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Why no Gridlock? Coping with Diversity in the Council of the European Union

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Abstract

The risk of gridlock has been haunting discussions on European legislative decision-making for decades. All European Union legislation has to pass through the Council of the European Union, which has a relatively high voting threshold and whose members hold a diverse set of preferences, particularly after Eastern Enlargement. Nevertheless, the legislative output of the Union is relatively high. Existing explanations focus on process-related mechanisms (vote trading, cooperative problem-solving). In contrast, this study explains how member states can change the content of proposals to accommodate the specific concerns of recalcitrant governments. Several empirical examples show how member states have adapted European legislation to overcome the risk of gridlock. Based on a new data set covering a five year period in one policy field (environmental policy), this study shows that member states frequently put forward requests to limit the scope of European legislation, to extend transitional time periods or to lower standards. Furthermore, these requests are often successful. Besides allowing member states to opt out of European agreements (differentiated integration), EU legislation can accommodate concerns of individual member states, thus increasing the decision-making capacity of the Union.

Key Words

Council of the European Union; Legislative decision-making; Gridlock; Member state requests

INTRODUCTION

The risk of legislative gridlock in the Council due to its high voting threshold has been a concern for decades. The reform of the Council's voting system has been a prominent topic in discussions on the reform of the Union since the 1980s, if not earlier (Hayes-Renshaw and Wallace 2006). The near doubling of the number of members of the Union with Eastern Enlargement in 2004 was expected to raise the risk of gridlock even further due to the difference in socio-economic terms between new and old member states (König and Bräuninger 2000). The discussions on treaty reform which lead to the Nice treaty, the abandoned constitutional treaty and eventually the Lisbon treaty were focused on making the EU "fit for enlargement". The changes of the Nice treaty, however, were widely seen as insufficient and the reform of the Lisbon treaty only came into effect in 2014 (Baldwin et al. 2001; Koczy 2012). The Council, nevertheless, still routinely adopts a high volume of legislation (Toshkov 2014; Settembri 2008).

How do member states reach agreement in the Council despite divergent preferences and a high voting threshold? The existing literature focuses on process-oriented mechanisms. By exchanging votes or adopting a problem-solving orientation member states can reach common ground (Akzoy 2012; Mattila and Lane 2001; Scharpf 1997). This study discusses a complementary explanation that focuses on the content of legislative proposals. Member states can reach a sufficient majority by accommodating the specific interests and domestic situations in some member states through the use of derogations. A member state government might be primarily concerned about the effects of a regulation on a specific sector or setting. Exempting certain situations from a regulation might then

allow a member state government to agree to a European regulation despite having reservations regarding specific aspects. Similarly, longer transitional periods might make a European regulation acceptable to a government that has reservations about it. Finally, lowering standards might make a legislative proposal acceptable to a sufficient majority in the Council. Changing the content of legislation in line with member states requests is an alternative to process-oriented mechanisms (vote trading, problem-solving negotiation style) or restricting the scope of European legislation geographically (opt-outs).

This exploratory study makes several contributions to the literature. First, it advances our understanding of Council decision-making conceptually by distinguishing between different forms of member state requests. Several case studies demonstrate the use of these different tools to overcome gridlock. Second, it adds to our empirical knowledge of Council decision-making. Member state requests have received scant attention in the literature so far, probably because of the secrecy surrounding Council deliberations. While it seems like conventional wisdom that member states change legislation in the Council, empirical studies covering a broader set of proposals are rare. Cross (2013, 2012) looks at member state interventions, including member state requests as they are defined here, but only in the context of the DEU data. The DEU data set (Thomson et al, 2012) covers a large number of policy fields, but is restricted to highly salient and controversial proposals. In contrast, this study looks at all member state requests in one policy field for a five year period. This can give us a better sense of how frequently member states request changes of legislation. In addition, we can see whether there are differences between member state requests for exemptions, lower standards and longer transitional time periods. Finally, it discusses the adoption rate of these requests, differentiating between the various stages of the legislative process and type of requests. According to existing studies (Arregui 2016; Cross 2013) member state involvement in Council negotiations has a negative effect on bargaining success. In contrast, this study shows that the majority of individual member state requests are at least partially incorporated into European legislation.

Using data on all legislative proposals on environmental policy discussed in the Council after Eastern enlargement in 2004 and before the coming into force of the Lisbon treaty in 2009, this study shows that member states routinely request exemptions, longer transitional time periods or lower standards. The time period of the study was chosen because both the formal rules and the overall set-up governing decision-making in the Council did not change in this period. It is also sufficiently long and includes a sufficient number of proposals which are included in this period to be representative. These requests are quite often successful within the Council but also affect the final outcome of the legislative process. The study cannot definitively establish the link between the lack of gridlock we observe and the use of derogations, lower standards and longer transitional periods. Nevertheless, the high success rate is quite suggestive. It also cannot rule out the possibility that gridlock was avoided due to vote trading, a problem-solving attitude or other factors. But it does offer an alternative (arguably simpler) explanation and demonstrates that member state requests do play a frequent role in Council negotiations. The conclusion outlines several areas of further research that could be addressed based on an extended data set or using comparative case studies.

The novel empirical insights of this study contribute not only directly to the literature on Council decision-making, but they are also relevant for the broader discussions on how the European Union can be an effective policy maker as it becomes more diverse. Besides allowing member states to opt out of European agreements (differentiated integration) (Leuffen, Rittberger and Schimmelfennig 2012), EU legislation can accommodate specific concerns of member states, thus increasing the decision-making capacity of the Union. The relatively high success rate also shows that the Union is quite responsive to the interests of member state governments, which is relevant for the discussion on a democratic deficit of the European Union (Warntjen 2011; Hix 2008; Moravcsik 2008).

DECISION-MAKING IN THE COUNCIL OF THE EUROPEAN UNION

The Council of the European Union is characterized by a high voting threshold and a growing number of member states as well as increasing preference heterogeneity in some policy fields (Dobbins 2008; Hosli and Machover 2004). This combination should make it prohibitively difficult to find agreement on changing the current legislative status quo by adopting new European legislation (Tsebelis 2008; König and Bräuninger 2000). The Council, however, routinely adopts a high volume of legislation (Toshkov 2014; Settembri 2008). Existing explanations of Council decision-making focus on the process of negotiations, in particular the style of discussions or the possibility that member state governments strategically vote against their interests on individual dossiers (Falkner 2011; Warntjen 2010). By adopting a problem-solving mode or trading votes, government representatives can find solutions despite divergent preferences. Rather than engaging in 'hard bargaining' - vetoing legislation that is detrimental to their self-interest - member states representatives might be focused on finding a solution to a common problem when deliberating about new legislation (Braun 2014; Lewis 1998, 2010; Scharpf 1997). Shifting deliberations to COREPER, with its high frequency of interactions and wide-ranging discussions, can help to overcome cooperation problems (Parizek, Hosli, and Plechanova 2015). However, the more important an issue, the more likely it is that a (hard) bargaining style dominates the proceedings (Naurin 2010). Even in a bargaining setting high preference heterogeneity and high voting thresholds do not necessarily lead to gridlock if member states do not insist on their ideal positions on every issue (Mattila and Lane 2001). Member states could agree to changes that would make them worse off regarding one aspect of a legislative dossier if they are compensated on other issues (Aksoy 2012; König and Junge 2009; Scharpf 1997, pp. 128-30). This compensation can operate at several levels. At the level of membership, for example, new member states might agree to stricter regulatory measures in some areas, even though they are opposed to them, if they receive side-payments via the EU budget. Similarly, the benefits of being a member of the European Union might outweigh the costs of enacting some unwelcome legislative dossiers (Achen 2006, pp. 101-3). Across legislative dossiers, member states might engage in a system of diffuse reciprocity, acquiescing in a decision, which runs counter to their interests, to the benefit of other member states because of the expectation that they will do the same for them at some later stage (Warntjen 2010; Keohane 1986). A more constrained form of cooperative exchange posits that member states resolve controversies across legislative proposals but within a ministerial portfolio or the same time period. To overcome gridlock, member states acquiesce in passing a legislative dossier, even though they are against it, in return for support from other member states on a legislative dossier that is more important to them (vote trading/log-rolling). Limiting the exchange to proposals in the same domain or in the same time period limits the risks of member states reneging on their part of the deal (König and Junge 2009). Finally, vote trading might take place within the same proposal. States that might veto a legislative dossier due to their opposition to a specific provision might be placated by the benefits they expect from another provision in the same legislative proposal (Aksoy 2012). In general, member state governments might accept legislation that runs counter to their interest if it is of low importance to them (Stratmann 1997). However, preference outliers often do not attach low salience to an issue where they disagree with the majority of member states. One example is the proposal regarding the inclusion of aviation activities in the greenhouse gas emission allowance trade (European Commission 2006). A number of new member states (Poland, Latvia, Lithuania, Romania, and Slovakia) departed from the majority in demanding special provisions for new airlines. According to an expert survey (Thomson 2011), this issue was very important for these preference outliers. Thus, vote trading is not always an option to overcome possible gridlock.

Besides reaching agreement via vote trading or problem-solving, member states can also restrict the scope of European legislation geographically. Allowing certain member states to opt out of European

legislation would allow the Council to side-step disagreements over the level of European integration in a particular policy field (Duttle et al. 2013; Holzinger 2011; Leuffen, Rittberger, and Schimmelfennig 2012; Scharpf 2006). Rather than restricting their applicability geographically, however, the Council could also adapt legislative proposals in line with member state requests. For example, in the proposal on aviation activities mentioned above a special reserve of allowances for new entrants and fast growing airlines was included. This change reflected the wishes of a number of Eastern European countries without geographically restricting the scope of the directive. Finally, the Council might cope with diversity by delegating crucial decisions to later stages (e.g. implementation) and/or other actors while avoiding clear-cut and detailed decisions in the Council (Junge, König and Luig 2015; Tsebelis 2008; Heritier 1999).

COPING WITH DIVERSITY IN THE COUNCIL: DEROGATIONS, TRANSITIONAL TIME PERIODS AND LOWER STANDARDS

Accommodating the specific concerns of recalcitrant governments by including exemptions for specific sectors or situations might allow a government to agree to Europe-wide regulation, possibly even on a high level of regulation. Similarly, longer transitional time periods and lower standards might allow a sufficient majority of member states to accept new European regulations despite some specific reservations.

Governments can disagree on the level of regulation, the level at which the legislation is enacted, the scope of the regulation and the policy instrument used when discussing a new proposal for European regulations (Heritier 1999, 1996). The positions of governments on these issues vary according to economic interests, party political calculations and the fit with current bureaucratic practices. For example, party political or ideological reasons lead left-leaning governments to favor stronger interventions of the state. Furthermore, governments of countries with high standards prefer common European standards to level the playing field because of regulatory competition (Scharpf 1996). And in general, member states would try to avoid facing the costs of adjusting existing bureaucratic practices due to the misfit of new EU legislation and previously used policy instruments (Heritier 1996).

Limiting the scope of a regulation allows a member state government to agree to a European-wide regulation despite having reservations regarding specific aspects. The scope of a regulation can be limited by exempting certain sectors of the economy, a certain set of companies or group of employees. In addition, the scope of the applicability of a regulation might be limited by defining the situation to which it applies more narrowly or excluding certain situations. For example, several member states requested derogations to exclude flights by small planes, for public services and to remote areas from the scope of the directive on the inclusion of aviation activities in the greenhouse gas emission trading scheme (European Commission 2006), which is discussed in more detail below. These derogation might allow European regulation to be adopted which would otherwise have been vetoed by a group of governments. For instance, a group of member states that constituted a blocking minority successfully requested a restriction of the scope of the directive on the management of waste by extractive industries (European Commission 2003), which limited the type of waste sites to which the directive applied.

The effect of longer transitional periods is similar to restricting the scope of a proposal. A longer transitional period implies that the costs of adjustments are spread out over a longer time period, reducing objections as to the feasibility of enacting necessary changes. Furthermore, the political costs might be lower given that politicians discount the future. Finally, lowering the level of

regulation could ensure a sufficient majority in the Council (Scharpf 1997, 2006). The directive on the quality of ambient air (European Commission 2005), discussed in more detail below, provides another example of how the Council adapts legislative proposals in line with member state requests. Several member states successfully requested a higher limit value for some pollutants and longer transitional time periods. By adding exemptions, delaying the entry into force or lowering regulatory standards member states might reach a sufficient majority to pass legislation even when both preference heterogeneity and voting thresholds are high.

This explanation differs from one focused on a problem-solving mode: there is no transformation of preferences and member states are not engaging in a common search for new value-creating solutions which benefit all of them (Scharpf 1997, pp. 130-2). It also does not rely on a mutually beneficial trade of votes across issues which are valued differently by the actors (Stratmann 1997). A change of the content of legislative proposals along the lines described above might be the result of a problem-solving mode and part of a vote-trading deal. However, these explanations posit a more complex process (new alternatives, exchange of votes) and require certain assumptions (transformation of preferences, differences in salience). In contrast, the approach outlined above focuses solely on changes to the content of the proposal at hand.

States might also prefer higher levels of regulations or suggest a wider scope of European legislation. However, outlier with preferences for more regulation or harmonization would prefer any European legislation to having none (Scharpf 1996), which makes them less of a concern when studying the risk of gridlock in the Council. In addition, the Commission which drafts European legislation prefers more regulation and harmonization than the member states (Thomson 2011). Thus, member states are more likely to disagree with a Commission proposal because it goes too far in their view. Thus, the study only addresses member state requests to restrict European legislation.

ADAPTING TO DIVERSITY: EMPIRICAL EXAMPLES

The proposal on the inclusion of aviation activities in the greenhouse gas trading scheme and the regulation on the quality of ambient air provide examples of how the concern of specific member states were accommodated during the discussion in the Council.

In 2006, the Commission put forward a proposal regarding the inclusion of aviation activities in the greenhouse gas emission allowance trading (European Commission 2006). One contested issue was whether there should be special provisions for new entrants to the aviation market. According to the DEU data (Thomson et al, 2012), all new member states felt that there should be special provisions for new aircraft operators, whereas the old member states generally opposed this idea. One of the questions discussed in the working group was about which non-discriminatory measures could be used to address special situations in the member states. Lithuania argued that basing the allowance on historical levels without making special provisions for new entrants would distort the aviation market, which was a rapidly growing part of the Lithuanian economy. Similarly, Latvia and Bulgaria argued that potential growth rates of operators had to be taken into account in order to not unduly discriminate against new operators with a small market share. In their written contribution, the Czech Republic pointed to the potential negative impact of not making allowance for smaller aircraft operators, which would violate the principle of equal access to air transport for all EU citizens (Council 2007a). This issue was highly salient for a number of new member states (Poland, Latvia, Lithuania, Romania, and Slovakia). A compromise proposal by the presidency (Council 2007b) took up these issues by including a special reserve of allowance for new entrants and fast growing airlines, which was also included in the Council's Common Position (Council 2008) and the final

version of the directive. Thus, the Council included a provision that directly addressed the concerns of several member states on an issue that was of high salience to them.

Another example is directive on the quality of ambient air (COM 2005/447). The proposal mainly merged existing legislation, but it also extended regulation to new pollutants, namely specific fine particles (particulate matter $PM_{2.5}$). It introduced a binding concentration cap for these fine particles of 25 $\mu g/m^3$ to be achieved by 1 January 2010 (European Commission 2005). A group of member states, including Latvia and Poland, preferred introducing non-binding targets for 2010 and postponing binding limit values for $PM_{2.5}$ to a later date. According to the DEU data, nearly all Central and Eastern European countries (CEEs) opposed the introduction of binding targets for a new pollutant. The issue was rated as very important by Poland and as moderately important by the other Eastern European countries opposed to the new regulation. The Czech Republic, Lithuania, Latvia and Poland voiced their concerns regarding binding limits at several meetings of the working group level in 2006. In addition, Eastern European and several other member states asked for a longer time period during which the regulations regarding particulate matter would come into force (Council 2006a). Poland requested an individual derogation which would postpone the entry into force of limit values for $PM_{2.5}$ for an additional 5 years. According to the Polish proposal from April 2007, the limit value for $PM_{2.5}$ would come into force in 2015 in general, but only in 2020 for Poland. In addition, the exemption period of three years for PM_{10} would be six years for Poland. Poland argued that it could not meet the targets in the proposed time frame because of its reliance on coal plants. Adopting the directive would lead to dire social consequences in Poland. The Council adopted a Common Position in first reading in June 2007 (Council 2007b). It stipulated a binding limit value of 25 $\mu g/m^3$ for $PM_{2.5}$ by 1 January 2015. The original time point for a binding limit value of 1 January 2010 was now adopted for a non-binding target value. Similarly, the deadline for reaching the limit values for other pollutants (NOX, PM_{10}) could be postponed by five and three years respectively. Poland (and The Netherlands) voted against the Common Position but accepted the final version, which kept the extended deadline of 2015 for the limit value for $PM_{2.5}$ as well as the possibility of postponing the deadlines for other pollutants (NOX, PM_{10}). Thus, the discussions on the directive in the Council to a large extent focused on the entry of force of the directive. By postponing the initial entry into force and allowing exemptions to the fixed deadlines agreement in the Council was possible. Eleven member states requested a higher limit value for PM_{10} in the directive on ambient air quality (Council 2006b). The pollution limit was subsequently raised during the legislative negotiations and the standards were effectively lower in the final act than the Commission originally proposed.

FACING THE RISK OF GRIDLOCK: ENVIRONMENTAL POLICY AFTER EASTERN ENLARGEMENT

As the previous section has shown, derogations, lower standards and extended transitional periods have been used in the Council to overcome the risk of gridlock. In order to study member state requests in the Council more broadly, this section looks at the use of these tools between the first round of Eastern enlargement (May 2004) and the entry into force of the Lisbon treaty (December 2009) in the field of environmental policy. Environmental policy after enlargement is a regulatory policy domain characterized by a relatively high level of preference heterogeneity (Braun 2014; Dobbins 2008). This makes it a suitable field to establish the use of member state requests to limit the scope or level of European regulation.

The accession of a large number of mainly Eastern European countries was widely expected to lead to greater preference heterogeneity and hence to gridlock in the Council unless the voting threshold was lowered substantially. The Eastern European candidate countries had a larger agricultural sector

and were poorer (in terms of GDP per capita) than the old member state (Baltas 2004). Thus, distributive conflict in agricultural policy was expected to increase and gridlock in social policy should be more likely after enlargement (König and Bräuninger, 2000). Nevertheless, legislative output in the European Union did not decrease substantially after enlargement in 2004 (Toshkov 2014; Settembri 2008). Formal analysis of the new Lisbon voting rules in the Council point to a higher likelihood of proposals being adopted by the Council (Koczy 2012). However, these voting rules only came into effect in 2014. In the process of enlargement, candidate countries had to adopt existing EU legislation (the acquis communitaire) and reform their institutions. This might have prevented an increase in preference heterogeneity of the member states after enlargement. Thus, gridlock might not have materialized after enlargement because the heterogeneity in the Council did not in fact increase due to the addition of new member states. While this was indeed the case for some policy fields, preference heterogeneity did increase in environmental policy after Eastern enlargement.

Dobbins (2008, pp. 42-61) estimates in which policy fields the 2004 Enlargement would lead to a greater risk of gridlock based on 16 expert interviews held in 2002. The Eastern European candidate countries were predicted to be preference outliers regarding distributive questions concerning agricultural and fisheries policy. The new member states (e.g. Poland) should also replace Southern member states (e.g., Spain, Portugal) as the countries with the most extreme positions regarding the level of regulation in environmental and social policy. In these policy fields, preference heterogeneity was expected to increase due after Eastern Enlargement. In an enlarged Union, Poland was supposed to be the country most strictly opposed to further regulation on environmental protection or to improve working conditions. All Eastern European candidate countries were also expected to prefer less regulation than the current status quo. In contrast, Great Britain remains the country with the preference for the lowest levels of regulations in the internal market: The new member states prefer a moderate level of regulation in this policy field, resisting the neo-liberal agenda of de-regulation to protect their public sector while facilitating the transition of their economies. Thus, an increase in preference heterogeneity and the resistance of the new member states to further European legislation, which would impose higher regulatory burdens on their companies, was expected to lead to legislative stagnation in environmental and social policy (Schneider et al. 2007) but not necessarily in other policy fields.

A closer look at the DEU II data set (Thomson et al. 2012) shows that the predictions of the study by Dobbins are largely borne out. A comparison of the minimum and maximum positions of the old and new member states demonstrates that there are several issues, notably in environmental policy, where the new member states have more extreme preferences than the old member states. The range of positions increases in 11 per cent of the proposals on distributive policies in agriculture. In 31 per cent of proposals on regulatory policies in environmental policy new member states have more extreme positions than the old member states. As predicted by Dobbins, the range of position does not increase in internal market policies because the positions of the new member states are included in the set of positions adopted by the old member states. The DEU II data set only includes two proposals in the area of social policy (on working time and the portability of pensions); in both cases the new member states do not hold more extreme positions than the old member states. Thus, preference heterogeneity did increase in environmental policy after enlargement. This makes it a suitable policy field to explore the use of tools to overcome gridlock.

ADAPTING TO DIVERSITY IN ENVIRONMENTAL POLICY AFTER EASTERN ENLARGEMENT

Member states frequently put forward requests to limit the scope of European legislation, extend transitional time periods or lower standards in the field of environmental policy between the first

wave of Eastern enlargement in 2004 and the entry into force of the Lisbon treaty in 2009. There were 790 individual member state request for 23 (out of 43) proposals. All member states made requests to change legislative proposals. These requests were often successful. Overall, nearly 65 per cent of requests are at least partially incorporated into the legislative proposal. About 45 per cent are completely incorporated.

The EUPOL data set (Häge 2011) was used to identify all legislative proposals (regulations or directives) in the field of environmental policy on which the Council had not reached political agreement in first reading before 1 May 2004 and which could have been discussed in the Council before the entry into force of the Lisbon treaty on 1 December 2009. Decisions were excluded because they only apply to a small set of subjects and thus would not necessarily be of interest to all member states. There were 48 Commission proposals for legislative acts that were discussed in the Council in that time period. Five of them were withdrawn by the Commission. Member state requests were identified for 23 out of 43 legislative proposals discussed in the Council. This is not a complete sample as some proposals were censored (Cross 2012).

The data was gathered manually based on Council documents summarizing the results of Council discussions (mainly at the working group level) during first reading. The restriction to first reading is due to the focus of this study on decision-making in the Council. The Council Secretariat prepares summaries of the Council discussions, which often identify specific requests for changes by member states in the first reading. At subsequent readings, the focus of the discussion shifts from internal discussion within the Council to finding agreement with the other legislative actors, without indicating the positions of individual countries. In addition, the public registry of the Council gives access to annotated proposals, which list specific requests by member states in footnotes to the legislative text (Cross 2012). The annotated proposals are sometimes (especially later in the process) reflecting changes not relative to the Commission proposal but to a presidency proposal. Thus, the requests in the data set are effectively a subset of all member state requests for changes to the Commission proposal, some of which are already included in the proposal as amended by a presidency compromise proposal.

The data set consists of all requests by member states that were specific and not just related to procedural issues[i]. The latter restriction excludes discussion on whether comitology would apply, in which format or frequency results would be reported to the Commission and public participation. Member state requests were coded into three separate categories: derogations, extensions and lower standards. *Derogations* are all requests that would reduce the scope of legislation, for example by making specific exemptions or by limiting the scope of activities to which the legislation applies. *Extensions* refer to requests that would extend the time period before the legislation is effective (e.g., requesting a later date for transposition of directives or entry into force, requests for transitional time periods). *Lower standards* refers to requests that would lower standards of the proposal, for example by increasing limit values for pollution or increasing threshold values which would trigger mandatory actions to limit pollution. Before coding the entire data set, a selection of documents was coded to establish the different categories and consistent coding rules.

For each unique request the degree to which member states' requests were successful was coded manually based on a comparison of the requests, the common position of the Council and the final adopted act. We can distinguish between *at least partial* and *full success* and success within the Council and across the whole procedure. A request was fully successful if the outcome completely incorporates the requested change. A request was at least partially successful if there were changes that reflect the request to some degree (e.g., an extension of a transitional time period is included, even if not for the entire amount requested) or if the request was completely successful. *Final* success refers to the outcome of the complete procedure. If the proposal was adopted in first

reading, we cannot distinguish between a position of the Council and the final outcome because there is no separate common position of the Council. This is the case for about one quarter of the unique requests. Thus we can distinguish between success regarding the *Common Position* of the Council, the entire *first reading* (including both Common Positions and procedures that were concluded in first reading), and the *final* outcome (which also includes procedures concluded after the first reading).

Member states routinely request changes to the proposals by the Commission. Member states made 790 individual requests or 216 unique requests (identical requests made by several member states) regarding 43 legislative proposals. About 60 per cent of unique requests were supported by more than one country (mean: 3.7, standard deviation: 3.5). For more than half of the proposals (23) requests were made. The number of individual requests per proposal ranges from 0 to 148, with a mean of 18.4 and a standard deviation of 28.

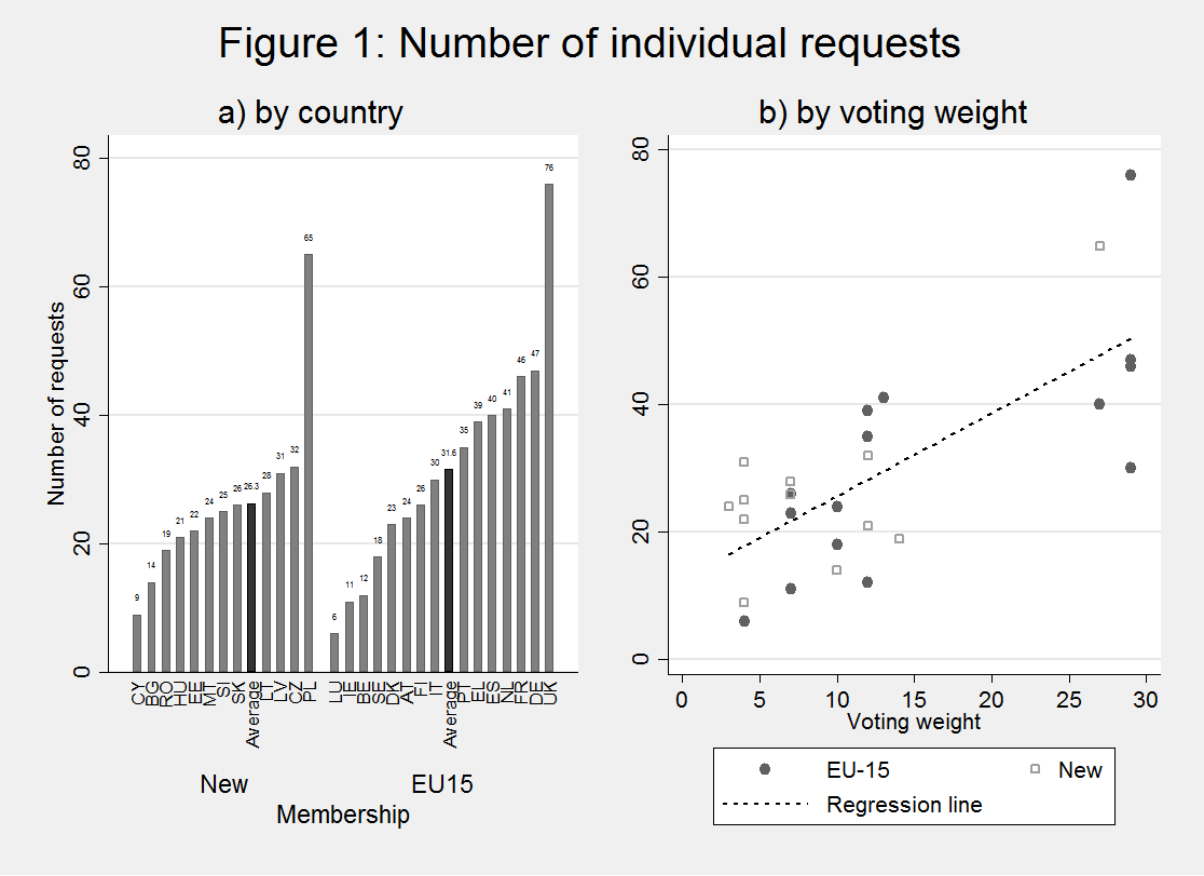
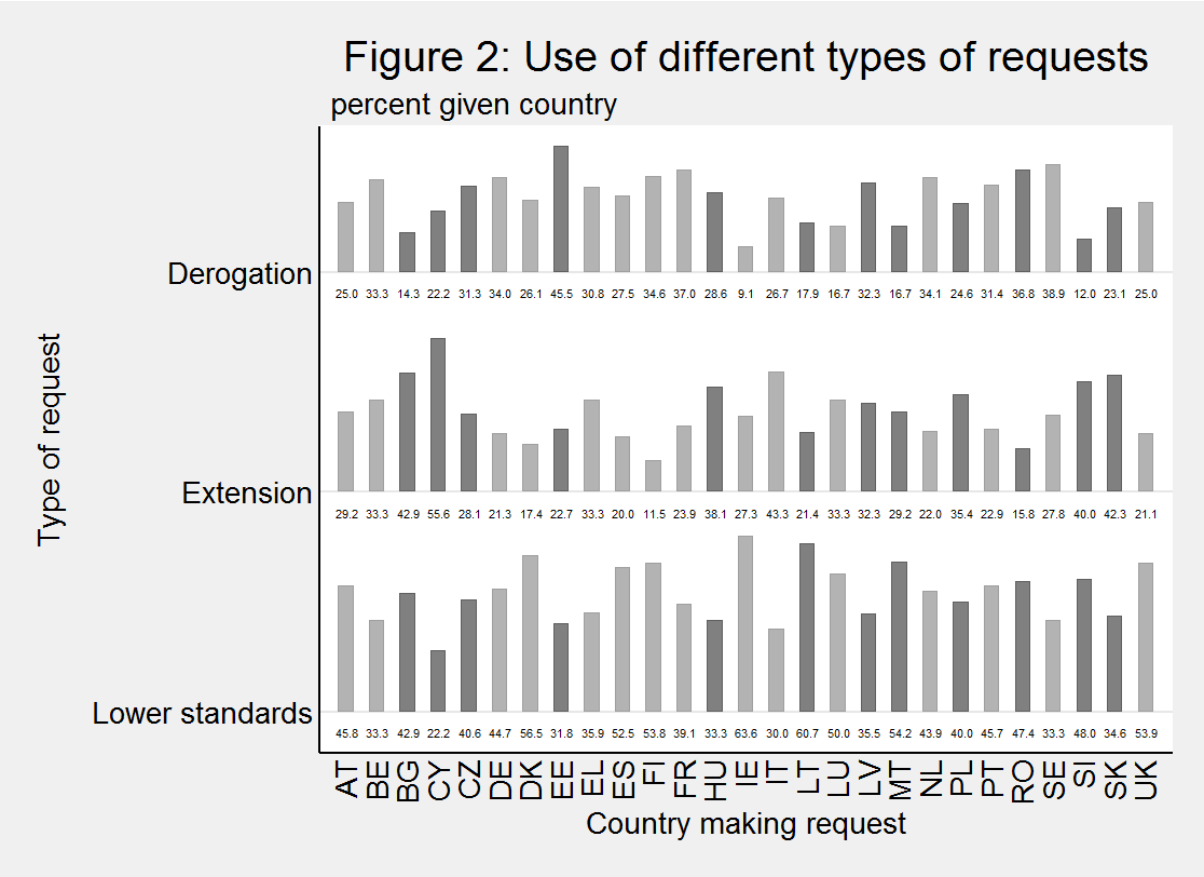


Figure 1 shows the distribution of individual requests across member states. All member states made some requests. The number of requests mainly differs between new and old member states (panel a). The new, mainly smaller member states made on average 26.3 requests while the old (EU-15) member states made 31.6 requests in that period. The United Kingdom (76) and Poland (65) stand out with the highest number of requests. The difference between the number of requests is related to the size (or number of votes) of a country (panel b). Larger member states – both old and new - make more requests. This could be due to a higher level of resources, more widespread interests or the expectation that their requests are more likely to be accepted. Interestingly, the

number of requests does not seem to differ between new (hollow dots) and old (EU-15, solid dots) member states once one controls for the size of the country.

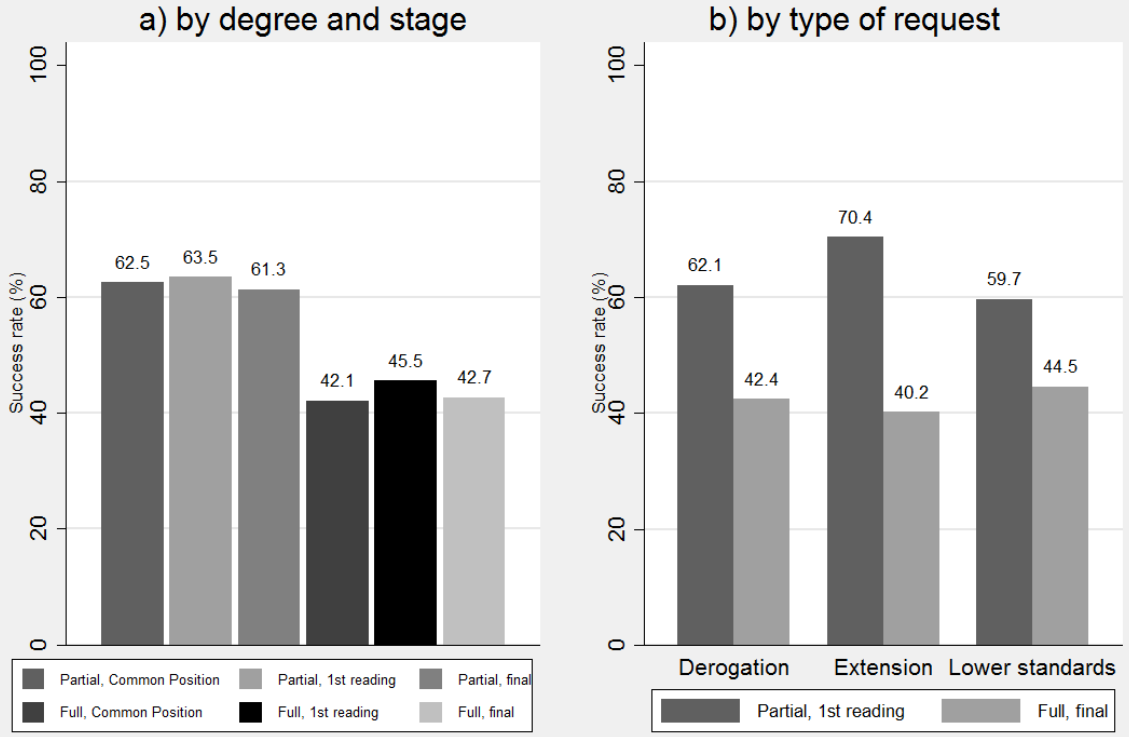


Most of the individual requests by member states are for lower standards (44.1 per cent), requests for derogations (28.2 per cent) and extensions (27.7 per cent) are made less often. There is a lot of variety regarding the type of requests made by different member states. Figure 2 shows the percentages of the different types of requests per country. Ireland only requests derogations 9.1 per cent of the time. In contrast, nearly half (45.5 per cent) of Estonia's requests are for derogations. Similarly, Cyprus asks for extensions more than half of the time (55.6 per cent), about five times more often than Finland (11.5 per cent). Finally, Ireland requests lower standards nearly 2/3 of the time, whereas Cyprus asks for them less than a quarter of the time. The graph distinguishes between old (light bars) and new (dark bars) member states. There does not seem to be a systematic difference in terms of the type of requests made by old (light bars) and new (dark bars) member states.

Member state requests are often successful. Overall, nearly 65 per cent of requests are at least partially incorporated into the legislative proposal. About 45 per cent are completely incorporated. Figure 3 shows the differences in success rate across the type of request and the stage of decision-making. The differences between the legislative stages are negligible. There are also no differences in the success rate, defined as complete success, between the types of proposals. When also taking partial success into account we can see a difference between extensions with a success rate of about 70 per cent on the one hand and lower standards and derogations on the other (about 60 per cent

success rate). Thus, member state frequently and successfully request changes to European legislation.

Figure 3: Success rate of member state requests



CONCLUSION

The European Union grew from a small and relatively homogenous club to an organization with a diverse membership encompassing an entire continent. To cope with this increase in diversity of member states, the decision-making system in the Council was adapted through a series of reform treaties. Nevertheless, the voting threshold remains relatively high. How can member state governments in the Council reach agreement despite high voting thresholds and divergent interests? The existing literature points to the possibility of vote trading and a cooperative style of negotiations. However, preference outliers often attach high salience to a proposal, making log-rolling difficult or impossible and a problem-solving mode is less likely if a proposal is important. This study proposed a complementary explanation, focusing on the changes made to European legislation due to the requests of member states. Member states frequently put forward requests to limit the scope of European legislation, extend transitional time periods or lower standards. The actual number of requests is probably even higher because a) documents for some proposals are censored, possibly due to a high level of political controversy and b) some member state requests are already incorporated in the presidency compromise proposals. Furthermore, the study is restricted to one policy field which is mainly regulatory in nature. The argument would not apply in a (re-)distributive setting (e.g. agricultural policy). Further research is needed to study how wide-spread changes due to member state requests are in other regulatory policy fields (e.g. single market regulation or consumer protection). Environmental policy after Eastern Enlargement is a relatively

heterogeneous policy field, others (e.g. single market regulation) might face a lower risk of gridlock and hence see less member state requests. At the same time, the success rate of member state requests might be higher in policy fields less riven by potential conflict.

In a comparative case study, one could also include process-related mechanisms of reaching agreement in the Council (e.g., vote trading, cooperative negotiation styles). Future research could also incorporate other types of requests (e.g., for higher standards), address the origins of member state requests (e.g., the influence of interest groups and party politics), study the difference in the success rates between member states and link member state requests to voting behavior and the subsequent implementation of European legislation. We saw that Poland and the UK put forward the by far highest number of request. The might be due to differences in preferences regarding the policy field (i.e., both want less environmental protection than most other countries), the level of regulation in general or the role of the European Union. In general, larger member states put forward more requests. Possible reasons for this include greater administrative capacity, more widespread policy interests and the expectation that they will be more successful because of their higher voting power. Interestingly, we do not observe a difference between the new member states from Eastern Europe and the old (EU-15) member states when we take the size of the countries into account. Given the socio-economic differences between these two groups of countries one would have expected more requests coming from the new member states. Administrative capacity, the initial lack of experience with decision-making in Brussels and a different negotiation style might be possible explanations. This merits further research.

It is also tempting to compare the frequency of member state requests before and after major changes in the legislative environment (e.g., due to enlargement or treaty changes). However, a simple comparison might prove to be inconclusive. As this study has shown, the number of requests per proposal varies quite substantially, making direct comparisons across time difficult.

The results of the empirical analysis are not just relevant for the study of decision-making in the Council and the decision-making capacity of the Union. The high success rate of member state requests is also quite interesting for the debate on a disconnect between the concerns voiced at the national level and decisions taken in Brussels and the democratic deficit of the European Union. That member state requests which are included in the Common Positions tend to be adopted in the final legislative act as well is also a quite intriguing fact in terms of the relationship between intra-institutional and inter-institutional negotiations.

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ENDNOTES

[1] The data set is available at https://dataverse.harvard.edu/dataverse/ENLaEX.

A web appendix with additional figures, tables and more details on data collection is available at http://utwente.academia.edu/AndreasWarntjen/Papers

REFERENCES

Aksoy, D. (2012). 'Institutional Arrangements and Logrolling: Evidence from the European Union'. *American Journal of Political Science*, 56(3), pp. 538-52.

Arregui, J. (2016). 'Determinants of Bargaining Satisfaction Across Policy Domains in the European Union Council of Ministers', *Journal of Common Market Studies*.

Baldwin, R., Berglöf, E., Giavazzi, F. and Widgren, M. (2001). *Nice Try: Should the Treaty of Nice be ratified?* London: Centre for Economic Policy Research.

Baltas, N. (2004). The Economy of the European Union. In Nugent, N. (Ed.) *European Union Enlargement.* Basingstoke, Palgrave.

Braun, M. (2014). *Europeanization of Environmental Policy in the New Europe*, Farnham: Ashgate.

Council of the European Union (2006a) 'Proposal for a Directive of the European Parliament and the Council on ambient air quality and cleaner air for Europe – General Approach', *Council Document No. 10453/1/06*, Brussels: Council of the European Union.

Council of the European Union (2006b) 'Preparation of the Council Meeting', *Council Document No. 7630/06*, Brussels: Council of the European Union.

Council of the European Union (2007a) 'Preparation of the Council Meeting', *Council Document No. 15993/07*, Brussels: Council of the European Union.

Council of the European Union (2007b) 'Common Position No. 13/2007', *Official Journal of the European Union*, 6.11.2007, C263E/1, Brussels: Council of the European Union.

Council of the European Union (2008) 'Common Position No. 13/2008', *Official Journal of the European Union*, 20.5.2008, C122E/19, Brussels: Council of the European Union.

Cross, J. (2012). 'Striking a pose: Transparency and position taking in the Council of the European Union'. *European Journal of Political Research*, 52(3), pp. 291-315.

Cross, J. (2013). 'Everyone's a winner (almost): Bargaining success in the Council of Ministers of the European Union'. *European Union Politics*, 14(1), pp. 70-94.

Dobbins, M. (2008). *After Enlargement: Preference Constellations, Voting Power, and Institutional Change*, Saarbruecken: VDM.

Duttle, T., Holzinger, K., Schäubli, T., Schimmelfennig, F., and Winzen, T. (2013). 'The Dynamics of Secondary-Law Differentiation in the European Union', *3rd Annual General Conference of the European Political Science Association*. Barcelona.

European Commission (2003). 'Proposal for a Directive of the European Parliament and the Council on the management of waste from extractive industries', COM(2003)319, Brussels: European Commission.

European Commission (2005). 'Proposal for a Directive of the European Parliament and the Council on ambient air quality and cleaner air for Europe', COM(2005)447, Brussels: European Commission.

European Commission (2006). 'Proposal for a Directive of the European Parliament and of the Council amending Directive 2003/87/EC so as to include aviation activities in the scheme for greenhouse gas emission allowance trading within the Community', COM(2006)818, Brussels: European Commission.

Falkner, G. (2011). 'The EU's Decision Traps and their Exits', in G. Falkner (ed.), *The EU's Decision Traps: Comparing Policies*, Oxford: Oxford University Press.

Golub, J. (2012). 'How the European Union does not work: national bargaining success in the Council of Ministers'. *Journal of European Public Policy*,19 (9), pp. 1294-315.

Häge, F. (2011). 'The European Union Policy-Making Data Set'. *European Union Politics*, 12(3), pp. 455-77.

Hayes-Renshaw, F. and Wallace, H. (2006). *The Council of Ministers*. London: Palgrave Macmillan.

Heritier, A. (1996). 'The Accommodation of Diversity in European Policy-making and its Outcomes: regulatory policy as a patchwork.' *Journal of European Public Policy*, 3(2), pp. 149-67.

Heritier, A. (1999). *Policy-Making and Diversity in Europe: Escape from Gridlock*. Cambridge: Cambridge University Press.

Hix, S. (2008). *What's wrong with the European Union and how to fix it*. London: Polity.

Holzinger, K. (2011). 'Environmental policy in the joint-decision trap', in G. Falkner (ed.), *The EU's Decision Traps: Comparing Policies*, Oxford: Oxford University Press.

Hosli, M. and Machover, M. (2004). The Nice Treaty and Voting Rules in the Council: A Reply to Moberg (2002). *Journal of Common Market Studies*, 42(3), pp. 497-521.

Keohane, R. O. (1986). 'Reciprocity in International Relations.' *International Organization*, 40(1), pp. 1-27

Koczy, L. (2012). 'Beyond Lisbon: Demographic trends and voting power in the European

Union Council of Ministers', *Mathematical Social Sciences*, 63(2), pp. 152-158.

König, T. and T. Bräuninger (2000). 'Governing the Enlarged European Union: Accession Scenarios and Institutional Reform.' Central European Political Science Review, 1(1), pp. 42-62.

König, T. and Junge, D. (2009). 'Why Don't Veto Players Use Their Power?'. *European Union Politics*, 10(4), pp. 507–34.

Junge, D., König, T. and Luig, B. (2015). 'Legislative Gridlock and Bureaucratic Politics in the European Union'. *British Journal of Political Science*, 45(4), pp. 777-797.

Leuffen, D., Rittberger, B., and Schimmelfennig, F. (2012). *Differentiated Integration: Explaining Variation in the European Union*, London: Palgrave.

Lewis, J. (1998). 'Is the 'hard bargaining' image of the Council misleading? The Committee of Permanent Representatives and the local elections directive'. *Journal of Common Market Studies*, 36(4), pp. 479-504.

Lewis, J. (2010). 'How institutional environments facilitate co-operative negotiations styles in EU decision-making'. *Journal of European Public Policy,* 17(5), pp. 648-64.

Moravcsik, Andrew (2008). 'The myth of Europe's "democratic deficit"', Intereconomics, 43(6), pp. 331-340.

Mattila, M. and Lane, J.-E. (2001). 'Why Unanimity in the Council? A Roll Call Analysis of Council Voting'. *European Union Politics*, 2(1), pp. 31-52.

Naurin, D. (2010). 'Most common when least important. Deliberation in the European Union Council of Ministers'. *British Journal of Political Science,* 40(1), pp.31-50.

Parizek, M., Hosli, M., and Plechanova, B. (2015). 'Avoiding paralysis: The Eastern Enlargement and the Council of the European Union'. *Journal of European Integration*, 37(6), pp. :649-65.

Scharpf, F.W. (1996). 'Negative and Positive Integration in the Political Economy of European Welfare States', in G. Marks, F.W. Scharpf, P.C. Schmitter and W. Streeck (eds.), *Governance in the European Union*. London: Sage.

Scharpf, F.W. (1997). *Games real actors play*. Boulder: Westview.

Scharpf, F.W. (2006). 'The Joint-Decision Trap Revisited. '. *Journal of Common Market Studies*, 44(4), pp. 854-64.

Schneider, G., Dobbins, M. & Drüner, D. (2007). Legislation in an ever-widening European Union: gridlock, chaos, and rent seeking? IN Hoen, H. W. & Selck, T. J. (Eds.) *Europa: Charming Zeus ... and numerous others! International Political Economy of EU Accession.* Leuven, Peeters.

Settembri, P. (2008). 'Legislative output after enlargement: similar number, shifting nature', in E. Best, T. Christiansen and P. Settembri (eds.), *The institutions of the European union: continuity and change*. Cheltenham: Edward Elgar, pp. 183–204.

Stratmann, T. (1997). 'Logrolling', in D. Mueller (ed.), *Perspectives on Public Choice*. Cambridge: Cambridge University Press.

Thomson, R. (2011). *Resolving Controvery in the European Union*, Cambridge: Cambridge University Press.

Toshkov, D. (2014). 'The Effects of the Eastern Enlargement on the Decision-Making Capacity of the European Union', *MAXCAP*, Berlin.

Tsebelis, G. (2008). 'Thinking about the recent past and the future of the EU'. *Journal of Common Market Studies*, 46(2):265-292.

Warntjen, A. (2010). 'Between bargaining and deliberation: decision-making in the Council of the European Union'. *Journal of European Public Policy,* 17(5), pp. 665-79

Warntjen, A. (2011). 'Designing Democratic Institutions: Legitimacy and the Reform of the Council of the European Union in the Lisbon Treaty', in S. Dosenrode: *Europe after Lisbon*, Ashgate, 2012.