member States in Coalition | 1 | 2 | 3 | 4 | 5 | 6 | 7 | 8 | 9 | 10 | 11 | 12 | 13 | total |
| EU-15 (1995-2004) | 59.2 | 19.6 | 13.5 | 5.4 | 1.3 | 0.5 | 0.4 | 0.0 | 0.0 | 0.0 | 0.0 | 0.0 | 0.0 | 100.0 |
| EU 27 (2004-2010) | | | | | | | | | | | | | | |
| of which only EU-15 (2004-2010) | 32.2 | 9.7 | 4.6 | 3.4 | 3.2 | 0.0 | 0.0 | 0.0 | 0.0 | 0.0 | 0.0 | 0.0 | 0.0 | 53.1 |
| of which only EU-12 (2004-2010) | 9.0 | 3.2 | 0.2 | 0.7 | 0.0 | 0.0 | 0.0 | 0.0 | 0.0 | 0.0 | 0.0 | 0.0 | 0.0 | 13.1 |
| of which only EU-27 (2004-2010) | 0.0 | 5.5 | 9.4 | 5.7 | 4.4 | 2.1 | 3.0 | 0.5 | 0.9 | 0.7 | 0.9 | 0.0 | 0.7 | 33.8 |
| Total | 41.1 | 18.4 | 14.3 | 9.9 | 7.6 | 2.1 | 3.0 | 0.5 | 0.9 | 0.7 | 0.9 | 0.0 | 0.7 | 100.0 |

**Legend:** Number of Member States contesting together as a % of total legislative acts. EU-15= AT, BE, DE, DK, EL, ES, FI, FR, IE, IT, LU, NL, PT, UK, SE; EU12=BG, CZ, CY, EE, HU, LT, LV, MT, PL, RO, SK, SL

**Source:** All recorded votes (except confirmatory replies) under all voting procedures (QMV, Simple Majority and Unanimity) collated from the Council minutes (1999-2010) and the Council press releases (1995-2010) of all individual Council sessions between the 1826th Council meeting for Agriculture (23 January 1995) and the 3061st Council meeting for Environment (20 December 2010). They were triangulated with the data from the monthly summaries of Council acts (1999-2010) and the Council Secretariat summary statistics (1996-2010).

A potential implication is that contestation might be more acceptable because it involves fewer individual Member States, lowering the risk of standing out in the Council. More frequently than not, i.e. approximately 60% of all contested decisions, explicit contestation comprises more than one Member

**Figure 8: Size of coalitions in the Council (1995-2010)**




**Legend:** Number of Member States contesting together as a % of total legislative acts.
**Source:** All recorded votes (except confirmatory replies) under all voting procedures (QMV, Simple Majority and Unanimity) collated from the Council minutes (1999-2010) and the Council press releases (1995-2010) of all individual Council sessions between the 1826th Council meeting for Agriculture (23 January 1995) and the 3061st Council meeting for Environment (20 December 2010). They were triangulated with the data from the monthly summaries of Council acts (1999-2010) and the Council Secretariat summary statistics (1996-2010).

State. Member States are more inclined to 'formally vote against a proposal or abstain from voting when there are other Member States displaying the same choice' (Hosli et al., 2011, p. 14).

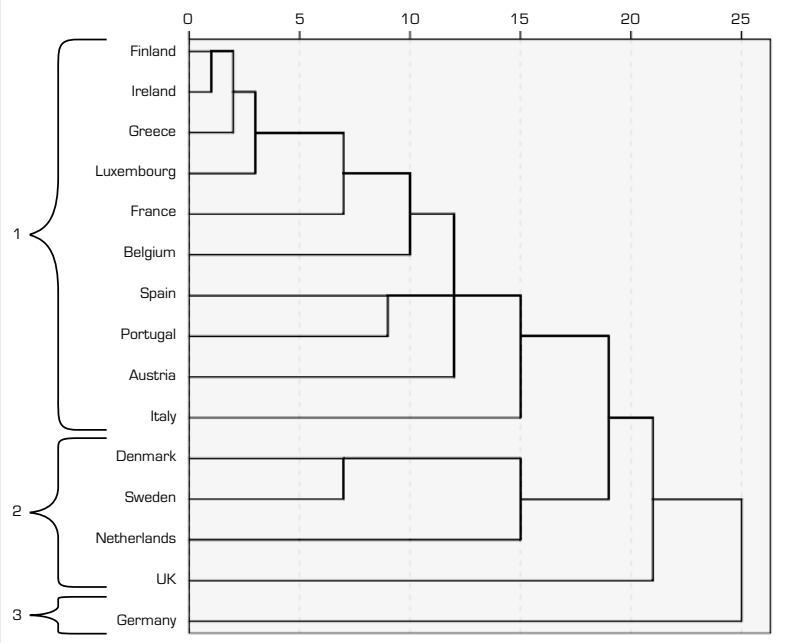
The nature of these contesting coalitions highlights that votes taken with two or more Member States are related to other factors than just the growth of EU membership. When excluding *single* contesting Member States in the post-2004 period the data show that a considerable part of contestations continues to come from coalitions composed of older Member States *only* accounting for 20.1% of total contested decisions. In contrast, the new Member States confound expectations that they would contest EU legislation *en bloc* and only 4.1 % of total contested decisions come from the new Member States *only*. They rather form mixed coalitions representing 33.8% of all coalitions and demonstrating that coalition formation in the Council cuts across old and new Member States. These findings indicate that integration in the Council has been a success over the observed period and temper concerns over the potential emergence of new cleavages in the Council as a result of EU enlargement (Hosli, 1999, Zimmer et al., 2005). Yet the findings also reveal that the adjustment in the Council is owed to the new Member States, as older Member States continue to behave as before: they record higher levels of contestation, their tendency to contest alone is unwavering and coalitions among older Member States only remain relatively high.

### 3.2.2 A silent majority and a vocal minority: cluster analysis and dendrograms

When combining the *ex ante* and *ex post analysis* in combination with *cluster analysis* the data tell us something about the nature and evolution of coalitions in the Council and more importantly the coalition's membership. Cluster analysis is a statistical technique that allows us to discern structure and associations in a dataset without prior assumptions. The technique reduces the number of observations or cases by grouping them together into a smaller set, maximising their similarity within the group and the dissimilarity between the groups. It allows us to see whether groupings of countries exist in the Council and how closely knit they are on the basis of their voting behaviour. An advantage of the technique is that any preconceived notion of whether groups of countries arise and what types of groups they might be are not needed. The clusters and groups are formed on the basis of a measure of distance between the variables, i.e. the explicit votes cast.

Cluster analysis is often represented by so-called dendrograms, which are fork-like structures that characterise the proximity between the variables (see Figure 9). The fork represents a similarity coefficient as a horizontal scale ranging from high similarity on the left side (close to zero) to low similarity on the right side (close to 25) of the fork. The closer the lines connecting the countries on the left side of the fork the more alike they are in their voting behaviour. The longer the lines connecting the countries and the more the bifurcation points move to the right side the less proximate they are to each other in their voting behaviour. In short, as the proximity in voting behaviour decreases and the bifurcation points move towards the right side in Figure 9 Member States become less similar until the dendrogram ends up with a single linkage of the fork representing one grouping of all EU Member States.

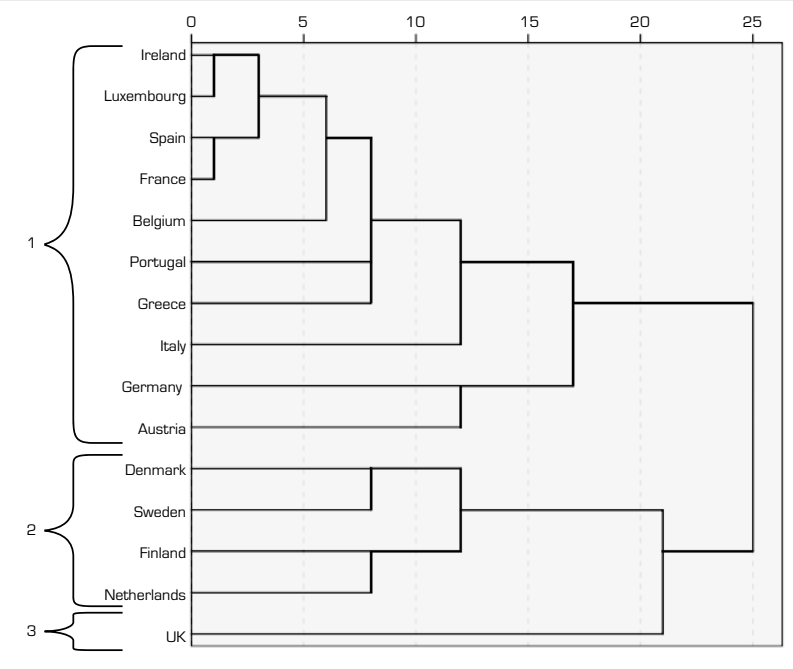
**Figure 9: Coalition formation over contested decisions in EU-15 (1995-2004)**




**Legend:** Similarity measure of voting behaviour (EU-15, 1995-2004, 748 observations): dendrogram (complete linkage).
**Source:** All recorded votes (except confirmatory replies) under all voting procedures (QMV, Simple Majority and Unanimity) collated from the Council minutes (1999-2010) and the Council press releases (1995-2010) of all individual Council sessions between the 1826th Council meeting for Agriculture (23 January 1995) and the 3061st Council meeting for Environment (20 December 2010). They were triangulated with the data from the monthly summaries of Council acts (1999-2010) and the Council Secretariat summary statistics (1996-2010).

The brackets that were added to the cluster structure to help the interpretation the dendrogram reveal three groupings of Member States for the period 1995-2004 (Figure 9). The group at the top left (1) represents the **silent majority** in the Council composed of countries that contest less and are seldom outvoted. This group represents seven smaller countries (Finland, Ireland, Greece, Luxembourg, Belgium, Portugal and Austria) and three bigger countries

**Figure 10: Coalition formation over contested decisions for EU-15 (2004-2010)**




**Legend:** Similarity measure of voting behaviour (EU-15, 2004-2010, 434 observations): dendrogram (complete linkage).
**Source:** All recorded votes (except confirmatory replies) under all voting procedures (QMV, Simple Majority and Unanimity) collated from the Council minutes (1999-2010) and the Council press releases (1995-2010) of all individual Council sessions between the 1826th Council meeting for Agriculture (23 January 1995) and the 3061st Council meeting for Environment (20 December 2010). They were triangulated with the data from the monthly summaries of Council acts (1999-2010) and the Council Secretariat summary statistics (1996-2010).

(France and Spain, with Italy joining last).[30] The second but less tightly knit group (2) is made up of a **vocal minority** of Denmark, Sweden and the Netherlands with the UK joining only at a later stage.[31] Then there is Germany (3) in a league of its own as the most vocal Member State closer to the vocal minority but still least similar of all other EU Member States when contesting specific decisions. Germany bowls in a league of its own and joins the other groupings last. The analysis is similar to earlier findings using cluster analysis (Hayes-Renshaw et al., 2006, p. 189, Figure 5).

In the period following 1 May 2004 the EU-15 continues to be characterised by three groups of Member States (Figure 10). The silent majority (1) in the Council continues to comprise 10 Member States but with Germany now moving within the group but only at a later stage. The group now represents four bigger and six smaller Member States with France and Spain tightly aligned. The vocal minority (2) continues to be more loosely packed but it has been joined by Finland. The UK plays in a league of its own but still does not find itself as removed in the graph as Germany was in the pre-2004 period.

Turning to the EU-27 the diversity has increased to four groups (see Figure 11). The silent majority (1) is now composed of 18 countries with 14 smaller and four bigger Member States (France, Spain, Italy and Poland).[32] France and Spain still make up the core of the silent majority as countries that infrequently express their opposition and vote on more similar issues. They rarely find themselves outvoted in the Council and are joined by a silent grouping of newer Member States. The vocal minority (2) now represents six countries with two new and similar countries, Malta and the Czech Republic.[33] Interestingly, Germany and Austria (3) stand somewhat apart and form a pivot that joins the silent majority and the vocal minority in the Council last. The UK (4) is now the only country in the EU that is least similar in its voting behaviour to other Member States.

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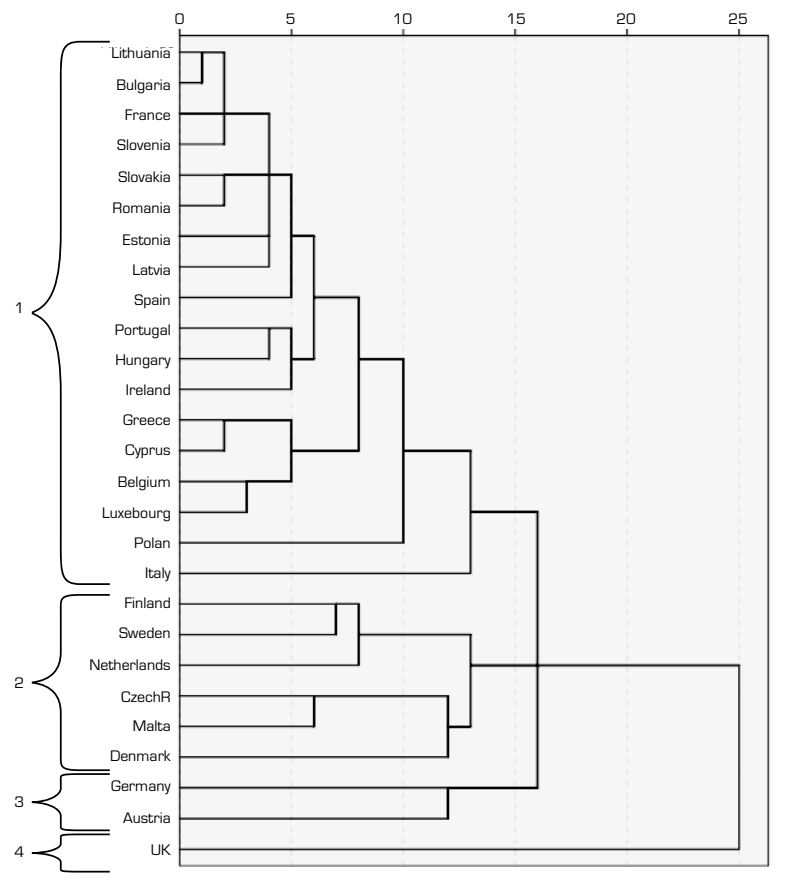
[30] They represent 55 out of 87 weighted votes, seven votes short of a qualified majority (1995-2004).

[31] They represent 22 out of 87 weighted votes, four votes short of a blocking minority (1995-2004).

[32] They represent 225 (201) out of 345 (321) votes, 30 (31) short of a QMV for weighted votes calculated under the Nice Treaty with 25 (27) Member States.

[33] They represent 52 votes, 38 (39) votes short of a blocking minority QMV for weighted votes calculated under the Nice Treaty with 25 (27) Member States.

**Figure 11: Coalition formation over contested decisions in EU-27 (1995-2010)**




**Legend:** Similarity measure of voting behaviour (EU-27, 2004-2010, 434 observations): dendrogram (complete linkage).
**Source:** All recorded votes (except confirmatory replies) under all voting procedures (QMV, Simple Majority and Unanimity) collated from the Council minutes (1999-2010) and the Council press releases (1995-2010) of all individual Council sessions between the 1826th Council meeting for Agriculture (23 January 1995) and the 3061st Council meeting for Environment (20 December 2010). They were triangulated with the data from the monthly summaries of Council acts (1999-2010) and the Council Secretariat summary statistics (1996-2010).

These findings are robust as the dendrograms confirm the results from the descriptive statistics as well as those of other cluster analyses (Plechanovová, 2011a, p. 262, Figure 6): *the geography of contestation in the Council evolved from a North-South divide before 2004 to a North and South-East divide after 2004.* The evolution is largely the result of the voting behaviour of the newer Member States and their adjustment to the Council.

# 4 Conclusions

This paper presents an aggregate picture of contestation in the Council of the EU. It is based on a new dataset representing the total population of public rolls calls and recorded votes covering the period between 1995 and 2010. The data were collated from the *Council minutes* (1999-2010) and press releases (1995-2010) of individual Council meetings, *the summary statistics from the Council Secretariat* (1996-2010) and the *monthly summaries of Council acts* (1999-2010). The triangulation of the individual roll calls from these publications allows us to access 16 years of roll calls with more detail on each vote. The data were analysed using descriptive statistics and cluster analysis and the findings supplemented with qualitative material from interviews with Council practitioners.

At the most aggregate level the data show that Council legislative activity has been relatively stable between 1995 and 2010. The data also reveal that Council's roll call activity runs parallel to the Council's legislative activity. On an annual basis, however, Council legislative and public roll call activity fluctuates considerably and is characterised by regular up- and downswings over the observed 16 years. This finding has methodological implications and highlights that analysis based on a shorter time span is more reliant on the period from which the observations are drawn.

The timing of the ups and downs of the Council legislative and public roll call activity coincides with consecutive European treaty reforms (1999, 2003 and 2009) and EU enlargements (1995 and 2004, 2007). Council legislative activity and public roll calls rise before the entry into force of a new EU treaty and the accession of new Member States; they decline subsequently. The pattern can be explained on the basis of uncertainty triggered by changing legal bases in the different policy domains, new voting weights and Council majorities as well as anticipated corrections to more distributive EU policies. Under such uncertainty the Member States pass more legislation (and hence hold more roll calls) under procedures they are familiar with rather than wait for new procedures to take effect. This approach of passing more EU legislation and eliminating the risk of bottlenecks subsequently guarantees the functioning of the Council in the longer run. During the downswings of legislative and roll call activity the Council digests change, leaving room for adjustment to the new institutional environment that European treaty reform and EU enlargement bring about.

This account goes some way to explaining one of the most interesting puzzles that the data expose. In contrast to general expectations the growth of membership from 12 to 27 Member States has not had any considerable impact on the Council's overall level of legislative and roll call activity. The stability of Council legislative and roll call activity is puzzling because the growing heterogeneity of Member States has been associated with a more difficult decision-making environment characterised by declining legislative output and more publicly contested legislation. The empirical evidence does not bear this out and in the longer run EU enlargement appears not to have had any considerable impact on the Council decision-making capacity measured by roll call and legislative activity.

At a lower level of aggregation the research finds that contested legislation is present in all EU policy areas with CAP, Trade, Internal Market and CFP consistently eliciting higher levels of opposition. Environment, Transport, Health and Consumer Affairs, and Economy and Finance also feature prominently. On an annual basis contested legislation is scattered across all the EU policy domains and the trend is also relatively stable here: CAP dominates every single year except for the period 2004-06 when the records display more contested legislation in the area of Trade, Environment and Transport policy.

These findings indicate that EU policy areas with a more distributive impact on the Member States such as CAP, CFP, Trade policy and Internal Market induce more contestation. Moreover, they attract 'no votes' rather than abstentions, suggesting that Member States carry stronger preferences regarding these issues and prefer to express a stronger negative vote than for other policy domains. The anticipation of EU enlargement appears to have amplified contestation in the more distributive policy areas during the years in which legislative activity peaks (1998, 2003 and 2006).

The fact that more distributive EU policies attract more contestation with 'no votes' rather than abstentions also reflects Member States' overall voting behaviour. Particularly, older Member States use 'no votes' whereas newer Member States prefer to cast abstentions. Germany, the UK, Sweden, the Netherlands, Denmark, Poland and Italy respectively contest more and are regularly outvoted in the Council. Two larger Member States (Spain and

France) and 18 smaller Member States[34] contest occasionally and support EU legislation more often. In terms of size and geographical location the data demonstrate that larger and more northern Member States contest more often *and* with 'no votes' – Italy being the only southern Member State. In contrast, smaller Member States from the South and the East oppose EU legislation less frequently. The latter usually make up the majority in the Council and prefer abstentions to 'no votes'. France and Spain are the only two larger EU countries that share this type of voting behaviour.

These overall voting patterns have a large influence on the analysis of coalition formation and the geography of contestation in the Council even when EU policy domains are added to the equation. The research finds the presence of four groups of EU Member States in the Council. The first group represents the *silent majority* and is composed of a tightly knit set of 18 countries with 14 smaller[35] and four bigger Member States (France, Spain, Italy and Poland). France and Spain are deeply embedded in this coalition whereas Italy and Poland are located near the edge of this group. The silent majority is rarely outvoted, takes a similar position on most policy issues and is characterised by Member States from the South and the East. The second group exemplifies the *vocal minority* in the Council and comprises a more loosely packed set of six countries (Finland, Sweden, the Netherlands, the Czech Republic, Malta and Denmark). The vocal minority is regularly outvoted and with the exception of Malta includes more northern Member States. With a higher frequency of contestation but not necessarily on similar topics Germany and Austria represent the *pivot* between these two groups. The *UK* follows the most singular course, being furthest removed in its voting behaviour from the other coalitions in the Council.

Supplementing this static picture of contestation with an *ex ante* and *ex post* analysis the research shows that the Big Bang enlargement of 2004 altered the Member States' voting behaviour. Before 2004 contestation in the Council was dominated by single Member States opposing EU legislation whereas after 2004 contesting coalitions of two or more Member States became

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[34] Austria, Czech Republic, Belgium, Portugal, Estonia, Latvia, Malta, Lithuania, Greece, Finland, Slovakia, Hungary, Luxembourg, Ireland, Romania, Slovenia, Cyprus and Bulgaria.

[35] Lithuania, Bulgaria, Slovenia, Slovakia, Romania, Estonia, Latvia, Portugal, Hungary, Ireland, Greece, Cyprus, Belgium and Luxembourg.

the norm. Against this background, contestation in the Council might have become more acceptable as growing membership lowers the risk of individual Member States standing out from the rest.

*These changes are entirely related to the voting behaviour of newer Member States.* They oppose EU legislation more often in coalitions and confound expectations by not contesting EU legislation *en bloc*. Only a fraction of all contested decisions come from coalitions made up of newer Member States *only* whereas mixed coalitions of older and newer Member States represent over a third of total coalitions, showing that in just over five years integration in the Council has been highly successful. In contrast, the older Member States continue to behave as before. Their level of contesting alone is unwavering, coalitions among older Member States represent as much as one-third of all coalitions in the Council and they continue to record higher levels of contestation overall.

There are, however, some important changes to the geography of contestation. After 2004 the smaller Member States, in particular Finland, Sweden, Denmark and the Netherlands, have voted more frequently whereas bigger Member States (Italy, France, Spain and in particular Germany) vote less frequently. The only exception is the UK, which has contested more often since the Big Bang enlargement.

These individual shifts have a substantial influence on the coalition analysis in the post-2004 era particularly for Finland, Greece, Germany and the UK. Until 2004 Finland rarely expressed contestation with a vote. The combination of more frequent contestation in similar policy domains has made the country move from the silent majority in the Council towards the vocal minority. Greece has followed a similar path and moved towards the outer edge of the silent majority coalition. Before 2004 Germany was the EU's most frequently contesting Member State. In the post-2004 era Germany has become more proximate to other larger Member States in the Council because its level of contestation has dropped and its voting behaviour become more similar to that of the silent majority. Only the UK is moving away from all other coalitions and is now a Member State that stands apart in the EU Council in terms of its voting behaviour.

On aggregate the Council adjusted well to the growth of EU membership and integration of new Members has been a success as measured by the Council's legislative and public roll call activity. Although the mechanism underlying this dynamic is less well understood the present research makes a number of observations that bring us closer to understanding how and why the Council has been so successful in guaranteeing legislative and roll call stability.

It is known that the Council working groups have made an effort to become more efficient since 2004; that the Council uses more written procedures and reversed majority voting to pass legislation; that larger Member States contest legislation less frequently and that contestation occurs more often with two or more countries. It is also clear that the newer Member States have adjusted to the older Member States rather than the other way around; that the newer Member States joined the silent majority in the Council and contest legislation less frequently; and, that they have refrained from forming a recurrent coalition on their own. Finally, the research also indicates that the growing diversity of Member States' preferences has been absorbed by existing coalition patterns in the Council rather than by the creation of entirely new ones.

This research shows that observing explicit contestation in the Council provides much information about the Council and EU integration. One should not be blind to external developments that might influence voting behaviour in the Council, however. For instance, the flexibility of the European treaties has had a substantial impact on the interests and preferences of individual Member States and their subsequent articulation in the Council of Ministers. If demands for closer EU integration are met with institutional flexibility such as transitional arrangements, permanent and temporary opt-outs and opt-ins and enhanced co-operation among the Member States one would expect declining contestation in the Council. Against this background more differentiated integration would allow the EU Council of Ministers to deal with preference heterogeneity in a different manner from explicit voting. These external influences on explicit contestation in the Council become more intricate as the dynamic effect of differentiated integration over time remains unclear. As temporary opt-outs expire contestation might increase in the Council; or, alternatively, as permanent opt-outs are agreed and function as shock absorbers for an 'Ever closer union' (Dinan, 2010) contestation in

the EU Council might be more unresponsive. These hypotheses open up a number of interesting venues for further research and explicit contestation is just one piece of the puzzle.

## 4.1 Areas for future research

The observations highlighted in this report provide us with a better understanding of the mechanism underlying the Council's legislative and roll call stability. Nevertheless, although the growth of EU membership does not have a considerable impact on the Council's overall level of legislative and roll call activity it might manifest itself in the substantive content of the legislation the Council decides upon. Whereas the Council legislative activity has not changed with respect to the growth of membership the substance of legislative acts may have. Perhaps the latter caters more for the preference heterogeneity in the EU Council today than it did in 1995 and does not change the status quo as much as it used to do. This is a question for further study.

In addition, descriptive statistics and cluster analysis only reveal so much of the underlying mechanism and the extent to which these factors actually explain the emerging patterns of contestation in the Council remains unclear. A more rigid approach of hypothesis testing on the basis of panel data over a longer time span could shed more light on the explanatory value of each individual variable.

# 5 Annex: notes on data

## 5.1 Work in progress

Despite the massive number of public records available on the websites of the different EU institutions robust evidence about Council decision-making has only recently become available. Until 1995 data on explicit voting in the Council of Ministers were only sporadically accessible to the wider public. The Council Secretariat, the Permanent Representations of the Member States, the Commission and sometimes national institutions of the Member States recorded contested decisions on an occasional basis. These documented votes were not widely shared and sometimes found their way into the press and academic literature (Neuwahl and Rosas, 1995). One example is the 1994 request of British MPs for details of voting under QMV in the area of the single market for the period between January 1989 and December 1993. Their analysis concluded that a vast majority of decisions were taken unanimously and that 39% (91 out of 233) of the total single market decisions were adopted against the stance of one or more member states (Miller, 26 October 1994, p. 16).

The sporadic nature of the reports on Council roll calls changed in 1993 when under the new transparency arrangements data about Council decision-making gradually became available, including explicit voting in the Council of Ministers (Commission of the European Communities, 1993). Given the sheer number of Council documents that needed to be made available the data on Council voting were not published all at once or in chronological order. Instead, the publication of Council documents that systematically recorded explicit votes is a work *in progress* and follows the development of the Council's transparency legislation, the Council's website and the EU's institutions. As a consequence, data collection is intricate and requires a systematic and laborious approach.

In the wake of the 1993 transparency arrangements the Council also started to collect voting statistics of its own. These statistics are the result of a 1994 decision when the Council declared 'for the future the Council intends to arrange for statistics on votes made public [...] to be compiled and periodically published' (Neuwahl and Rosas, 1995, p. 99). These data have also been a work in progress.

## 5.2 Public roll calls and votes

Over the years the Council has set clear rules on what types of votes it publishes (Council Decision, 22 March 2004). Council *final* deliberations leading to the vote, the vote itself and the accompanying explanations under the co-decisions procedure are public. More generally, the Council is required to make votes and Member States' statements public when they concern:

- the Council's legislative activity;
- the adoption of common positions;
- the meeting of the conciliation committee; and,
- the establishment of a convention in the field of police and judicial co-operation in criminal matters.

For legal acts in the area of CFSP and common positions in the field of police and judicial co-operation in criminal matters only the votes are made public when the Council or COREPER unanimously agrees. In the area of CFSP the first such instance was made public in 2010. At the time the Council unanimously decided by *written procedure* to send a European Union military mission to Somalia to contribute to the training of the Somali security forces (Council Decision, 15 February 2010 (2010/96/CFSP)). All Member States voted in favour, only Denmark and the Netherlands abstaining. For non-legislative matters, the Council continues to meet behind closed doors when discussing and voting and here our gaze remains necessarily limited.

One of the most important developments spurring the publication of roll calls is the extension of policy domains to the use of the co-decision procedure. As policy areas become subject to the co-decision procedure roll calls are automatically accessible to the public. In particular, the Lisbon Treaty has brought about a major shift in publications with all deliberations and votes on legislative acts open to the public. The real impact of this decision is unclear. It might result in more strategic decision-making in the Council; or it might lead to less formal decision-making whereby the locus of legislative activity moves away from public scrutiny; or, finally, it might result in a more democratic and legitimate manner of decision-making in the Council.

## 5.3 Data collation

Over a number of years I carefully collected the data that form the basis of the analysis for this paper. I collated the data from the *Council minutes* (1999-2010) and the *Council press releases* (1995-2010) of individual Council

| Table 4: Overview of selected data sources in the literature | | | |
|---|---|---|---|
| **Author(s)** | **Source(s)** | **Period** | **Type(s)** |
| (Mattila and Lane, 2001) | Summary Statistics from the Council Secretariat | 1994-1998 | Final decisions (definitive legislative acts) |
| (Mattila, 2004) | Summary Statistics from the Council Secretariat | 1995-2000 | Final decisions (definitive legislative acts) |
| (Heisenberg, 2005) | Summary Statistics from the Council Secretariat | 1994-2002 | Final decisions (definitive legislative acts) |
| (Hayes-Renshaw et al., 2006) | Council minutes of individual Council meetings, Council press releases of individual Council meetings, Summary Statistics from the Council Secretariat | 1994-2004 | Final decisions (definitive legislative acts and other acts) |
| (Dehousse et al., 2006) | Summary Statistics from the Council Secretariat and Database L'observatoire des institutions européennes | 1 January 2003-31 December 2005 | Final decisions (definitive legislative acts) on which a vote was recorded. |
| (De Clerck-Sachsse and Hagemann, 2007) | Council minutes of individual Council meetings and Prelex database | September 2001 to December 2006 | Final and non-final decisions adopted in the observed period and on which a vote was recorded |
| (Hagemann, 2007) | Council minutes of individual Council meetings and Prelex database | January 1999 – May 2004 | Final and non-final decisions ('all legislation adopted') on which a vote was recorded. Member States' 'serious concerns' or stating 'direct disagreement' about a decision in the formal statements were treated as opposing a majority. |
| (Settembri, 2007) | Prelex and monthly summaries of Council acts | 2003 (Greek and Italian Presidencies); 2005 (UK Presidency); 2006 (Austrian Presidency) | Definitive legislative acts and other acts (acts adopted on a proposal from the Commission or Member State and acts having as a legal basis a treaty article or a piece of secondary legislation) |
| (Mattila, 2009) | Monthly summaries of Council acts | 1 May 2004-31 December 2006 | Final decisions (definitive legislative acts and other acts) on which a vote was recorded. |
| (Thomson, 2009) | Council agendas | 1999, 2000; 1 May 2004-December 2005. | Politically important legislative proposals subject to consultation or co-decision with directives, regulations and decisions before 2004 and directives and regulations after 2004. |

| Author(s) | Source(s) | Period | Type(s) |
|---|---|---|---|
| (Deloche-Gaudez and Beaudonnet, 2010) | Monthly summaries of Council acts | 2002-2008 | Final decisions (definitive legislative acts) on which a vote was recorded |
| (Plechanovová, 2011b) | Provisional agendas of individual Council meetings, Council minutes of individual Council meetings, Council press releases of individual Council meetings, monthly summaries of Council acts and Prelex database. | 1 May 2004-December 2006 | Final and non-final decisions on which a vote was recorded. |
| (Plechanovová, 2011a) | Data survey of various documents potentially including information on position of EU member governments on proposed legislation in the Council. | May 2004-June 2009 | Final and non-final decisions on which a vote was recorded (all proposals presented to the EU Council). |
| (Hosli et al., 2011) | Monthly summaries of Council acts | 1 May 2004-31 December 2006 | Final and non-final decisions (definitive legislative acts and other acts) on which a vote was recorded. |
| (Van Aken, 2012) | Council minutes of individual Council meetings, Council press releases of individual Council meetings, Summary Statistics supplied by the Council Secretariat, monthly summaries of Council acts. | 23 January 1995-20 December 2010 | Final and non-final decisions (definitive legislative acts and other acts) on which a vote was recorded. |

sessions. I supplemented these with data from *the monthly summaries of Council acts going back until 1999*. In addition, I used the *Council Secretariat summary statistics* for the period covering the years 1996 to 2010. I subsequently compared these data and examined their accuracy. The result of this laborious endeavour is one dataset representing the universe of cases of all contested Council decisions that have been recorded in Council documents for the years between 1995 and 2010. To be more precise, the data represent all the recorded votes on legislative and non-legislative acts between the 1826th Council meeting for Agriculture (23 January 1995) and the 3061st Council meeting for Environment (20 December 2010) totalling 1406 explicitly contested legislative acts with 27,107 observations (votes cast).

When I compared these data a number of discrepancies emerged relating to different voting records, coding issues, the type of roll call and legislative activity and the corresponding accounting methods applied over the years. Frequently, different types of Council documents recorded distinct roll calls. To disentangle the discrepancies the data were triangulated according to the timing of the votes, the participating Member States, the issue areas, the policy domains, the roll calls and the voting procedures. In that process I opted for the largest possible population while eliminating double counting.

## 5.4 Coding

Subsequently I methodically coded and organised the data. The Council documents usually record the timing of the vote, the voting procedure, the policy domain, the legislative activity, the type of legal measure, the opposing and abstaining Member States and frequently also the Member State voting in favour and the statements clarifying the Member States' voting position. Votes were coded along a categorical variable (abstention='2', vote against = '1', vote in favour = 0).

One frequent obstacle is the failure to describe the legal basis and the ensuing voting procedure in Council documents, making research more complicated as 'often the EU can choose between two or more different legal bases for a piece of legislation, with the different institutions seeking to use the legal basis that provides the procedure most advantageous to them' (Chalmers et al., 2006, p. 140). Generally there should be no leeway in deciding the legal basis for a legislative proposal and usually an official from the Council Secretariat assists the Council to set the legal basis of a proposal. In case of doubt the legal basis is set at the level of the Council working group but when doubt persists it usually reflects a disagreement at the EU inter-institutional level rather than between the Member States.

Assigning the legal basis to a legislative proposal is not a trivial matter because it determines the voting procedure under which the legislation will be adopted and may influence the probability of its adoption. For example, in 2010 the Transport, Telecommunications and Energy Council considered the so-called *Eurovignette directive on road use charges for heavy goods vehicles.* During the discussions it emerged that the draft directive would be based on a transport provision rather than on a fiscal provision of the EU Treaty as favoured by some Member States. The two legal bases had a different effect

for the voting procedure as the fiscal provisions implied unanimity whereas the transport provision entailed decision-making according to the ordinary legislative procedure, i.e. co-decision with Parliament and qualified majority voting (Council Press release, 15/10/2010). Once a legal basis has been decided it will not be altered at a later stage in the legislative procedure.

Sometimes the absence of the legal basis for individual votes is related to the Council documents and occasionally a result of note-taking in the Council meeting. In this context it is important to note that the Council Secretariat did not habitually publish the legal basis for all Council acts but from January 2009 the legal basis has been systematically recorded in the summary of Council acts.

For consistency purposes the dataset requires all the characteristics of roll calls to be assigned including the voting rule. When assigning a legal basis to a roll call one needs to take into account a number of parameters. The most important parameters relate to the adoption of new European treaties and the evolution of the voting rules (Miller, 2004, Chalmers et al., 2006, Chalmers et al., 2010a, Piris, 2010). Four different European treaties entered into force between 1 November 1993 and 1 December 2009. As a result the voting procedures sometimes changed and moved from unanimity to a qualified majority requirement – the so-called ordinary legislative procedure.

Other parameters are the distinction between an executive or a legislative act including amendments. Fortunately, I was able to trace the origin of most of these roll calls. For the remainder I deduced the voting procedure on the basis of the literature and with help from a number of specialists.[36]

Clear EU policy domains were also regularly lacking in Council documents particularly for A-items but also for B-items. Their evolution is related to that of the legal bases and Council formations between 1995 and 2010. The policy domain can be decided on two grounds. Either the so-called *Chef de File* is the internal marker for the legislative proposal and assigns the policy area as s/he follows the legislative proposal through the entire EU decision-making process or alternatively the EU Presidency decides the policy domain

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[36] I benefited enormously from the advice of interviewees, practitioners and specialised scholars for the coding.

on the basis of the respective national administrative structure. The Council Secretariat may further regroup the policy domains according to the existing Council configurations. The labour intensive process of data collation has enabled one internally and externally consistent dataset to be built.

## 5.5 Limitations and pitfalls

It is important for the empiricist to take some important limitations into account with respect to Council roll calls and explicit votes. Researchers must guard against the potential pitfalls of relying too heavily on Council roll calls without explicitly understanding their relationship with the total legislative activity. That relationship reveals important elements about the act of voting itself as well as the possible implications of studying Council legislative politics generally. A lack of proper understanding of this relationship could result in over- or underestimation of the probability of political disagreement (Clinton and Lapinski, 2008).

For the analysis of roll calls this is not an uncommon problem. For instance, only a minority of national legislatures record all roll calls, making it more difficult to obtain a clear understanding of the relationship between total legislative activity and roll calls (Hug, 2010). EU Council roll call analysis and knowledge about the Council's total legislative activity is a case in point. One can only draw on the total number of roll calls for legislation that was effectively adopted and subsequently published. One cannot observe legislative activity or roll calls for legislative proposals that failed to garner sufficient support among the Member States. We know for instance that with the exception of a few instances a vote is only called when the legislative proposal has the approval of the majority in the Council. Usually proposals are not put up for a vote because the EU Presidency deems the required majority to be absent. As a result, it is difficult to gauge the proportion of contested decisions versus those decisions that failed to pass the required majority (Mattila, 2009, p. 843). Fortunately, over the last few years research has made great strides and there are strong indications that *only about one in ten proposals* is withdrawn at some point. More often than not the Council finds agreement with an adoption rate exceeding 90% (König and Junge, 2009, p. 508). Between 1976 and 2009 the Council passed about 89% of legislative proposals submitted by the Commission whereas less than 10% of the Commission proposals failed to survive the Council negotiations (Häge, 2011 , p. 470, 475).

Neither do we have knowledge of the number of roll calls the Council decided not to publish because they did not garner sufficient support when a vote was effectively tabled.[37] Yet here also the numbers appear to be very low. Over the entire dataset only a few legislative proposals were found between 1995 and 2010 that were submitted to a vote and failed to garner sufficient support among the Member States. For instance, in 2004 the Irish EU Presidency's compromise proposal for a Council Regulation on a community patent was submitted for a vote under unanimity. It failed to garner sufficient support and was opposed by the German, French, Spanish, and Portuguese delegations while Italy abstained. The other recorded examples are roll calls on legislative proposals dealing with emergency measures to protect against mad cow disease (1998), genetically modified crops (2008) and the authorisations for plant protection products (2008).

One should also beware about the implicit assumption that voting on a legislative act is similar to roll call activity. The Council is certainly not unique in this respect and evidence from other legislatures highlight the existence of divergent accounting methods (Hug, 2010). I found substantial evidence that votes on legislative acts do not completely reflect roll call activity in the Council of Ministers. Roll call behaviour is the public recording of individual positions on *one or more legislative acts* by means of a vote. A vote on a legislative act is the public recording of a Member State's position on a single legislative act by means of a vote. When analysing data on explicit votes in the EU Council one can see that not all legislative votes are done by roll call but rather a mixture of the two. For instance, it is possible for the Council documents to record a vote on a single legislative proposal or on a package of several related legislative proposals *within a similar policy domain*. For this paper I counted the number of acts that were subject to a vote and compared them with the total roll call activity. When comparing roll calls with the number of acts that were subject to explicit voting I found an average dissonance of 5.5% for the period 1995-2010 with substantial differences in some years.

The uneven Council legislative and roll call activity between 1995 and 2010 combined with the dissonance between roll calls and votes on legislative acts serve as a warning against drawing inference on the basis of cross-sectional

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[37] Since 1 December 2009 decisions that were subject to a vote and did not make it have also been recorded in Council documents.

comparative analysis or shorter time spans. Despite these limitations it is my view that roll call analysis is certainly relevant for understanding contested legislation, i.e. policy outcomes that were subject to a vote. Moreover, owing to the characteristics of explicit votes in the Council and the findings of more recent research it is possible to go one step further and assume that roll calls are a type of critical case for understanding the total population of legislative activity under the shadow of a vote in the EU Council. This strategy has been followed for the analysis of the US Congress and the study of national legislative institutions. In the case of the EU Council one only has to state explicitly the assumptions when drawing inference for the entire legislative activity on the basis of roll call analysis and contested legislation; and considering the wider Council decision-making processes and procedures.

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## Sammanfattning på svenska

Europeiska unionens råd är EU:s viktigaste lagstiftande organ och den mest betydelsefulla EU-institutionen. Men trots denna betydelse är det alltjämt oklart hur lagstiftningsarbetet egentligen går till och det saknas på det hela taget handfast information om beslutsfattandet i rådet. Syftet med den här rapporten är att bidra till den växande forskningen på området.

Rapporten grundas på en ny databas över det samlade antalet uttryckligt avgivna röster *(explicit votes)* och omröstningar med namnupprop *(public roll calls)* i rådet mellan åren 1995 och 2010. Skillnaderna i röstresultat över tid och politikområde ger oss en bild av beslutsfattandet i rådet, vilka frågor det handlar om och hur de olika medlemsländerna ställer sig.

Rapporten består av två delar. I den första delen analyseras omröstningar med namnupprop, med följande slutsatser:

- Förhållandet mellan majoriteter och minoriteter i rådet är avgörande för att förstå hur beslutsfattandet går till.
- Analysen visar även dynamiken bakom s.k. uttryckligt bestridande *(explicit contestation)* i rådet och ökar vår kunskap om lagstiftningsarbetet som helhet.

Del två är en empirisk analys av uppgifterna i databasen och leder till fem huvudslutsatser:

- Lagstiftningsarbetet i rådet karaktäriseras av upp- och nedgångar, med parallella omröstningar. Tidpunkten för dessa ”pucklar” sammanfaller med fördragsförändringar och utvidgningar. Under uppgångarna antar medlemsländerna fler lagförslag och undanröjer därmed risken för flaskhalsar. Vid nedgångarna bearbetar rådet beslutade förändringar och anpassar sig till den nya institutionella miljön.
- Sammantaget har lagstiftningsarbetet och omröstningarna legat på en jämn nivå under hela den senaste 16-årsperioden, trots ökande skillnader mellan medlemsländerna i och medutvidgningarna. Nya rutiner, ändrade röstbeteenden, förstärkande av koalitionsmönster och de nya medlemsländernas framgångsrika anpassning till rådet har fungerat som stötdämpare. Sammantaget har dessa faktorer bidragit positivt till rådets lagstiftningskapacitet mellan 1995 och 2010.
- Vad gäller politikområden, ser vi att uttryckligt bestridd lagstiftning *(explicitly contested legislation)* återfinns inom EU:s alla politikområden.

Det är emellertid vanligast när det handlar om fördelningspolitik, frågor där medlemsländerna har tydliga uppfattningar.

- Geografiskt kan vi konstatera att större och mer nordligt liggande medlemsländer oftare bestrider lagstiftningsförslag och har starkare egenintressen jämfört med länder i södra och östra Europa – med Italien som lysande undantag.
- Vad beträffar koalitionsbildning, visar databasen att det före 2004 fanns tre återkommande koalitioner i rådet. Den första var en *tyst majoritet* bestående av länder som bara i liten utsträckning opponerade sig och som genomgående stödde lagförslag. Den andra gruppen bestod av *en högljudd minoritet* av länder som ofta blev nedröstade. Tyskland (vad vi kan kalla den tredje koalitionen) var det enda land som avvek, eftersom man oftare än andra bestred lagförslag och dessutom på områden där andra länder inte opponerade sig. Efter utvidgningen 2004 anslöt sig flertalet av de nya medlemsländerna till den tysta majoriteten. Också Tyskland flyttade sig närmare denna grupp, medan Finland, Tjeckien och Malta anslöt sig till den högljudda minoriteten. Det enda land som har rört sig bort från dessa grupperingar och nu avviker alltmer är Storbritannien.

Trots de senaste årens turbulens ger rapporten en relativt positiv bild av rådets lagstiftningsarbete mellan åren 1995 och 2010. En bild som står i kontrast till de mer pessimistiska analyserna av EU-integrationen efter 2004 års stora utvidgning.

Rapporten ger ökad kunskap om såväl rådet som EU-integrationen. Mer forskning inom området behövs dock.

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