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**Decision-Making in the Enlarged EU Council of Ministers:
A Softer Consensus Norm as an Explanation for its Adaptability?**

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Abstract: Before 2004, it was feared, even predicted, that the enlargement of the European Union would block the ability of the Council of ministers to take common decisions. However, the blockage did not occur. The paper investigates this unexpected result, with a view to understanding better how the Council works. It focuses on possible changes in the informal consensus norm in an enlarged Council of ministers. Our two main hypotheses are that 1. the enlargement has softened the consensus norm and increased the impact of the majority threshold when it comes to approving decisions under qualified majority voting; 2. that this change has been differentiated across policy domains and Council configurations. The analysis relies on an innovative database documenting the entire EU decision-making process and including sector data over the period 2002-2008. It enables us to question the influence of the consensus norm a) with other data than the mere votes made public and b) across policy domains. Some data confirms that, since enlargement, the majority threshold has played a greater role in the Council and that this trend affects some configurations more than others.

1. Introduction

We know that we don't know. As surprising as it may sound, more than fifty years after the beginning of European integration, this could still be our starting point when it comes to explaining how decisions are taken in the EU Council of ministers. Proof of this is that we, academics, were not really able to predict how, in the absence of institutional reform, the Council could adapt to the last enlargements.

Before the accession of ten new member states in 2004, many commentators predicted that such a 'big bang' would block the ability of the European Union to reach common decisions – an ability that is at the heart of European integration. It was notably expected that the enlargement would affect the Council more than any other EU institution. This is why the constitutional Treaty included new institutional provisions, notably the new double majority decision rule aimed at facilitating common decisions in the Council. But a series of 'no' votes, in France, in the Netherlands and then in Ireland, prevented the Constitutional Treaty and its successor, the Lisbon Treaty, from being enforced until December 2009. Consequently, EU actors had to agree on common decisions without the help of new institutional rules. In particular, it was assumed that the Council would suffer from the drawback of including more numerous and more heterogeneous members - a total of 27 since January 2007. The latter would be both determined to defend their own national interests and obliged to reach common decisions under the current high thresholds of qualified majority voting or, worse, under the unanimity rule. Some alarming scenarios, often based on quantitative modelling, indicated that, under the provisions of the Nice Treaty, the probability of forming winning coalitions was expected to be very unlikely (Tsebelis, 2005).

However, at first sight, the Union has adapted to the 2004 and 2007 enlargements surprisingly well. The predicted blockage of an enlarged Council did not occur (Best, Christiansen, Settembri, 2008; Dehousse, Deloche-Gaudez, Duhamel, 2006; Hagemann, De Clerck-Sachsse, 2007; Wallace, 2007). Quantitative data shows that the institution has continued to take common decisions, almost at the same level in terms of the number of decisions, and apparently more rapidly.

This *unexpected* adaptability confirms that we still do not fully understand how common decisions are reached in the EU Council. Admittedly, the decision-making process is not easy to evaluate as, despite the transparency provisions, most of it still occurs behind closed doors.

The dominant narrative is that, in this institution, the decisions are taken by ‘consensus’. But this word, used since the beginning of European integration (Haas, 1958) up until now (Naurin, Wallace, 2008), leaves some questions open. In particular, as more and more decisions are subject to the rule of qualified majority voting (QMV) and could legally be adopted by votes, why in most cases do all ministers seem to rally to the decision made and approve it by ‘consensus’? Is the informal norm of the consensus strong enough to neutralize the effect of formal voting rules and rally opponents (Heisenberg, 2005)? Or could the few votes made public mask the fact that the majority threshold plays a more frequent role than usually assumed, at least in some policy domains (Novak, 2009)?

The aim of this paper is to contribute to a better understanding of the enlarged Council decision-making process by focusing on its unexpected adaptability, which, in our view, has not yet been fully investigated. The paper is structured as follows. First, we explain why, from a theoretical point of view, questioning the dominant narrative of a Council taking decisions by consensus could give an insight into this apparent adaptability. We then describe our methodological choices. We provide details on the innovative dataset that we are using to examine the respective influence of the consensus norm and the majority threshold in the Council. Finally, we provide and discuss findings suggesting that, since enlargement the Council’s actors have been more inclined to play the rules of a majority game.

2. Theoretical argument

a) The respective influence of the consensus norm and of the majority threshold

A dominant narrative is that, in the EU Council of ministers, actors try and reach common decisions by consensus, without voting, even when they could decide by majority and outvote minorities (Heisenberg, 2005; Lewis, 2008). According to this narrative, the members of the Council are willing to continue discussions until everybody is ‘on board’.

However widespread this idea is, it remains somewhat obscure. In principle, the notion of consensus excludes any votes (Urfalino, 2006). But, in the Council, the consensus norm coexists with votes. In the first place, since the mid-1990’s, some no votes and abstentions have been made public. Admittedly, given their small number, these votes are usually considered as a ‘last resort’, used only to overcome situations of stalemate in the Council,

when consensus cannot be reached because of a few intransigent opponents. The fact remains that, sometimes, the consensus-seeking norm is put aside and replaced with ‘last resort’ votes.

In the second place, there are accounts in the literature implying that consensus coexists with votes more closely. According to them, consensual decisions are reached ‘in the shadow of the vote’ (Golub, 1999). In other words, consensual decisions can be reached because ministers are aware that, under QMV, votes can be cast at any moment. Knowing that they can be outvoted, they are more inclined to compromises. However, it is difficult to find firm conclusions on the exact scope and influence of this ‘shadow of the vote’ (Hageman, 2009). Some argue that, in some configurations of the Council, this ‘shadow’ results in a specific voting practice that can be summarized as follows: votes of countries against the proposal on the table are constantly being counted; once the opposition does not constitute a blocking minority any more - in other words, once the majority threshold is reached -, the presidency suggests ending the discussions; the states in the minority have then the opportunity to make their opposition public or not (Novak, 2009).

The main hypothesis we would like to test is that since enlargement, in order to cope with the increasing number of members, actors in the Council have resorted to this voting practice – or rather to this ‘counting’ practice - more often; that they have paid attention to the majority threshold, rather than to the consensus norm, more systematically than before.

b) Votes made public: a misleading data?

Before detailing this hypothesis, we would like to address a possible objection. Admittedly, this hypothesis does not seem to be confirmed by a data commonly used by scholars: the votes made public. The part of legislative acts ruled by qualified majority voting (QMV) and having given rise to public no votes or abstentions has remained under 30% since enlargement. Over 2002-2008, the lowest percentage even relates to 2008 (cf Figure 3, thereafter).

This gives us the opportunity to distance ourselves from a tendency, among academics, to rely on public votes too much, on the ground that they are the ‘only available data’. Let’s not overlook that they are ‘odd’ votes and that they are likely to give a restricted, possibly distorted, picture of reality (Dehousse, Deloche-Gaudez, Duhamel, 2006; Heisenberg, 2008). They *only* account for votes recorded during the final adoption of legislative acts. But votes that prevent a decision from being taken are not made public: if the number of opposing

members reaches the blocking minority, the act is simply not passed. Consequently, public votes cannot prevent a decision from being taken. Even when the act is adopted, if opposing members do not want to publicly express their disagreement, they are not obliged to make their votes public. This is why some countries mentioned in the Council's press releases as opponents when it comes to agreeing a political agreement do not appear as such when it comes to making votes public (see the example of Poland and the gas network proposal in Dehousse, Deloche-Gaudez, 2009).

As a result, it has been argued that these votes are more likely to reflect domestic concerns (Hayes-Renshaw, Van Aken, Wallace, 2006), than voting practice in the Council. For instance, the Danish government is one of the governments that give most often public proof of opposition because its positions in the Council are agreed upon with the Danish Parliament beforehand. When it fails to win the case, making its opposition public signals its Parliament that it advocated their preferences.

As ministers are free to make their opposition public or not, it could also be argued that in fact the small number of public votes demonstrates the influence of the consensus norm when it comes to revealing one's opposition *once* the decision is adopted, rather than when it comes to expressing one's opposition *while* adopting the decision. This question leads us to distinguish two different moments when the consensus norm is likely to influence behaviour: when it comes to taking common decisions (phase 1) and, then, when it comes to making votes public (phase 2). The influence of the consensus norm is not necessarily the same during the two phases, all the more so since, in practice, they are distinct. Once the decision is agreed upon, the presidency sends e-mails to permanent representations in order to ask them if they want to make their opposition public (Novak, 2010). The small number of public votes seems to suggest that this consensus norm has a significant impact during the second phase, that the member states are reluctant to *publicly* appear as 'opponents'. But, here, we question the influence of the consensus norm in the first phase, when decisions are agreed upon and disagreements expressed behind closed doors.

c) Hypotheses: a less influential consensus norm since enlargement?

Our hypotheses are meant to highlight the enigma of a Council having to keep delivering common decisions in the absence of any new treaty from 2004 until 2009 (and therefore of any new institutional reform). They rely on the assumption that in the absence of any change

in *formal* decision rules¹, some *informal* rules had to change. More precisely, the ministers could have paid less attention to the requirements of the informal consensus norm. Under QMV, once the majority threshold reached, they could have been inclined to put an end to the discussions more often and/or more rapidly. This supposition is in line with the constructivist and institutionalist argument: what matters is not only the formal rules, but also, perhaps more importantly, the way they are interpreted and implemented by the various actors involved (Peterson, Shackleton, 2006; Pollack, 2005). The paradox is that an informal change leads to giving more weight to a formal rule!

Confronted with this hypothesis, practitioners often object that they ‘do not vote in the Council’. But it does not necessary imply formal voting. When the opposing states no longer represent a blocking minority, the presidency can simply suggest that negotiations should end. Therefore, the act can be adopted even if a full consensus is not reached - the states in the minority having then the opportunity to make their opposition public or not. In this case, voting is replaced with counting (the votes).

As mentioned above, in our view, to be able to grasp the reality of voting practice in the Council, or even more difficult, the influence of the majority threshold, we should not rely on votes made public only. We should resort to complementary questions, data and hypotheses. Our first hypothesis is that the decision-making process under QMV tends to differ from the one occurring when unanimous decisions are required because the majority threshold tends to play a more significant role. In other words, since enlargement, the definitive legislative acts under QMV would have become *comparatively* ‘easier’ to adopt than the ones ruled by unanimity (they would have become comparatively more numerous and faster to adopt, hypothesis 1a).

If the majority threshold competes more with the consensus norm under QMV and if the negotiations are ended sooner once the majority threshold is reached, it could also mean that the size of ‘unblocking’ minorities tends to increase. From 1999 to 2004, most of the minorities revealed by public votes comprised one member state only (Hayes-Renshaw, Van Aken, Wallace, 2006). It is in line with the idea that discussions in the Council are pursued as long as possible and votes used as a last resort to neutralize a last recalcitrant state. We expect that, after the 2004 enlargement, the percentage of these one-state minority coalitions will

¹ The main exception is the application since 1 January 2005 of codecision and QMV to most measures concerning asylum, immigration and the movement of persons (except legal immigration and family laws) in the area of security and justice.) (Best, Christiansen, Settembri, 2008).

decrease (hypothesis 1b). Admittedly, the increasing number of member states is likely to produce larger minority coalitions, comprising more and more countries. Nevertheless, the decrease in the percentage of *one*-state minorities could also signal a shift from a dominant practice consisting of negotiating until there is only one recalcitrant state left.

These first two hypotheses deal with the Council as a whole. Actually, the ministers meet in specialized configurations (currently in a total of nine) to deal with sector-specific issues, such as agriculture or competition. Given that the different configurations gather different ministers, who deal with different matters and face different requirements as well as various deadlines, our hypothesis is that there is a differentiation across configurations, notably in terms of output and decision-making duration, which also affects the influence of the consensus norm (hypothesis 2a). In other words, in some configurations, ministers pay more attention to the majority threshold, and are more likely to end negotiations once it is reached, than in others.

Our last hypothesis is that changes affecting the consensus norm are more significant in some configurations, i.e. that changes are differentiated across configurations. More precisely, we expect configurations used to taking the majority threshold into account, to pay even more attention to it after enlargement, and configurations where the consensus norm is more influential to find it difficult to get out of the habit of reaching consensual decisions (hypothesis 2b). Consequently, if our paper questions the idea of a ‘path dependence’ by putting forward hypotheses about possible changes to informal norms, we go back to this idea when it comes to configurations.

This sector approach adds value to the existing analyses that either stay at the surface of the overall decision-making process or focus on one specific domain. It aims at improving our knowledge of sector specificities, whose limitations have been emphasized by some scholars (Golub, 2007; Hagemann, 2008, 2009).

Table 1. Hypotheses summary

H1: The enlargement has softened the consensus norm influence	H1a: Decision-making processes under unanimity and Qualified Majority Voting (QMV) rule have diverged
	H1b: Under QMV, discussions have ended sooner once the majority threshold is reached and share of one-state coalitions has decreased

H2: The impact of this change is differentiated across configurations	H2a: A sector differentiation affects output and duration as well as voting practice
	H2b: Changes in the consensus norm influence are differentiated across configurations

3. Research design

a) Data

In order to test these hypotheses, we use a dataset of all definitive legislative acts adopted by the Council from January 2002 to December 2008 (more than 1300 cases). This dataset is built within Sciences Po's Observatory of European Institutions. It is unique as, first, it documents the whole process of each legislative act and includes data on various aspects of decision-making (see the list of variables in Annex 1). Second, it includes sector data drawn from the Directory of Community Legislation in Force, which allows for innovative policy domain analyses.

The dataset is based on the 'definitive legislative acts' adopted by the Council, for two reasons: 1) they are presumably the most important acts; 2) they are the only acts for which votes cast by member states during their final adoption are systematically made public. Even if the votes made public might not reveal the actual level of opposition in the Council (see above), this data is crucial for our analysis as it might give an insight into other aspects such as the size of minority coalitions.

The legislative acts included in the dataset are drawn from the Monthly Summaries of Council acts that are available on the Council website². These summaries list all legislative acts adopted each month, as well as the votes made public and the voting rule. As mentioned in the previous part, the latter is essential if we want to compare the Council's legislative output ruled by QMV / unanimity and assess the impact of these formal rules.

The database also contains data related to the Commission and the EP, for theoretical and practical reasons. As other academics argue, it appears 'impossible to tell the story of Council decision-making without reference to other institutional actors (notably the EP and the Commission)' (Pollack, Shaffer, 2008). From an empirical perspective, having data on the

² <http://www.consilium.europa.eu/showPage.aspx?id=551&lang=EN>

transmission of Commission proposals to the Council and their adoption date by the Council allows for calculations of decision-making duration. As for data on the EP, it notably relates to the codecision procedure. It enables to differentiate acts adopted by the Council under QMV, within and outside the codecision procedure.

Building such a dataset implies gathering data from four different online sources: not only the monthly summaries of Council acts, but also the Pre-Lex database on inter-institutional procedures, the EP Legislative Observatory OEIL and the Eur-Lex Database.³ Relying on various sources has the advantage of permitting cross checking. This has indeed revealed errors or inconsistencies, notably because of a lack of coordination between EU institutions, and has led us to establish systematic validation rules.

Data covers seven years (2002-2008), which allows us to make comparisons before/after enlargement and to rely on a significant period of time after the 2004 enlargement. However, the shorter period of time before enlargement (Jan 2002 – April 2004) could be misleading. EU actors were willing to clear the table of acts that have been bogged in the decision-making process for a long time, for fear that the increase of EU actors should make it impossible to approve them later. This could lead to overestimate the decision-making duration before enlargement and conclude, wrongly, that the Council has adopted decision more rapidly since May 2004. This is why, for the moment, we should be cautious when it comes to data relating to duration⁴. Our intention is to include the years 2000 and 2001 in the database by the end of this year and then test complementary hypotheses on duration before/after enlargement.

b) Dependent variables

To test our hypotheses, we rely on two measures: the number of legislative acts adopted by the Council, and the duration of decision-making. The duration variable measures the number of days from the date a Commission's proposal is transmitted to the Council to its adoption (by the Council). Depending on the hypothesis, the group of acts under investigation slightly varies.

To test our first hypothesis (that decision-making processes have diverged under QMV and unanimity since enlargement, H1a), we first study the changes in volume for acts adopted

³ Sources: Prelex database: <http://ec.europa.eu/prelex/apcnet.cfm?CL=en>
OEIL database: <http://www.europarl.europa.eu/oeil/index.jsp>
Eur-lex database: <http://eur-lex.europa.eu/en/index.htm>

⁴ Because of this small number of years, we are not relying here on time series analysis.

under the unanimity rule and under QMV. We then use the duration of decision-making under these two rules. Among QMV acts, we distinguish acts that are adopted within the codecision procedure from those that are not. As this procedure contributes to increase the decision-making duration, comparing acts adopted by the Council under unanimity and under QMV without codecision gives us another insight into the time required by the institution to adopt decisions under different formal rules.

To test the increasing readiness of ministers to stop negotiations even though the minority still comprises several member states (H1b), we use logistic regression on a dependent variable “coalition size”, coded 1 when the coalition contains only 1 member state, and 0 when it is larger. We do not use a continuous variable, which could have been coalition=1, 2, 3...8 states, because we are not interested in testing a linear increase that would be caused only by mechanic Council size increase: we want to focus on a specific effect regarding one-state coalition.

To test our second set of hypotheses that relates to sector Council configurations and sector differentiation, changes in the respective percentages of acts adopted under QMV or unanimity are not examined. Within each policy domain, this development might reflect the impact of legal bases more than the difficulty of approving unanimous decisions. On the other hand, as data relating to public votes make more sense in a comparative perspective, when an attempt to compare different styles of decision across configurations, we resort to volume and durations figures regarding acts having given rise to public votes.

c) Independent variables

To test for a specific effect of the 2004 enlargement, we rely on a simple dichotomous variable to specify whether the act was adopted before or after the 1 May 2004. To help distinguishing the impact of enlargement from other factors, we controlled for the year of adoption as well.

To test our second set of hypotheses, we created dichotomous variables for, first, each policy domain (hereafter referred to as “sector”) and, second, for most of Council configurations. There are twenty sector variables and eight configuration variables, for the reasons explained below.

d) Sectors and Council configurations

Allocating acts to the Council configurations is a more challenging task than it might appear at first sight. Taking the configurations where acts are *definitively* adopted as a basis for a breakdown would be irrelevant because of a practice that attributes to each configuration acts that have nothing to do with the fields it substantively handles. Once an act is agreed upon in the appropriate Council configuration, it has to be finalized and duly translated. Then, to save time, the first Council that follows officially adopts it, even though the act does not relate to its area of responsibility. It is finally approved without any discussion, as an ‘A point’ on the agenda.

This is why we resorted to a codification created and used by the EU itself: the Directory of Community Legislation in Force that includes 20 main sectors, divided into sub-sectors⁵

Table 2. Policy sectors

Code	Sector
1	General, financial and institutional matters
2	Customs Union and free movement of goods
3	Agriculture
4	Fisheries
5	Freedom of movement for workers and social policy
6	Right of establishment and freedom to provide services
7	Transport policy
8	Competition policy
9	Taxation
10	Economic and monetary policy and free movement of capital
11	External relations
12	Energy
13	Industrial policy and internal market
14	Regional policy and coordination of structural instruments
15	Environment, consumers and health protection
16	Science, information, education and culture
17	Law relating to undertakings
18	Common Foreign and Security Policy
19	Area of freedom, security and justice
20	People's Europe

Each act is characterized by one to four sector codes, depending on the number of domains it covers. Relying upon this existing sector breakdown has the advantage of avoiding an extensive and delicate coding work. But these 20 sectors have the disadvantage of not coinciding with the 12 existing Council configurations. Consequently, they cannot give us an accurate view of their possibly differentiated styles of decision.

⁵ Source : <http://eur-lex.europa.eu/en/legis/latest/index.htm>

To move from sectors to configurations, we took the following steps. Legislative acts were brought together according to the first two digits of their first sector code⁶. They were then allocated in a Council configuration according to three criteria (in descending order): 1. the name of the sector; 2. in case the act was debated in the Council as a B item, the name of the Council configurations where it was discussed; 3. the DG in charge of the corresponding proposal.

When such groups appeared too heterogeneous to be allocated to one specific configuration, the first *four* digits of the first code were considered (and not only the first two digits). Were then left aside two kinds of groups: the ones containing less than 3 acts (i.e. the acts having a first sector code beginning by 01.07; 01.20; 01.30; 01.50; 15.07; 15.40); the ones remaining too heterogeneous (i.e. the acts having a first sector code beginning by 01.10; 01.40). These choices came to exclude 62 out of 1388 legislative acts.

Relying on the name of the configuration where an act was discussed as a B point revealed another problem: the scope and the name of the Council configurations have changed over time. Actually, their number was reduced in 2002. It means that, regarding acts discussed as B point beforehand, previous configurations are mentioned in the Prelex documents. To match the previous and current configurations, the indications given in the conclusions of the June 2002 European Council, as well as explanations on the Council website⁷ have been taken into account. In particular, it is assumed that the acts debated by the previous Internal Market, Consumers and Tourism configuration are currently mainly examined by the Competition configuration.

Table 3. Council configurations and corresponding sectors

Council configuration	Label	Sectors⁸
General Affairs	CAG	-
Foreign Affairs	RE	11, 18
Economic and Financial Affairs	ECOFIN	09, 10
Justice and Home Affairs	JAI	19
Employment, Social Policy, Health and Consumer Affairs	EPSCO	05; 15.30
Competitiveness	COMPET	01.60; 02; 06; 08; 13; 15.20; 17
Transports, Telecommunications, and Energy	TTE	01.60; 07; 12

⁶ As each act might have several sector codes, attributing each act to all its sectors artificially increases the number of acts (as an act is adopted only once, but might cover several sectors). For this reason, to code the dichotomous sector variables, we took into account the first sector code only

⁷ <http://www.consilium.europa.eu/showPage.aspx?id=427&lang=en>

⁸ Sector 20 is not included as, in the database, no act has a first sector code beginning with 20.

Agriculture and Fisheries	AGRIFISH	03; 04; 14
Environment	ENV	15.10
Education, Youth, and Culture	EYC	16

The final groupings are shown in table 3. As they result in allocating no act to the CAG (General Affairs) configuration and only a few acts to the RE configuration (Foreign Affairs), it has been decided to test the last two hypotheses with the remaining 8 configurations (ECOFIN, JAI, EPSCO, COMPET, TTE, AGRIFISH, ENV, EYC), which appears more relevant when it comes to *legislative* acts.

4. Results

a) The unexpected adaptability of the Council

To begin with, presenting an overall picture of the Council in terms of output and speed explains why the idea of adaptability has emerged. According to quantitative evidence, the Council's ability to take common decisions hasn't been blocked. Since enlargement, the Council has continued to deliver legislative acts, almost at the same level in terms of volume⁹, and possibly more rapidly (see Figures 1 and 2 below).

If there is no evidence of a blockage, the Council's legislative output seems to have been more erratic since enlargement. The lowest and highest figures relate to the post enlargement period, respectively in 2005 and 2008. This could signal, as we assume, that the recent enlargements have resulted in informal changes, likely to be more or less pronounced from year to year - and therefore leading to ups and downs. Two other factors should be taken into consideration: the objective of the new Commission to achieve better regulation rather than over regulating; the fact that 2005 was a transitional year in many respects (it coincided with the arrival of many new actors coming not only from new member states, but also from a new Commission and a new Parliament, who possibly tried to get their bearings; after the hyperactivity of the Union in the months preceding the 2004 enlargement, there might have not been so many proposals left on the negotiation table) (Dehousse, Deloche-Gaudez, Duhamel, 2006).

⁹ If we exclude 2004 - an atypical year with a peak of 107 acts per term over January-April 2004 and an average of 34 acts per term over May-December 2004 -, the number of definitive legislative acts before/after enlargement is almost the same one: 49 against 48(per term).

Figure 1. Number of Legislative Acts adopted by the Council alone or with the EP (2002-2008) (N=1384)

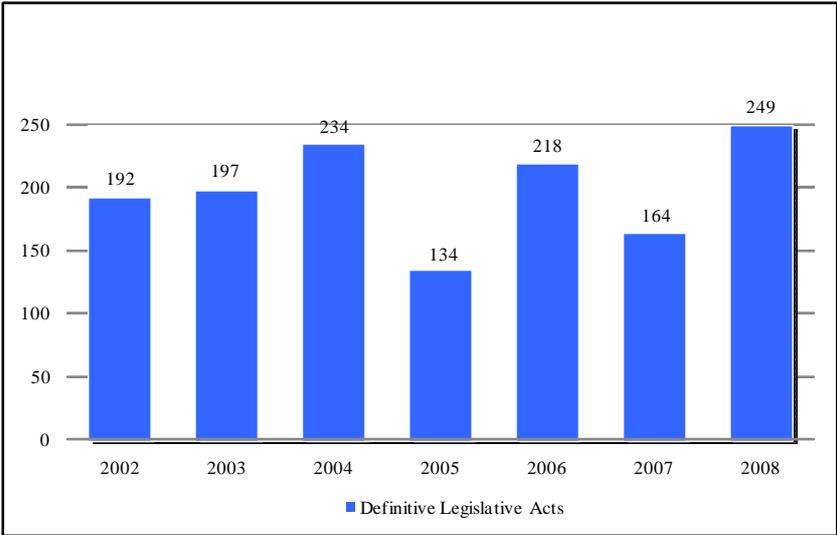
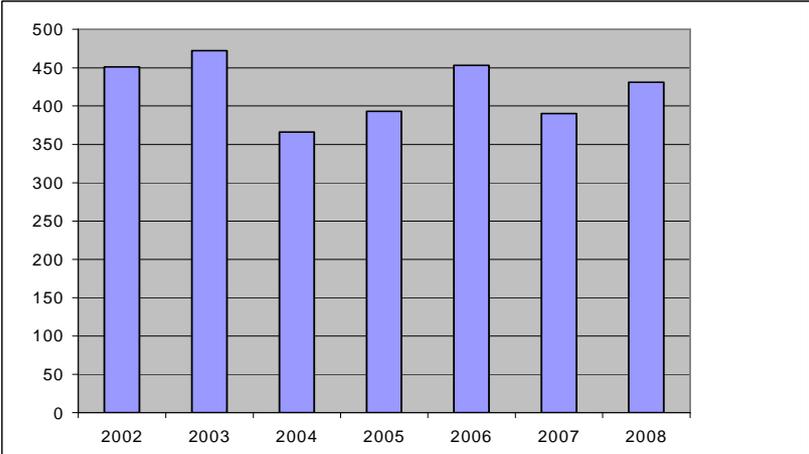


Figure 2. Time Period between Transmission and Adoption of Legislative Acts in the Council (2002 - 2008, in days)

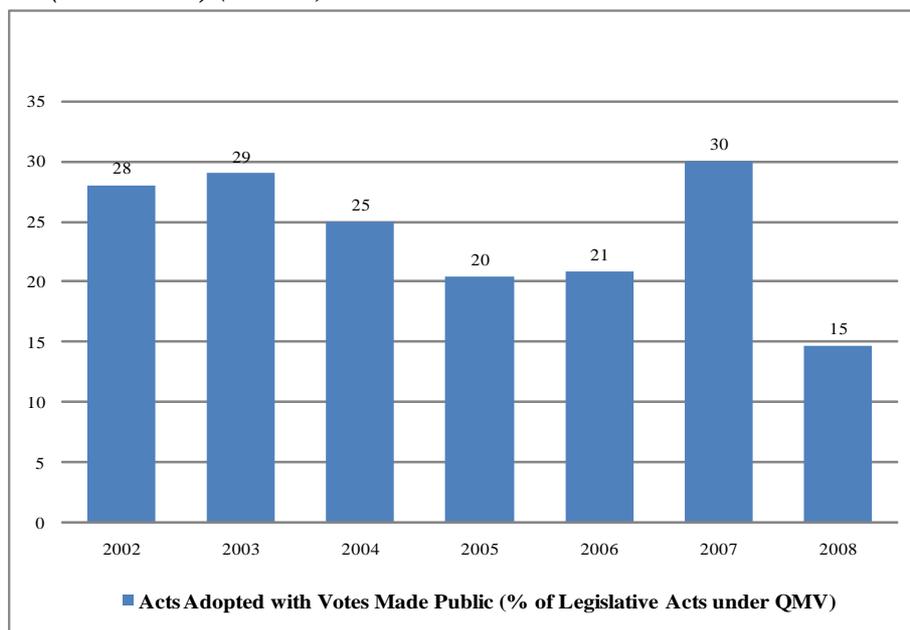


Data relating to duration also shows that, contrary to predictions, enlargement has not slowed down decision-making. However, as mentioned above, because of the atypical pre-enlargement period (2002-April 2004), it is difficult to draw firm conclusions as regards enlargement and duration. The regression analysis, displayed in Table 4 thereafter, using decision-making duration as the dependent variable, confirms that the increase in the number of member states in May 2004 hasn't had a decisive effect on duration. The latter depends more on other variables, primarily on the type of procedure (codecision or not) and the type of act (directive or not).

b) *Few public votes...*

To test this type of hypothesis - that enlargement has resulted in giving more weight to the majority threshold by the Council actors when it comes to adopting decisions by QMV – the first reaction is to turn to votes made public. And it could lead to infirm this hypothesis as the percentage of acts with public votes (in share of acts under QMV) has not increased since enlargement (Figure 3 below).

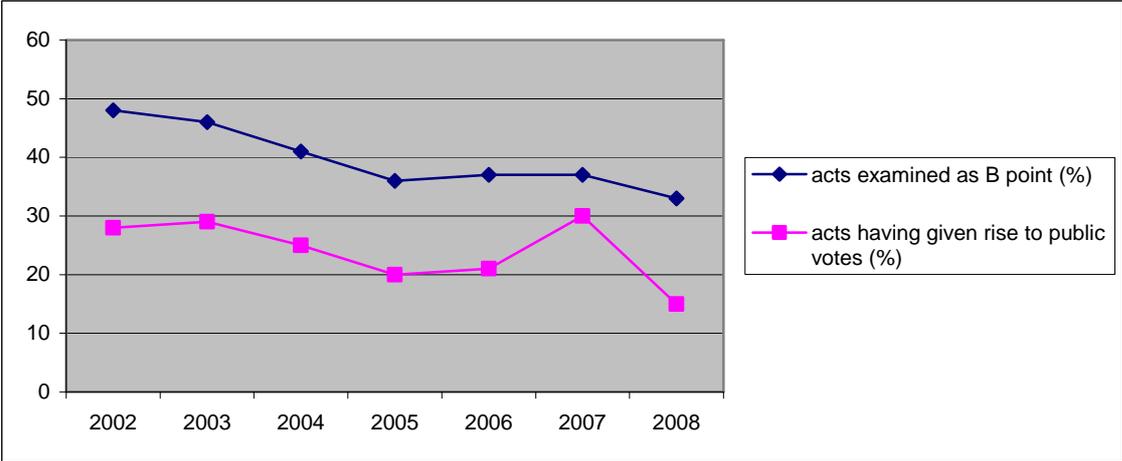
Figure 3. Share of Legislative Acts Adopted with Votes Made Public and Under Legal Basis QMV, by year (2002-2008) (N=1036)



However, we should be cautious as regards public votes. Generally speaking, our view is that they reflect domestic concerns more than the voting practice in the Council (see part 2b). In addition, it is difficult to draw conclusions from 2002-2008, as not only the lowest percentage but also the highest one relate to the post-enlargement period (15% in 2008 and 30% in 2007). Other analyses covering 1999-2001 even lead to question the idea of a decrease in public votes as, for instance in 2000, only 15% of acts ruled by QMV gave rise to public votes (Hayes-Renshaw, Van Aken, Wallace, 2006). Lastly, the lower percentages in the post enlargement period could be a result of a tendency to discuss fewer controversial acts at the ministerial level. According to Figure 4 (below), the charts relating to the percentage of acts examined as a B point in the Council and the part of acts having given rise to public votes seem to follow the same downward trend. As mentioned before, agreeing on acts in

COREPER does not prevent the national representatives from making opposing votes public. However, it can be argued that controversial discussions at the ministerial level are more likely to lead to public disagreement than the ones held among the permanent diplomatic members of the COREPER.

Figure 4. Share of acts examined as B points and of acts having given rise to public votes (% of legislative acts under QMV)



c) ...together with a more influential majority threshold...

If we want to come closer to understanding the actual practices in the Council, other hypotheses and other data should be examined.

Analyzing, first, the developments regarding the acts ruled by unanimity or majority gives us another insight into the processes at work in these two cases. The hypothesis put forward is that, since enlargement, the way of taking decisions has diverged under QMV and unanimity. According to our data, the percentage of legislative acts adopted under QMV indeed increased from 71% before enlargement to 78% after enlargement. A breakdown per year shows that the 2004 enlargement can be considered as a decisive factor. The respective parts of acts adopted under QMV / unanimity are stable in 2002, 2003 and 2004 (around 69% and 29%). Their progression diverges only after 2004, and the acts adopted under QMV then increased to represent 80% of the total legislative acts in 2008 (Figure 5 below). As a) there is no treaty change, thus no extension of the QMV scope, over the period¹⁰, b) EU actors cannot really

¹⁰ The main exception is the application since 1 January 2005 of codecision and QMV to most measures concerning asylum, immigration and the movement of persons (except legal immigration and family laws) in the area of security and justice.) (Best, Christiansen, Settembri, 2008).

choose the legal basis of a decision, the data seems to validate the idea that acts ruled by QMV have become comparatively 'easier' to adopt than the ones ruled by unanimity.

Figure 5. Volume of legislative acts by voting rule 2002-2008 - in %

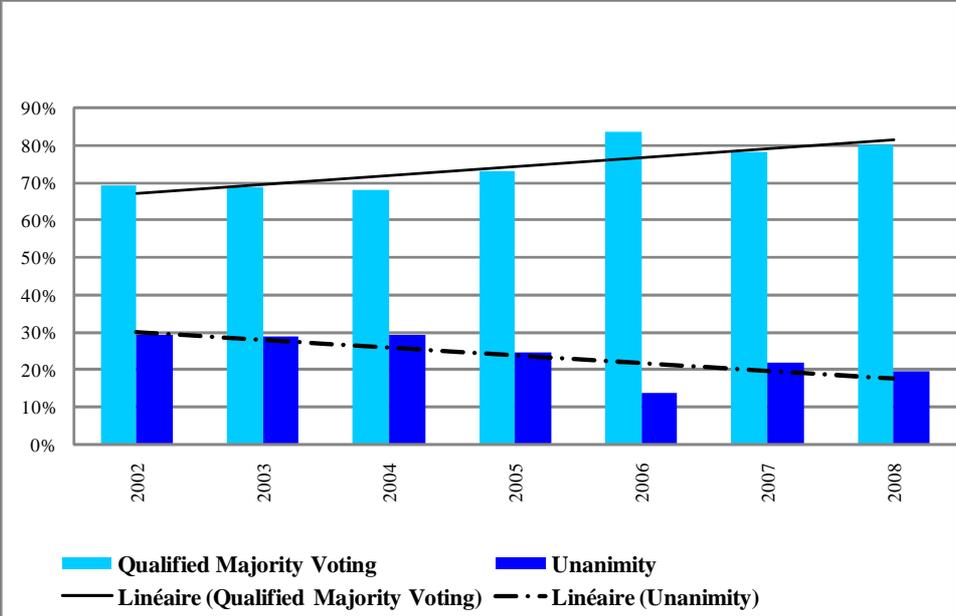
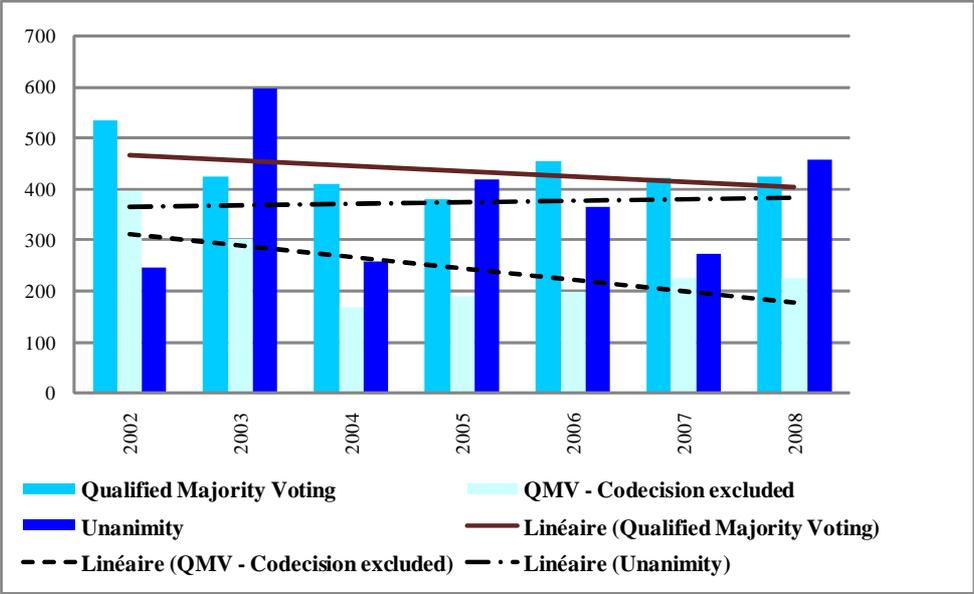


Figure 6. Length of decision-making by voting rule (in days) 2002 - 2008



As regards duration, Table 4 includes an interaction term between voting rule and enlargement, in order to test the hypothesis that enlargement has had a different effect on decision-making processes ruled by QMV and unanimity. Regarding qualified majority, we expected decision-making to be relatively faster after enlargement because of a weakening of the informal consensus norm, this very softening not being possible under unanimity. Therefore, we expect decision-making under unanimity to suffer from the increase in the Council size, and the trend relating to its duration to slow down after enlargement. If the consensus norm was indeed weakened under qualified majority, in order to overcome the increase in Council members, then the interaction term enlargement * qualified majority should be negative (meaning that the effect of qualified majority on decision-making length is smaller in the post enlargement period). While controlling for procedure, type of act and year of adoption, Model 1 shows that adopting an act under qualified majority indeed goes faster than under unanimity (minus 136 days in average), and that this difference is increased by 50% after enlargement (the interaction term adds circa 50 days to the difference).

This being said, it might appear surprising to see, in figure 6, that it is sometimes faster to approve acts by unanimity. Admittedly, among acts adopted under unanimity rule, there are implementation acts, easy to adopt, notably in the Justice and Home Affairs domain. For instance, the Council Decision of 22 December 2003 amending the third subparagraph (Basic criteria for examining applications) of Part V of the Common Consular Instructions (!) is one of the fastest acts of the database. In addition, Table 4 also shows that co-decision, which goes along with QMV, has a huge impact on decision-making length: on average, it increases by 464 days the decision making process, as compared to adoption involving only the Council, and by circa 200 days as compared to consultation. Once we control for procedure (codecision, consultation and Council alone), unanimity is no longer faster than qualified majority.

Overall, the data validates the hypothesis that decision-making under unanimity and QMV increasingly tends to diverge. It seems therefore to validate the idea that what differs between the two procedures – the existence of a majority threshold under QMV- tends to play a greater role (even if it does not lead to votes made public).

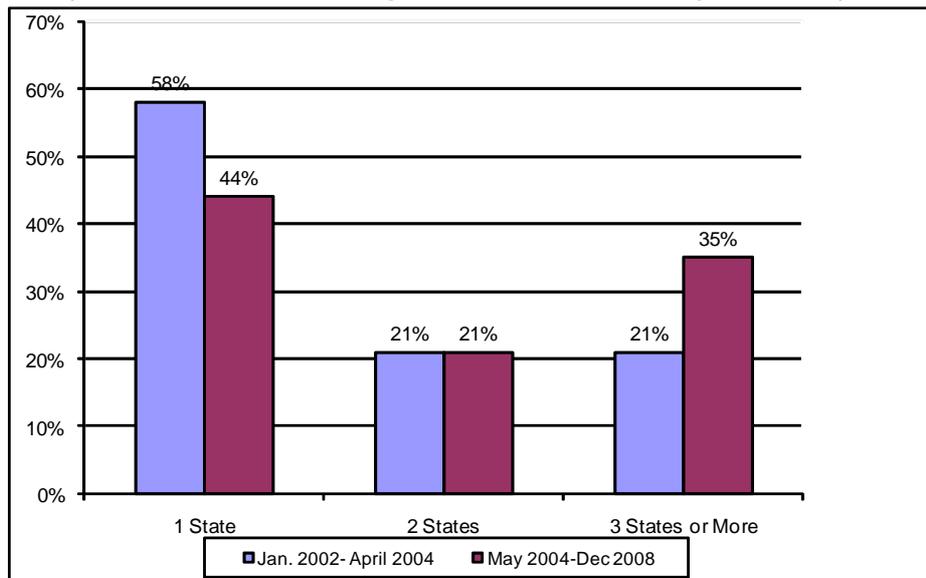
Table 4. The effect of enlargement, voting rule and type of act on decision-making process duration¹¹ Dependent variable = decision-making length (in days)

	MODEL 1		MODEL 2	
	Coefficient	SE	Coefficient	SE
Enlargement	-29.39	(71.62)	-212.4***	(74.33)
Voting rule = Qualified Majority	-136.2***	(48.93)	-170.0***	(35.88)
Qualified maj. * Enlargement	-53.20	(57.06)		
Vote made public	46.23	(31.63)	47.37	(31.46)
Type = Decision	-238.3***	(36.12)	-384.3***	(53.70)
Decision * Enlargement			245.1***	(66.30)
Type = Regulation	-189.2***	(31.13)	-275.1***	(47.45)
Regulation * Enlargement			149.1**	(59.92)
Procedure = Consultation	273.0***	(32.38)	265.7***	(32.30)
Procedure = Co-decision	464.8***	(34.75)	463.6***	(34.58)
Constant	410.3***	(56.57)	520.6***	(57.49)
Observations ¹²		1336		1336
Adjusted R-squared		0.197		0.205

SE=standard errors

*** p<0.01, ** p<0.05, * p<0.1

Figure 7. Size of State Coalitions having made Votes Public Before and After Enlargement



Data relating to the size of minority coalitions gives us another insight into decision-making under QMV. In the case of public votes, the percentage of one-state minority coalitions

¹¹ The year of adoption is included in the model as control, using dummies for each year (base category= 2002), they are not displayed here. Full table is in the appendix.

Base category: Enlargement = before, Voting rule = unanimity, vote made public = no, type = directive, procedure = council alone, year= 2002.

¹² The sample includes only acts adopted under unanimity and qualified majority (due to the small number of acts under simple majority), and acts for which no information on voting rule were available are excluded.

decreased from 58% (of all the minority coalitions) before enlargement to 44% since enlargement (Figure 7). Table 5 (below) shows the results of a logistic regression on a dependent variable coded 1 when an act is adopted with a one-state coalition, and coded 0 when the coalition is larger (the sample here includes the 240 acts with public votes). While controlling for the size of the Council and time period¹³, we see that after enlargement, the odds of having only a one-state coalition are reduced by a factor of 0.005, i.e. there are dramatically reduced, as compared to before enlargement (by approximately 99%).¹⁴ Admittedly, given the limited time range and the limited number of acts with votes made public, we cannot totally rule out a size factor (minorities would be larger because there are more ministers in the Council). However, the strong effect of enlargement gives credit to the idea that the size factor goes along a change of *practice*. Because there are more members, they cannot afford (too often) to wait for the opposition to be limited to one recalcitrant state before ending discussions.

Table 5. The frequency of one-state coalition before and after enlargement

Dependent variable = 1-state coalition			
	coefficient	SE	exp(b)
Enlargement	-5.236**	(2.433)	0.0053
Council size	0.443*	(0.259)	1.5573
Year	-0.0558	(0.189)	0.9457
Constant	105.4	(375.7)	
Observations	240		

SE=Standard errors
 *** p<0.01, ** p<0.05, * p<0.1
 exp(b) = factor change

d) ... and a differentiated voting practice across configurations

To go beyond this overall picture, we have now to examine the reality of decision-making across the Council’s configurations, in order to assess the robustness of these evolutions.

The figures confirm the hypothesis of a differentiation across configurations in terms of output, speed and voting practice (hypothesis 2a). As shown in Table 6, over 2002-2008, the number of definitive legislative acts ranges from 31 acts adopted by the Education, Youth and Culture (EYC) configuration to 334 acts approved by the ministers dealing with agriculture

¹³ Council size is coded 15, 25 and 27, year is a linear variable ranking from 2002 to 2008.
¹⁴ The control variable “Council size” has the reverse effect : an increase in Council size increases by 55% the odds of having a one-state coalition. However, further analysis shows that this effect is in fact not linear and can therefore not be interpreted as simply as this (results available upon request).

and fisheries (AGRI-FISH). Regarding the average time required to adopt an act, it ranges from a minimum of 258 days within the ECOFIN configuration (Economic and Financial Affairs) to a maximum of 807 days within the EPSCO configuration (Employment, Social Policy, Health and Consumer Affairs).

Table 6. Volume and length of decision-making per configuration

		Number of acts	Average duration	Average number of acts per term
AGRIFISH	2002-2008	334	281	12
	Before Enlargement	128	345	14
	After Enlargement	206	241	11
	Difference Before/after			-20%
EPSCO	2002-2008	71	807	3
	Before Enlargement	35	950	4
	After Enlargement	36	667	2
	Difference Before/after			-49%
ECOFIN	2002-2008	140	258	5
	Before Enlargement	49	280	5
	After Enlargement	91	246	5
	Difference Before/after			-7%
COMPET	2002-2008	332	478	12
	Before Enlargement	118	578	13
	After Enlargement	214	424	11
	Difference Before/after			-9%
TTE	2002-2008	143	569	5
	Before Enlargement	71	531	8
	After Enlargement	72	607	4
	Difference Before/after			-49%
ENV	2002-2008	65	552	2
	Before Enlargement	23	434	2
	After Enlargement	42	617	2
	Difference Before/after			-9%
JAI	2002-2008	169	466	6
	Before Enlargement	69	362	7
	After Enlargement	100	537	5
	Difference Before/after			-28%
EYC	2002-2008	31	414	1
	Before Enlargement	12	334	1
	After Enlargement	19	464	1
	Difference Before/after			-21%

According to Table 7, the influence of the consensus norm appears also differentiated across configurations. Data relating to voting practice could have been very similar in each configuration. Table 7 indicates that this is not the case. For instance, on average, under QMV, in the AGRI-FISH configuration, the opposing votes are made public (and therefore the discussions ended) 265 days after the Commission transmitted the proposal to the Council.

In the EPSCO configuration, it takes almost three more years to agree on taking such a step! The maximum and the minimum percentage of acts having given rise to public votes (in share of acts ruled by QMV) also relate to these two configurations (33% in AGRI-FISH and 8% in EPSCO).

From this analysis, two extreme cases emerge. In the AGRI-FISH configuration, the ministers appear able to agree very quickly on a significant legislative output, apparently by paying attention to the majority threshold. Admittedly, there are common policies in these sectors, which require initiating a large number of measures every year. This has probably encouraged a less consensual style of decision. The EPSCO configuration constitutes an opposite case: ministers need a longer time period to adopt a smaller number of acts and the consensus norm seems more influential. Interviews with practitioners confirm that there is a common will to adopt consensual decisions to strengthen the legitimacy of European legislation in this policy domain. More precisely, the ministers are reluctant to make public that one delegation - the British one - is frequently opposed to the Union's interventions in social affairs. This is why the Council does not publicly outvote the British, who are therefore in a position to negotiate extensively over the details before rallying to the common view (Dehousse, Deloche-Gaudez, Jacquot, 2009).

As regards our last hypothesis – that changes affecting the consensus norm influence have been differentiated across configurations (hypothesis 2b) -, some quantitative evidence confirms that configurations that used to take the majority threshold into account have paid more attention to it since enlargement. The following four indicators could signal that the majority threshold influences the discussions:

I 1: a high percentage of acts having given rise to votes made public;

I 2: a short decision-making duration when acts are ruled by QMV and have given rise to votes made public;

I 3: a small difference between duration under QMV with public votes and under QMV without public votes;

I 4: a percentage of one-state minority coalitions below 50%.

AGRI-FISH is the only configuration that systematically ranks among the first three ones according to the four indicators. And apart from the percentage of acts haven given rise to votes made public (I 1), all of them have moved in the direction of a more influential majority

threshold (I 2, I 3 and I 4 have decreased since enlargement). Conversely, EPSO is the only configuration to rank bottom as regards three indicators (I 1, I 2, I 3). I 4 appears as an exception but the small number of votes makes the breakdown of minority coalitions per size hardly significant. In contrast to AGRI-FISH, since enlargement, the first three indicators have evolved in the direction of a stronger consensus norm (I 1 has decreased; I 2 and I 3 have increased).

As a result, even if it should be supplemented with more systematic analyses, the hypothesis of differentiated changes in the informal consensus norm across configurations appears plausible.

Table 7. Volume and length of QMV decision-making per configuration

		Acts under QMV		Acts with votes made public			Acts with public votes / Acts without public votes	1-State Minority Coalitions	
		Number of acts	Average duration	Number of acts	% (in share of acts under QMV)	Average duration	Difference between durations	Number of acts	% (in share of coalitions)
AGRIFISH	2002-2008	316	284	105	33	265	-29	51	49
	Before Enlargement	120	360	48	40	299	-102	26	54
	After Enlargement	196	237	57	29	236	-2	25	44
EPSCO	2002-2008	59	823	5	8	1261	478	1	20
	Before Enlargement	30	921	3	10	912	-10	1	33
	After Enlargement	29	721	2	7	1784	1141	0	
ECOFIN	2002-2008	28	362	3	11	435	81	2	67
	Before Enlargement	9	513	2	22	376	-177	1	50
	After Enlargement	19	291	1	5	554	278	1	100
COMPET	2002-2008	310	467	71	23	622	201	36	51
	Before Enlargement	106	540	34	32	679	205	22	65
	After Enlargement	204	429	37	18	569	172	14	38
TTE	2002-2008	109	603	24	22	588	-19	13	54
	Before Enlargement	53	537	14	26	527	-13	8	57
	After Enlargement	56	666	10	18	673	10	5	50
ENV	2002-2008	61	547	12	20	470	-96	4	33
	Before Enlargement	23	434	2	9	575	155	1	50
	After Enlargement	38	616	10	26	449	-227	3	30
JAI	2002-2008	49	493	11	22	615	157	6	55
	Before Enlargement	4	344	1	25	659	420	1	100
	After Enlargement	45	507	10	22	611	134	5	50
EYC	2002-2008	27	415	3	11	316	-112	3	100
	Before Enlargement	11	328	1	9	235	-103	1	100
	After Enlargement	16	475	2	13	357	-135	2	100

5. Conclusion

In conclusion, the available data leads us to question the dominant narrative – that, in the Council, decisions are reached by consensus whenever possible, even when the decision rule is qualified majority voting and allows for votes. It could have to compete with another narrative: that under QMV, the majority threshold does play a significant role. This other narrative does not necessarily imply that ministers explicitly cast their votes. But the new story could be that the presidency counts the votes of the countries opposing the proposal being discussed and suggests ending the discussions once the majority threshold is reached. The states in the minority have then the opportunity to make their opposition public if they wish to do so. The fact that few of them actually do suggests that the consensus norm is strong when it come to publicly reveal one's disagreements, not necessarily when it comes to agreeing on decisions.

Since enlargement, the second narrative seems to have gain ground. It appears comparatively more difficult to adopt decisions under unanimity than under QMV. As the existence of a majority threshold is the element that distinguishes QMV from unanimity, it can be argued that, under QMV, the consensus requirement plays a lesser role and the majority threshold a stronger one, even if there is no explicit voting. Complementary data indicates that under QMV, in the case of votes made public, the minority coalitions used to be mostly composed of only one last recalcitrant country. Since enlargement, the percentage of these one-state coalitions has decreased. It could again signal a change of practice: once the majority threshold is reached, the presidency of the Council is more likely to put an end to negotiations, even if there are still more than one opposing country.

A policy domain analysis gives credit to the hypothesis that the relevance of each narrative depends on the Council configuration being considered. In some configurations, for instance agriculture, the 'majority' narrative is more appropriate. In others, dealing for example with social issues, the 'consensus' narrative remains valid. The available data also suggests that changes in the influence of the consensus norm are differentiated across configurations. The majority threshold is likely to be more influential in configurations where ministers already pay attention to it. In configurations where the consensus norm is more entrenched, the ministers apparently find it difficult to get out of the habit of reaching consensual decisions.

According to studies over a longer time period (Novak, 2010), it could be argued that the relevance of each narrative also varies over time. In the past, the majority threshold could have already played a significant role, for instance when it came to preparing for the internal market. This idea that the influence of the informal consensus norm, and therefore of the formal majority threshold, is subject to change across configurations and over time, adds new elements to the literature on informal norms. Admittedly, it should be confronted with complementary data, covering a longer period of time before enlargement, and with other qualitative analyses. However, this 'flexibility' could be a key element of the adaptability that the Council has demonstrated since enlargement.

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Annex 1: Observatory of European Institutions Database - Variables

Where do we find the legislative act?

- Monthly Summary of Council Acts where the act is mentioned – Year
- Monthly Summary of Council Acts – Month
- Monthly Summary Of Council Acts – Number

The act's Origin

- Initial Proposal Code – Year
- Initial Proposal Code – Entity (Commission, Member State, Council, ECB)
- Initial Proposal Code – Number
- Split Proposal (yes/no)
- Demand from a Member State (yes/no)

The act's ID

- Type of the act (regulation, directive, decision...)
- Procedure code – Year
- Procedure code – Procedure (COD, CNS,...)
- Procedure code – Number
- Celex Number
- Title of the act (in French)
- Title of the act (n English)
- Legal basis

From the Commission...

- Directorate General responsible for the proposal 1 - Abbreviation
- Directorate General responsible for the proposal 2 – Abbreviation
- Commissioner responsible for the proposal 1 – Name
- Commissioner responsible for the proposal 2 – Name
- Commissioner responsible for the proposal 3 – Name
- Commissioner responsible for the proposal 1 – Member State
- Commissioner responsible for the proposal 2 – Member State
- Commissioner responsible for the proposal 3 – Member State
- Date of adoption of the proposal
- By Written/Oral procedure
- Date of transmission of the proposal to the Council of Ministers

...To the Council...

- Council Voting Rule
- Votes made public (yes/no)
- Member States having voted Against
- Member States having Abstained
- Written Procedure in the Council (yes/no)
- Number of 'A' points per act
- Number of 'B' points per act
- Configurations where the act was discussed as a 'B' point
- Date of adoption by the Council

...And the EP

- Date of signature by the Council and the European Parliament
- Number of readings (within codecision procedure)
- Second reading / Approval by the EP without amendments (yes/no)
- EP Rapporteur 1 - Name
- EP Rapporteur 2 – Name
- EP Rapporteur 1 – Member State
- EP Rapporteur 2 – Member State
- EP Rapporteur 1 – Political Group
- EP Rapporteur 2 – Political Group
- EP Commission – Abbreviation

Average Life Span

- Time period between the adoption of the proposal and its transmission to the Council (number of days)
- Time period between the transmission of the act to the Council and its adoption by the Council (number of days)
- Time period between the transmission of the act to the Council and its signature by the Council and the European Parliament (number of days)

Sector Affiliation

- Sector code 1 from the Directory of Community Legislation – Code
- Sector code 1 from the Directory of Community Legislation – Name (French, English)
- Sector code 2 from the Directory of Community Legislation – Code
- Sector code 2 from the Directory of Community Legislation – Name (French, English)
- Sector code 3 from the Directory of Community Legislation – Code
- Sector code 3 from the Directory of Community Legislation – Name (French, English)
- Sector code 4 from the Directory of Community Legislation – Code
- Sector code 4 from the Directory of Community Legislation – Name (French, English)

Annex 2: Table 4 (complete table)

Dependent variable = decision-making length (in days)				
	MODEL 1		MODEL 2	
	Coefficient	SE	Coefficient	SE
Enlargement	-29.39	(71.62)	-212.4***	(74.33)
Voting rule = Qualified Majority	-136.2***	(48.93)	-170.0***	(35.88)
Qualified maj. * Enlargement	-53.20	(57.06)		
Vote made public	46.23	(31.63)	47.37	(31.46)
Type = Decision	-238.3***	(36.12)	-384.3***	(53.70)
Decision * Enlargement			245.1***	(66.30)
Type = Regulation	-189.2***	(31.13)	-275.1***	(47.45)
Regulation * Enlargement			149.1**	(59.92)
Procedure = Consultation	273.0***	(32.38)	265.7***	(32.30)
Procedure = Co-decision	464.8***	(34.75)	463.6***	(34.58)
2003	8.229	(44.91)	0.655	(44.88)
2004	-56.66	(49.20)	-61.23	(49.21)
2005	28.27	(78.31)	34.93	(78.16)
2006	88.57	(74.65)	91.93	(74.35)
2007	49.54	(76.50)	47.07	(76.17)
2008	55.04	(73.88)	59.36	(73.67)
Constant	410.3***	(56.57)	520.6***	(57.49)
Observations		1336		1336
Adjusted R-squared		0.197		0.205

SE=standard errors

*** p<0.01, ** p<0.05, * p<0.1