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The impact of 'widening' on the *substantive lourdeur* of EU decision-making

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WORK IN PROGRESS

1. Introduction

Even before the accession of the new member states in 2004, the impact of the 2004 EU enlargement was a research theme among academics, EU officials and others. It was expected that this enlargement would cause a gridlock in the EU decision-making process. However, the research conducted after May 2004 (a.o. Wallace, 2008; Costa, Dehousse & Deloche-Gaudez, 2006 and König, 2007) did not detect indications of a serious decision-making gridlock.

In other words, all this research summarizes the impact of the 2004 EU enlargement on the decision-making process as "business as usual" (Christiansen, Best & Settembri, 2008: 243).

However, more research in this area is still necessary for several reasons. Firstly, the mentioned research probably did not capture a possible 'delayed impact' (Best, Settembri & Christiansen, 2008: 2) because most of the mentioned research did not include data after 2006 or 2007. Secondly, Hagemann & De Clerck-Sachsse (2007: 39-40) suggest to focus on the impact of enlargement per policy areas.

Moreover, most research focused on the 'numbers' concerning the EU decision-making process. However, Leuffen and Hertz (2007) and Zimmer, Schneider and Dobbins (2005) suggest that the EU enlargement influenced also the content (and quality) of the EU legislation.

Therefore, this paper will focus on the impact of enlargement on the content of EU legislation. I will conduct a content analysis on the EU legislation, adopted in the period 1999-2011, in the framework of

the 'Transport' policy area to examine whether or not the increase in EU member states affected the quality of legislation. As such, the purpose of this research is to examine the impact of the fifth EU enlargement on what Krislov, Ehlerman and Weiler (1986: 34) call the *substantive lourdeur* of EU decision-making. The *substantive lourdeur* has a negative impact on the quality of legislation. These authors use this concept to describe the decisional malaise after the Luxembourg Compromise (1966). However, this concept is still very much at stake in the context of EU enlargement because sociological theories on group size (a.o. Simmel, 1902) indicate that an increase of the group affects the behavior of the group, and, the outcome of what the group produces.

In the theoretical framework, I elaborate the sociological theories on group size in order to theorize the impact of EU enlargement. I focus on these sociological theories because they focus more on the daily decision-making process, whereas the classical integration theories don't.

In the methodology chapter, I elaborate the concept of 'quality of legislation'. I will explain how a content analysis is the appropriate instrument to examine the quality of legislation.

The subsequent chapter presents the research and the results. The final chapter summarizes the main conclusions regarding the impact of enlargement on the quality of legislation and presents the issues that need further research.

2. Theoretical framework

Sociological theories on group size

Because the classical EU integration theories give divergent perspectives on the influence of EU enlargement and because they are more suited to explain the integration process and less the daily decision-making processes, a different perspective is necessary to compose a theoretical framework on the impact of enlargement on the daily decision-making.

The sociological theories on group size fit well in this context. These theories examine the impact of an increased group size on the behavior of the group. These sociological theories focus more on the daily decision-making of the group (and not on the integration process) and there is more consensus among these theories regarding the effects of the group size.

Georg Simmel (1902) was a pioneer in the context of the research on the effect of the number of members of a group on the group behavior. Although most of the research was conducted on small groups (ranging from four to six members), Hare (1952) examined groups of 12 members and it seems that the research of the other authors (Hackman & Vidmar, 1970; Hare, 1952) could be applied to larger groups.

The research conducted on the effects of the group size on the group behavior and functioning contains a series of experiments (Simmel, 1902; Hackman & Vidmar, 1970; Hare, 1952; Olson, 1965; Zimmer, Schneider & Dobbins, 2005; Ziller, 1957; Leuffen & Hertz, 2010 and Devine a.o., 2001). The conclusions of this research are very uniform: the number of individual members in the group is determining for the functioning and performance of the group. In particular, the conclusions of this research asserts that small groups appear to be more efficient and that the members of small groups are more satisfied about their performance than the members of the larger groups (Hackman & Vidmar, 1970: 43; Hare, 1952: 261 and Olson, 1965). Larger groups have to deal more regularly with coordination problems and

conflicts among the members (Hackman & Vidmar, 1970: 49). Larger groups also need more time to finalize their assigned task(s) (Hare, 1952: 267 and Devine a.o., 2001: 670). When the group becomes larger, the need to divide the work in smaller sub-groups becomes more urgent (Hackman & Vidmar, 1979: 49). In other words, an increase in the number of members of a group has an impact on the efficiency and quality of the group performance. The growing coordination problems and conflicts within the group suggest complex outcomes (or in the context of the EU: decisions). This suggestion (reduced quality of the decisions) is reinforced by the fact that the individual group member's satisfaction about their own performance decreases when the group size increases.

However, the mentioned authors do not provide us with an instrument to explain why large groups do still exist and function in a more or less proper way. To overcome this theoretical gap, I will now examine the various theoretical approaches on how the individual members of the group and the group as a whole are considered to deal with the increased group size in this discussion. Bailer, Hertz and Leuffen (2009) detected three possible reactions of the members of a group on an increase of the group size. They applied their findings to the context of the fifth EU enlargement.

Firstly, the old members of the group may have a specific reaction towards the enlarged group. Michels (1962) introduced the term 'oligarchization' to define this reaction. Oligarchization suggests the need of the increased group for more leadership in order to function effective and efficiently. Consequently, it will be the experienced member states that will take the leadership position. Applied to the EU enlargement, 'oligarchization' supposes that the old member states will gain power. Bailer, Hertz and Leuffen (2009: 167) however, are not convinced that oligarchic tendencies can be detected since the 2004 EU enlargement. In the few cases where such tendencies can be found, they could also be explained by the new member states' lack of experience in the EU. Still, further research should examine whether or not such oligarchic tendencies can still be detected some years after the EU enlargement. If this is the case, it will be hard to keep invoking the lack of experience of the new member states.

A second possible reaction to group enlargement is 'formalization'. 'Formalization' needs to be interpreted in the context of the Weberian bureaucracy (Weber, 1972). This means that, faced with enlargement, all members of the group, old and new, may experience a desire to establish more formal rules and procedures. Informal rules may have worked in a smaller group, but to ensure the efficient functioning of the group, the need for 'formalization' of these informal structures and processes will increase when the group enlarges. However, Bailer, Hertz and Leuffen (2009: 168) did not detect confirmation of this formalization process in the context of the 2004 EU enlargement. Moreover, previous research (e.g. Lemp, 2007; Horvath, 2008;...) detected a growing importance of informal practices in the enlarged EU.

Thirdly, 'adaptation' (DiMaggio & Powel, 1983) suggest a specific reaction of the new members of the group. The new members of the group will adapt to the existing group behavior. These new members consider the existing structure of the group to be well-established and they will not cause considerable changes to the existing structures, rules and procedures. On the contrary, new members will adjust to the existing norms. Interestingly, in the framework of the EU enlargement, Bailer, Hertz and Leuffen (2009: 169) already found "*supporting evidence for the adaptation scenario in the Council and the EP*".

Leuffen and Hertz (2010) also suggest another reaction due to an increase of the group size. More specifically, a group size increase may lead to a qualitative shift of the outcome (i.e. decisions) of the group away from the position of the old members. In the context of the EU enlargement, Zimmer, Schneider and Dobbins (2005) indeed suggest such a shift in the EU's policy content.

Remark: anticipatory effects and (social) learning

When applying the sociological theories on group size in the context of the EU enlargement, it is necessary to be aware of possible anticipatory behavior of the old member states and possible (social) learning of the new member states. These kinds of behavior might influence the conclusions of the sociological theories on group size regarding the effects of the behavior of old and new member states.

It is possible that the old member states anticipated on the reaction of the new member states. They might have taken precautions before the actual accession of the ten new member states. The warnings about a possible decision-making gridlock before the EU enlargement might have encouraged them to take measures that will assure their (leadership) position in the EU and their influence on the decision-making process and outcome. Leuffen and Hertz (2010) examined this concept of 'anticipation' in the context of the EU enlargement. According to them, the old member states indeed anticipated the enlargement by 'pushing' the decision-making of pending legislation in order for it to take place before the EU enlargement. More decisions were reached shortly before the enlargement and the amount of adopted legislation decreased slightly after the accession of the new member states. As such, the increase of the group size affected the timing of adopting legislation. This anticipation depended on the expectations about the enlargement and are different for various policy areas (Leuffen & Hertz, 2010: 57-58 & 67). Knowing this, it is possible that the anticipatory effects of the old member states have postponed the real effect of the EU enlargement.

It is also possible that the new member states needed a time to adjust to the new situation. All the time they are not that comfortable in the political environment of the EU and all the time they have not yet mastered the decision-making practices, they might copy the behavior of the old member states. As soon as they are adjusted to the new situation they might leave the norms and behavior of the old member states and pursue their own (other) preferences (Bailer, Hertz and Rittberger, 2009: 167). This should be understood in the context of (social) learning. New member states can learn from their own experiences or from the old member states. The new member states can learn how to achieve a goal or what kind of goals they should try to achieve (Levy, 1994: 286). They might develop another concept of the goals that should be pursued (Dobbin, Simmons & Garrett, 2007: 460).

Therefore, anticipatory behavior of the old member states and the learning process of the new member states might postpone the real impact of the EU enlargement on the efficiency and effectiveness of the daily EU decision-making. This reinforces the statement that further research on the impact of the 2004 EU enlargement is necessary in order to capture a possible delayed impact.

Hypothesis

The theoretical framework suggest that an increase in the number of members of a group has a negative impact on the performance of the group. Applying this to the EU enlargement, the accession of ten new member states in 2004 will have a negative impact on the adopted legislation, in terms of the quality of the legislation. This is a topic that is still little explored in the literature on the impact of the EU enlargement.

Researching this hypothesis might produce an answer to the question about the possible delayed impact of the enlargement and about the (social) learning of the member states.

As the existing literature is not unanimous about how larger groups continue to function, despite the suggested difficulties, this research might add a new perspective to this discussion.

2 Methodology

This part of the paper elaborates the concept of the quality of legislation. How can we detect good legislation? Which aspects characterize legislation of good quality? Determining this concept is crucial to conduct a reliable content analysis.

Secondly, I explore the research method, content analysis (quantitative and qualitative), that enables me to detect the quality of legislation and whether or not there is a trend towards better or worse legislation during the period 1999-2011. Thereafter, I finalize the research design. I elaborate the codebook for the quantitative content analysis and I determine the aspects under consideration in the qualitative content analysis.

Finally, I define which adopted EU decisions will be subject to the content analysis. Although a quantitative content analysis allows us to capture more texts than a qualitative content analysis, in the framework of this paper it is still necessary to select a number of legislative texts out of the total volume of the adopted EU legislation. Because a qualitative content analysis requires an in-depth and time consuming study, it is necessary to select only a few EU decisions for this part of the analysis.

Quality of legislation

The EU attention to the quality of legislation is rather recent. The accession of new member states is one reason why the EU focuses more on the quality, and not only on passing legislation. Another reason is the increased number of EU competences that have a direct impact on the life of EU citizens (Xanthaki, 2001 and Voermans, 2009). Good legislation is important for many reasons: it is crucial for the judicial protection of the EU citizens and it also makes the application of the EU law and its enforcement easier (Xanthaki, 2001).

In order to examine the quality of legislation, it is necessary to elaborate this concept. Good legislation or legislation of a certain quality means that each legislative decision has to meet certain standards in order to accomplish its functions. As such, the standards or requirements good legislation has to meet, differs with the functions we assign to legislation. The function I examine is the ability to produce clear and simple legislation. As such, this perspective connects well with Voermans' (2009: 66-68) point of view: *"legislative quality standards can only emanate from constitutional principles"*. These constitutional principles express the ability to produce law.

The attempts of the EU to produce common standards for the quality of legislation started in October 1992 with the Sutherland Report. The Interinstitutional Agreement of 22 December 1998 on common guidelines for the quality of drafting of Community legislation, the Interinstitutional Agreement of 2003 on better law-making and the Joint Practical Guide of the European Parliament, the Council and the Commission (European Communities, 2003) are now the main EU documents that provide the standards for legislation.

Voermans (2009) deduced out of all the EU policy documents on the quality of legislation 7 categories of quality requirements that should be met from the draft of the decision, through the adoption of the decision until the implementation of the decision. These categories are legality, due procedure and consultation, subsidiarity and proportionality, right instrument, implementation and transposition, enforceability and technical quality.

Within the scope of this paper, it is not feasible to check the adopted EU legislation on all these categories of quality requirements. However, it is still the purpose to make solid conclusions on the quality of the EU legislation. As such, I look for the quality requirements that were repeated the most or were given most attention in the literature on the quality of legislation and in the Interinstitutional Agreement of 2003 on better law-making and the Joint Practical Guide of the European Parliament, the Council and the Commission (European Communities, 2003).

The EU policy documents on the quality of legislation primarily provide standards that fit the category of 'technical quality'. Such standards were also mentioned by Xanthaki (2001) and Voermans (2009) as important for the quality of legislation because they influence the readability and the transparency of the legislation. I deduce a number of such technical requirements of good legislation that are mentioned in at least two of the mentioned documents or research, that responds to my research question and that can be examined with a content analysis (see next part).

A first standard that I will examine is the volume or length of an adopted EU decision. Long and extensive decisions could be an indication of a decreased performance of the decision-making group and is certainly not an aid to the overall accessibility and readability of the decision (Voermans, 2009).

A second standard is the title. In order to make legislation transparent and understandable, the title of the legislative text should be concise and reflect the content of the text.

The use of many external references jeopardizes the technical quality of a decision. External references also need to be comprehensible. More in particular, the Joint Practical Guide (European Communities, 2003: 49) dictates that "*[a] reference should be worded in such a way that the central element of the provision to which reference is to be made can be understood without consulting that provision*".

The last technical standard I examine, is the use of non-legal statements. This should be avoided because it brings along confusion and it decreases the clarity of the legislative texts.

Because the quality of the EU legislation cannot only be determined on technical requirements, I will also examine whether or not the directives contain clear transposition deadlines. In order to avoid confusion and implementing problems, the transposition deadlines for directives should not exceed two years (Inter Institutional Agreement on better law-making, 2003). As such, I will also examine the category of quality requirements that is defined by Voermans' (2009) as 'implementation and transposition'.

Furthermore, I also examine Voermans' (2009) categories 'due procedure and consultation' and 'subsidiarity and proportionality'. A motivated decision indicates that the decision-making group consulted the people that will be affected by the decision and it indicates that the group is aware of the necessity to adopt the decision on EU-level (and not on a national or regional level).

Table 2.1 lists these standards or requirements of the quality of legislation that will be examined in this research.

Table 2.1: Quality of EU legislation standards

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

Source: Voermans, 2009 and European Communities, 2003

Content Analysis

To examine the quality of legislation, a content-analysis should be conducted. Both a quantitative and qualitative content analysis will be conducted because using both research methods makes the research more complete (Holsti, 1969: 12). A content analysis investigates the content of (a) text(s) (including verbal, visual and auditive). As such, it can, and is, used for many research purposes (Holsti, 1969; Weber, 1985; Hijmans, Pleijter & Wester, 2003 and Wester, 2006). The main reason to use this research method is to examine trends and patterns in the material under investigation, such as shifts in public opinion. Moreover, North (1963: 37) explicitly determines content analysis as a "*rigorous tool*" for students of decision-making.

As the research question of this paper is whether or not the 2004 EU enlargement had an impact on the quality of the adopted EU legislation, I need to examine the adopted EU decisions on the standards that determine the quality of legislation (see table 2.1). Secondly, I have to examine whether or not there is a trend over time towards better or worse quality in the adopted legislation for the period 1999-2011. According to Holsti (1969: 28-30) this is an intermessage analysis. It allows researchers to compare data with other data from a single source over time or in other situations. As such, the researcher can detect certain trends.

Firstly, I will conduct a quantitative content analysis. A quantitative content analysis examines the manifest content (whereas a qualitative content analysis examines the latent content) of a text. The manifest content consists of the words, phrases and even symbols we can objectively observe or

measure (Holsti, 1969: 12-14 and Neuendorf, 2002: 23). A quantitative content analysis measures or counts the frequency of an attribute or theme. In other words, this analysis is a tool for obtaining merely descriptive data on the content of the research material (George, 2009: 144). As such, this analysis counts the absence, presence or volume of the standards that determine the quality of the adopted legislation and it explores whether or not there is a trend towards better or worse quality of legislation during the period under investigation.

To conduct a (quantitative) content analysis, I need to determine the concept under investigation: quality of legislation. This was already done in the previous part. Because a quantitative content analysis only measures the manifest content of a text, not all the quality requirements listed in table 2.1 can be measured by a quantitative content analysis. Therefore, in the legislative texts, only the length of the adopted decision, the length of the title, the number of (comprehensible) external references and the transposition deadlines for the directives can be examined by conducting a quantitative content analysis. Secondly, a codebook describes the variables under investigation. It gives instructions as how to examine the quality of a legislative text. The codebook for this research can be found in annex A.

Secondly, a qualitative content analysis enables the researcher to examine the latent content of the text. Such content needs more interpretation of the researcher because the message of latent content is not directly observable or might appear in different ways (Geeroms, 1970 and Neuendorf, 2002).

To examine the remaining quality requirements listed in table 2.1 (title reflects content of the text, use of non-legal statements and evidence-based, informed and necessary decisions) will be examined with a summative content analysis (Hsieh & Shannon, 2005: 1283-1285). To explore the mentioned quality requirements, I need to identify (and quantify) the words that reflect those requirements. As such, this research goes beyond word counting as it needs a thorough analysis of the text, followed by an interpretation of the latent content. As such, a qualitative content analysis is a time consuming research method as it requires several readings of the text.

Defining the research material

Before conducting the content analysis, it is necessary to determine the research material.

One of the main features of a quantitative content analysis is that it allows to capture a large number of texts into the research. However, it is not feasible to take all the adopted EU legislation over the years into account. Therefore, I can make a random sampling. In a random sampling each adopted EU decision has the same possibility to be chosen for the research. However, a multi-stage sampling is often used by content analysis researchers because it allows the researcher to examine the material on trends (Wester, 2006: 50). In a multi-stage sampling, groups of research units are selected. Thereafter, it allows the researcher to select the research material in a few steps.

For this research, I conduct a multi-stage sampling. Out of all the adopted EU legislation, I select the adopted legislation of one policy area. The research of Hagemann and De Clerck-Sachsse (2007) justifies this selection. Their research showed that some policy areas were more affected by the accession of 10 new member states than others in terms of the amount of adopted legislation. In most policy areas the amount of adopted legislation decreased after the 2004 EU enlargement. The policy areas Agriculture

and fisheries, Justice and home affairs, Environment and Transport, telecommunications and energy did not yet recover at the time of the research of Hagemann and De Clerck-Sachsse (2007) in December 2006. Whereas the policy areas Employment, social policy and Consumer affairs did recover.

Out of these four affected policy areas, I now select the Transport, telecommunications and energy area because Hageman and De Clerck-Sachsse (2007) detected some interesting findings in this policy area regarding the recorded disagreement of the member states in the Council. Before the enlargement, the amount of recorded disagreement through opposing votes was the highest in this policy area. In most other policy areas, the disagreement of the member states was more visible through formal statements and abstentions. After the enlargement, the research of Hagemann and De Clerck-Sachsse detects the opposite trend for the Transport, telecommunications and energy sector: there are now more formal statements and abstentions than opposing votes, which is more in line with the other policy areas.

Moreover, Hagemann and De Clerck-Sachsse (2007: 28) suggest that such a policy gridlock is a reason to examine the quality of the adopted legislation.

For these reasons, out of the overall adopted EU legislation, I select the policy area Transport, telecommunications and energy.

Out of this policy area, and although the three sectors Transport, Telecommunications and Energy, might be related, I only select the legislation that covers the Transport sector to reduce the amount of legislation.

I select the Transport sector because it is one of the three common policies of the EU (Greaves, 2000: 3). A Common Transport Policy [CTP] was one of the objectives in the Treaty of Rome in 1957 because it was seen as a crucial condition for the establishment of the free movement of goods, services, capital and labour.

However, the transport sector took a slow start and it remained under the control of the national governments for a long time. The 1985 White Paper on Completing the Internal Market and the condemnation by the European Court of Justice of the Council of Ministers in 1985 because of their inactivity in the transport sector, caused more activity at the EU level regarding the transport sector. As such, the transport sector is a rather 'recent' policy sector because the crucial decisions to establish a CTP were only taken in the 1990s (Greaves, 2000 and Schmidt & Giorgi, 2001).

This is interesting for my research because it justifies why I do not take all the adopted transport legislation (meaning from 1957 until today) into the content analysis. Moreover the research question focuses on the impact of the 2004 EU enlargement on the quality of EU legislation. Therefore, I only select the transport legislation adopted in the period 1999-2011.

The Eurl-lex database makes all EU legislation available per policy area. I selected the EU legislation in force (on 1/03/2012) that were adopted by the ordinary legislative procedure (before the Lisbon Treaty called the codecision procedure). Therefore, the research material for the quantitative content analysis counts 98 EU legislative texts.

Table 2.2 presents these legislative texts according to the period in which the procedure started and according to the period in which the legislative text was adopted: before or after the 2004 EU enlargement. It shows that more or less half of the procedures started before the 2004 EU enlargement and more or less half of them started (and were adopted) after the enlargement.

Table 2.2: Research material for the quantitative content analysis

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

Source: Eur-lex database, author's calculations

Because a qualitative content analysis is very time consuming, it is not possible to examine all the legislative texts of table 2.2 on the quality requirements which demand a qualitative analysis: only a few texts can be examined thoroughly. To select these cases, I conducted a random sampling for a directive and a regulation for each of the three periods. Table 2.3 presents the selected EU legislative texts.

Table 2.3: Research material for the qualitative content analysis

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

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

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

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

3. Research and results

The selected research material provides sufficient material to conduct a content analysis in order to examine whether or not the quality of the EU legislation decreases which is assumed by the sociological theories on group size. If this is the case, the 2004 EU enlargement had a negative impact on the what Krislov, Ehlerman and Weiler (1986: 34) call the *substantive lourdeur* of EU decision-making.

Quantitative content analysis

The 98 legislative texts were examined on 4 quality requirements. Annexes B, C and D present the results of this analysis.

The number of pages were counted. This means that the number of pages of the actual decision (i.e. the title, recitals and enacting terms, excluding the annexes), and the number of pages of the annexes were first counted separately and afterwards the total number of pages of the EU decision were counted. The decision and the annexes were first counted separately because, according to guideline 22 of the Joint Practical Guide (European Communities, 2003: 72), the annexes should only contain the technical aspects of the act and not a new right or obligation. Because some binding acts might contain many or extensive technical aspects and others non, the number of pages of the decision (i.e. the enacting terms and the annexes) might give a biased result.

Secondly, the number of words of the title were counted. The technical name (e.g. Directive 2003/59/EC) and the reference to which EU decisions are amended or repealed by the particular decision were excluded from the word counting. In other words, only the words of the title that (should) cover the content of the decision were counted.

Thirdly, the number of external references to binding EU decisions were counted. Many external references in the legislative text decreases the clarity and readability of the text, and as such, the quality of the decision.

Moreover, guideline 16 of the Joint Practical Guide (European Communities, 2003: 48-49) stipulates that an external reference needs to be comprehensible in a way that the central theme of the reference is clear without consulting the reference. Therefore, the number of external references as well as the number of comprehensible external references were counted for each of the EU decisions included in the research.

Lastly, for each directive, included in the research, I checked whether or not the transposition deadline for the member states to comply with the particular directive was clear (i.e. in the form of an actual date, which may not exceed 2 years after the directive entered into force).

Table 3.1 presents the average number for each of these qualitative requirements.

The average number of pages of the decision (i.e. recitals and enacting terms) do not show a trend in the quality of legislation because for the 3 periods, there is no real decrease or increase in the average number of pages of the decision.

The average number of pages of the annexes do tell something. Comparing period 1 and period 3, table 3.1 shows that the average number of pages of the annexes doubled. This is caused by an increase in the number of pages of the annexes to the directives. In period 3, two EU decision were counted with more than 100 pages of annexes. Nine of the EU decisions adopted in period 3 count 20 or more pages of annexes. In period 1, the maximum number of pages of the annexes is 78 and only 2 EU decisions counted 20 or more pages of annexes. The results of period 2 needs to be threatened carefully because

only 16 EU decision could be included in the research material (i.e. small N) and there is one directive with 252 pages of annexes. No other EU decision that was examined counted so many pages.

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

Summarized, the length of the EU decisions in the Transport sector show no increase in the length of the decision, but a noticeable increase in the volume of the annexes, and therefore in the volume of the total legislative text. This should indicate that the decision-makers add more technical aspects to an EU legislative text than before the EU enlargement because the annexes should not contain new rights and obligations.

Table 3.1: results of the quantitative content analysis

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

Source: Eur-lex database, author's calculations

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

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

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

Table 3.1 shows that the average number of words of the title are more or less constant in the period 1999-2011. There are also no exceptional long titles in the research material. For each period, the longest title counts more or less the same amount of words (in period 1, the longest title counted 28 words, for period 2 this was 24 words and for period 3 the longest title counted 32 words). Although this does not tell us anything about whether or not the title reflects the content of the decision, the EU enlargement did not affect the length of the title.

Table 3.1 shows that the average number of external references to other binding EU acts did increase over the years. This means that the EU acts adopted after the enlargement are less clear and readable than the EU acts adopted before the enlargement. The same trend is noticeable for the average number of comprehensible external references. This means that far from all external references in an EU act are comprehensible, but there is no trend that the decision-makers add more references that are not comprehensible. The average number of comprehensible external references increased because more external references are included in the EU acts. However, this analysis of the number of external references should be treated carefully. In period 3, there is one directive with 90 external references (78 of them are comprehensible). Whereas in period 1 and 2 the maximum number of external references in a legislative text is 26. This exceptional high number of external references of one directive influenced the average number of external references in period 3. On the other hand, period 2 and 3 count more EU legislative texts that contain 10 or more external references (8 for period 2 and 11 in period 3). Whereas in period 1, this is the case for only 3 EU legislative texts. In other words, and although we should be aware of the exceptional high number of external references of one directive adopted in 2010, the EU decisions adopted after the 2004 EU enlargement count a bit more (comprehensible) external references than the EU decisions adopted before the EU enlargement. As such, the EU decisions in period 2 and 3 lose some clarity and readability.

The analysis whether or not the directives included in the research have clear transposition deadlines showed that only a few had no clear transposition deadline or that they exceeded two years. There is also no trend towards more directives with no clear transposition deadlines. As such, the 2004 EU enlargement had no impact on this quality requirement.

Qualitative content analysis

To examine whether or not the title of the legislative text reflects the content of the text a thorough reading and analysis of the text is necessary. Such an analysis will always be affected by the interpretation of the researcher that conducts the analysis. A few indicators to determine whether or not the title reflects the content, might balance this interpretation bias. In this research, I add two indicators: whether or not the subject matter is clear in the title and whether or not the title gives a suggestion for whom the adopted decision is of interest. For both indicators all of the enacting terms are analyzed. For the first indicator, a special focus is given to the articles that elaborate the subject matter of the legislative text.

The qualitative content analysis of the 6 EU legislative texts (see table 2.3) detected no major problems regarding the title of the EU decision reflecting the content of the legislative text. Both indicators, clear subject matter and suggestion for whom the decision is of interest, could be answered with yes for the legislative texts of period 1 and period 3. The titles of the legislative texts of period 2 are clear on the subject matter, but less for whom the decision is of interest. Overall, and according to this research, the 2004 EU enlargement did not have a negative impact on this quality requirement.

The use of non-legal statements (including political and commonly-known statements) decreases the clarity and quality of the legislative text. Guideline number 10 of the Joint Practical Guide (European Communities, 2003) states that the 'recitals' (the part of the legislative text which contains the reasons

for the act, i.e. the part that starts with the word ‘whereas’) should not contain such non-legal statements. Guideline 12 of the Joint Practical Guide (European Communities, 2003) stipulates the same for the ‘enacting terms’: “*desires, intentions and declarations do not belong in the enacting terms of a binding act*”. The qualitative content analysis identifies such non-legal statements and quantifies them: how many non-legal statements were detected and how long are they, for both the recitals and the enacting terms?

In the analysis of the 6 legislative texts, I could not detect non-legal statements in the enacting terms. In the recitals of each legislative texts under examination, I categorized at least one non-legal statement. Some of them were expressed as desires. For example, Regulation (EC) No. 847/2004 expressed that “*The Community institutions and the Member states should take all necessary steps to ensure the best possible cooperation [...]*”.

Others were categorized as political statements. Directive 2011/82/EU stipulates that “[t]his directive respects the fundamental rights and observes the principles recognized in particular by the Charter of Fundamental Rights of the European Union [...]”. Because Article 6 of the Treaty on European refers to this Charter, it is unnecessary to repeat this in the directive. Therefore, I categorized this as a political statement.

However, the analysis did not show that the decision-makers include more (or less) non-legal statements in (the recitals of) the adopted legislation after the 2004 EU enlargement.

The ‘recitals’ are also examined to identify if the act contains a motivated decision and if it stipulates clearly the necessity of the decision. This does not include the legal motivations such as the references to the Treaties. The same analysis of the ‘recitals’ detects whether or not, and if so, to what extent the decision-makers consulted the groups that might be affected by the decision before adopting the decision.

All of the examined legislative texts contain (a number of) reasons for adopting the particular directive or regulation. In other words, the texts suggest that the decision-makers agreed on the necessity to adopt the decision.

Although Guideline 10 of the Joint Practical Guide (European Communities, 2003) defines the recitals as the part of the legislative text which contains the reasons for the act, these recitals contain more than only these reasons. Some legislative texts contain several pages of recitals (e.g. Regulation (EC) No. 1370/2007 counts 5 pages of recitals). Besides some reasons to adopt the act, these pages can be interpreted as an introduction to the enacting terms because most of these recitals express what should be adopted in the enacting terms without expressing a concrete reason (e.g. in Regulation (EC) No. 1370/2007 “*Directly awarded public service contracts should be subject to greater transparency*”).

The analysis did not detect any shifts in the amount of reasons or in how motivated the adopted EU legislation is.

Each of the examined legislative texts made at least one reference to another institution that was consulted before adopting the particular decision. This reference was included before the recitals.

Directive 2006/22/EC, Regulation (EC) No. 1370/2007 and Regulation (EC) No. 391/2009 were only adopted after the European Economic and Social Committee and the Committee of the Regions presented their opinion on the draft legislative text. The directive and regulation adopted before the

2004 EU enlargement consulted only one of these institutions (Directive 2003/59/EC consulted the Committee of the Regions, Regulation (EC) No. 847/2004 consulted the European Economic and Social Committee).

In Directive 2011/82/EU, I could not detect a reference to a consultation of one of these institutions. However, the recitals mentioned that the European Data Protection Supervisor was consulted prior to adoption of the directive. Moreover, the recitals express that when the European Commission will review the particular directive, it should consult the relevant stakeholders.

As such, no real conclusion can be made whether or not the decision-makers consult less (or more) groups before adopting the legislative text.

Lastly, in accordance with the quality requirement on subsidiarity and proportionality (see table 2.1), each of the examined EU texts made a clear statement regarding the subsidiarity and proportionality principle and explained (briefly) why action is necessary on the level of the EU.

4. Conclusions and discussion

The content analysis examined the research material (EU legislation adopted by the European Parliament and the Council in the period 1999-2011 in the transport sector) to answer the question whether or not the 2004 EU enlargement had a negative impact on the quality of the adopted EU legislation. This hypothesis is suggested by the sociological theories on group size. An increase of the members of the group causes more conflicts among the members, coordination problems,... and, has therefore a negative impact on the quality on what the group produces.

This theoretical framework and research can be related to the *substantive lourdeur* Krislov, Ehlerman and Weiler (1986: 34) identified after the Luxembourg Compromise. The results of the research can explore whether or not the EU enlargement had an impact on this *substantive lourdeur*.

The quality of legislation (and trends towards better or worse legislation) can only be examined when the quality standards or requirements are defined. In this research, I defined nine quality requirements (see table 2.1) out of the literature (Xanthaki, 2001 and Voermans, 2009) and the EU policy documents on the quality of legislation. These quality requirements could be explored by a (quantitative and qualitative) content analysis.

Although the research seemed less clear to determine how good or bad the adopted EU legislation is (e.g. there are no exact indicators for the length of the title), it is suitable to examine a possible trend regarding the quality of legislation.

The qualitative content analysis of the research material did not detect major problems on five quality requirements (i.e. title reflects the content, use of non-legal statements, evidence based and duly motivated decisions, necessity of Community action and informed and evidence-based decision-making). For each of the examined decision, the title reflected the content. Each legislative text contained a number of reasons and framed the necessity for adopting the particular directive or regulation. Each adoption was preceded by at least one consultation process. Moreover, there was a reference to the

subsidiarity and proportionality principle and an explanation why Community action is needed in each of the examined decisions.

Although there were no non-legal statements in the enacting terms, a few desires and (political) statements were detected in the recitals. There were not many non-legal statements detected, but according to the literature on the quality of legislation, such statements reduces the quality of adopted decisions. Moreover, the Joint Practical Guide (European Communities, 2003) specifically asks the decision-makers not to include non-legal statements. However, because all the examined legislative texts, those adopted before as well as those adopted after the 2004 EU enlargement, contained such statements, the research cannot conclude that the EU enlargement made the quality of the legislation worse.

However, in this qualitative content analysis only six EU legislative texts, adopted in the transport sector, were examined on these quality requirements. Although these six legislative texts were adopted throughout the period 1999-2011, it is possible that the same analysis covering more EU decisions gives other results.

The quantitative content analysis of the research material covered four quality requirements (i.e. length of the decision, length of the title, external references and clear transposition deadlines for directives). The results show that the 2004 EU enlargement had no impact on the length of the title of the adopted decisions or on the clarity of the transposition deadlines for the directives.

The analysis detected that the number of pages of the annexes to the adopted legislation is higher after the accession of the new member states. Consequently, also the total number of pages of the legislation is higher after the enlargement. This suggests that the decision-makers added more technical aspects to a decision after the enlargement than they did before the enlargement.

According to the literature on the quality of legislation, long and extensive decisions reduce the clarity, readability, transparency and, as such, the quality of the legislation.

The research also detected a rise in the amount of external references to other binding EU acts after the 2004 EU enlargement. Again, this decreases the quality of the adopted legislation.

However, another explanation for this increase of external references could be the total volume of adopted EU legislation. The total amount of adopted EU legislation increases every year. As a consequence, the more recent adopted EU legislation has more other EU binding acts to refer to.

The overall conclusion of this research is that the EU enlargement had an impact on only a few quality requirements. In other words, the 2004 EU enlargement did not cause major problems among the decision-makers that could affect the outcome of the decision-making process.

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

Firstly, the research of this paper can be complemented with a content analysis on the quality of the legislation adopted in other policy areas. Hagemann and De Clerck-Sachsse (2007) already concluded that not all policy areas recovered from the 2004 EU enlargement.

Secondly, this research could not provide the elements that explain why the enlarged Union does not produce notable worse legislation, in contrast with the hypothesis of the sociological theories on group size. An extensive content analysis of the amendments made by the Council and the European Parliament to the Commission proposal and of the voting behavior, both with a focus on the activity of the old and new member states might suggest which element detected by Bailer, Hertz and Leuffen (2009) oligarchization, formalization or adaptation, avoids the decrease in the quality of the outcome of the group.

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6. Annex A: Codebook

Coding Unit

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

Coding Directory

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

7. Annex B: Results quantitative content analysis (decision-making procedure started and decision was adopted before the enlargement)

EU legislative text	pages: decision	pages: annex	pages: total	words title	External references	precise external references	clear transposition deadline
Regulation (EC) No. 91/2003	5	10	15	4	6	4	
Directive 2001/14/EC	15	3	18	21	2	1	yes
Directive 2003/59/EC	7	7	14	20	11	7	no
Directive 2000/9/EC	8	20	28	8	4	4	yes
Directive 2000/30/EC	4	4	8	15	6	5	yes
Directive 2002/51/EC	5	6	11	16	26	6	yes
Directive 2004/54/EC	10	17	27	11	1	1	yes
Directive 2002/15/EC	5	0	5	14	9	4	yes
Regulation (EC) No. 437/2003	3	5	8	15	1	0	
Directive 1999/62/EC	6	3	9	13	4	3	yes
Regulation (EC) No. 782/2003	5	6	11	8	2	2	
Directive 2002/6/EC	3	13	16	18	0	0	yes
Regulation (EC) No. 789/2004	5	0	5	13	8	5	
Directive 2001/96/EC	7	5	12	14	5	3	yes
Directive 2002/59/EC	12	6	18	9	3	1	no
Regulation (EC) No. 417/2002	5	0	5	16	0	0	
Regulation (EC) No. 1406/2002	9	0	9	6	7	5	
Regulation (EC) No. 2009/2002	5	0	5	13	16	0	
Directive 2003/25/EC	5	15	20	8	3	0	yes
Regulation (EC) No. 725/2004	8	78	86	7	5	4	
Directive 2000/59/EC	6	3	9	10	4	1	yes
Directive 1999/95/EC	3	4	7	19	8	5	no
Regulation (EC) No. 549/2004	8	0	8	12	4	4	
Regulation (EC) No. 550/2004	8	2	10	12	1	1	

Regulation (EC) No. 551/2004	5	0	5	13	1	0	
Regulation (EC) No. 552/2004	7	10	17	10	3	2	
Regulation (EC) No. 868/2004	7	0	7	28	1	0	
Regulation (EC) No. 261/2004	7	0	7	23	6	3	
Regulation (EC) No. 785/2004	6	0	6	9	2	2	
Regulation (EC) No. 1592/2002	17	4	21	16	2	1	
Directive 2003/42/EC	4	10	14	6	5	5	yes
Directive 2004/36/EC	6	5	11	9	1	1	yes
Directive 2002/30/EC	5	2	7	19	2	1	yes
Regulation (EC) No. 847/2004	6	0	6	14	2	0	

Source: Eur-lex and Pre-lex database

8. Annex C: Results quantitative content analysis (decision-making procedure started before the enlargement, decision was adopted after the enlargement)

EU legislative text	pages: decision	pages: annex	pages: total	words title	external references	precise external references	clear transposition deadline
Regulation (EC) No. 1370/2007	11	2	13	10	12	7	
Directive 2006/1/EC	2	2	4	15	0	0	yes
Directive 2006/87/EC	8	252	260	8	3	0	yes
Regulation (EC) No. 1371/2007	10	8	18	6	10	7	
Directive 2006/126/EC	10	33	43	3	10	10	no
Directive 2007/59/EC	14	14	28	17	26	12	yes
Directive 2009/78/EC	2	11	13	6	3	3	yes
Directive 2009/79/EC	2	5	7	7	3	3	yes
Directive 2006/22/EC	6	3	9	18	26	3	yes
Regulation (EC) No. 561/2006	13	0	13	11	17	8	

Decision No. 167/2006/EC	2	2	4	13	2	2	
Directive 2005/35/EC	5	6	11	11	7	5	yes
Directive 2005/45/EC	4	0	4	11	11	8	yes
Directive 2005/65/EC	6	8	14	4	13	10	yes
Regulation (EC) No. 336/2006	5	31	36	12	4	3	
Directive 2006/93/EC	2	2	4	24	0	0	yes

Source: Eur-lex and Pre-lex database

9. Annex D: Results quantitative content analysis (decision-making procedure started and decision was adopted after the enlargement)

EU legislative text	pages: decision	pages: annex	pages: total	words title	external references	precise external references	clear transposition deadline
Regulation (EC) No. 443/2009	12	3	15	22	14	11	
Regulation (EC) No. 912/2010	10	1	11	8	22	17	
Directive 2008/57/EC	24	21	45	10	32	21	yes
Regulation (EC) No. 1072/2009	9	7	16	11	6	5	
Regulation (EU) No. 181/2010	10	2	12	10	2	2	
Decision No. 357/2009/EC	2	1	3	21	0	0	
Directive 2008/68/EC	7	40	47	7	1	1	yes
Directive 2009/40/EC	4	13	17	9	0	0	yes
Directive 2009/60/EC	2	3	5	15	3	3	yes
Directive 2009/61/EC	2	31	33	15	2	2	yes
Directive 2009/63/EC	2	9	11	11	2	2	yes
Directive 2009/66/EC	2	5	7	10	3	3	yes
Directive 2009/67/EC	2	89	91	14	4	3	yes
Directive 2009/80/EC	2	11	13	14	4	3	yes

Directive 2009/100/EC	3	3	6	10	1	0	yes
Directive 2009/139/EC	2	7	9	9	3	3	yes
Directive 2010/35/EU	13	5	18	4	90	78	yes
Directive 2010/40/EU	8	5	13	24	8	3	yes
Directive 2011/82/EU	7	8	15	12	10	8	no
Regulation (EC) No. 1071/2009	13	8	21	18	6	5	
Regulation (EC) No. 1107/2006	7	2	9	15	6	5	
Regulation (EC) No. 1692/2006	6	7	13	24	6	3	
Regulation (EC) No. 1100/2008	2	5	7	21	0	0	
Directive 2009/33/EC	7	1	8	10	9	9	yes
Regulation (EC) No. 1365/2006	3	8	11	8	0	0	
Directive 2009/42/EC	3	16	19	13	1	0	no
Decision No. 661/2010/EU	12	117	129	11	11	0	
Regulation (EC) No. 1177/2010	12	4	16	12	4	0	
Directive 2010/65/EC	6	4	10	14	14	6	yes
Regulation (EC) No. 1891/2006	3	0	3	25	2	2	
Directive 2008/106/EC	14	15	29	8	5	2	no
Directive 2009/15/EC	7	3	10	19	3	2	yes
Directive 2009/16/EC	16	28	44	4	18	7	yes
Directive 2009/18/EC	10	4	14	14	3	2	yes
Directive 2009/20/EC	3	1	4	8	2	1	no
Directive 2009/21/EC	4	0	4	6	3	3	yes
Directive 2009/45/EC	11	129	140	8	9	2	no
Regulation (EC) No. 391/2009	8	5	13	11	9	1	

Regulation (EC) No. 392/2009	5	18	23	14	7	7	
Directive 2005/44/EC	5	3	8	11	5	2	yes
Directive 2009/12/EC	6	0	6	3	3	2	yes
Regulation (EC) No. 2111/2005	7	1	8	32	7	5	
Regulation (EC) No. 216/2008	28	21	49	16	16	10	
Regulation (EC) No. 1008/2008	13	5	18	12	2	1	
Directive 2006/23/EC	10	6	16	7	2	0	yes
Regulation (EC) No. 300/2008	9	4	12	10	2	0	
Regulation (EC) No. 996/2010	15	1	16	12	11	11	
Regulation (EC) No. 1073/2009	12	6	18	14	11	9	