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From an ever-growing towards an ever-slower Union?

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INSTITUTIONAL REFORM AND ENLARGEMENT

Further European (EU) enlargement by Eastern and Southern applicant countries has drawn attention to the Union's complex institutional framework, originally established by six founding members in the late 1950s and reformed by the Single European Act (SEA) in 1987, the Maastricht Treaty on the EU (TEU) in 1993 and the Amsterdam Treaty in 1997. However, in spite of an excessive overload and increasing gridlock risk, the European Council (EC), consisting of the 15 member-states, postponed the institutional reform of the Union's decision-making system at the 1997 IGC. EC member-states were not yet able to agree on which applicant countries should join the Union, and they ardently disagreed on which voting procedure should be applied in order to guarantee the proper functioning of EU legislation in an enlarged Union. A major task of the Nice IGC in December 2000 was to finish the institutional reform before the first wave of applicant countries joins the Union. The results of the Nice IGC provoke the questions as to how the EC member-states will proceed with the upcoming enlargement by Eastern and Southern applicant countries, and whether the reform sufficiently prepares them to cope with the Union's widened scale. More specifically, the question arises concerning whether the modification of the procedural provisions enables the Union to integrate more than 20 member-states into its legislative decision-making system.

In this chapter, we address the question of institutional reform and enlargement. More precisely, we assess how to prevent a higher status quo bias of EU legislation without endangering its common support. We approach this problem by focusing on two aspects. First, in order to show the impact of institutional reform, we ask whether the formal settings of voting procedures influence the Union's legislative decision-making process or not. With the exception of rich and insightful literature on the theoretical consequences of different procedural provisions (Steunenberg, 1994; Tsebelis, 1994, 1996; Crombez, 1996; Garrett and Tsebelis, 1996;

Moser, 1996; Tsebelis and Garrett, 1999), only a few studies have shed light on the actual impact of these formal procedures in a quantitative and empirical way (Krislov *et al.*, 1986; Sloot and Verschuren, 1990; Schulz and König, 2000). In a previous empirical study, Golub (1999) considers enlargement impacts; however, his database only includes directives – one of three instruments that is applied in less than 15 per cent of binding EU legislation (König, 1997, p. 87). In the following, we analyze EU legislation by examining the adoption rate and the duration of over 5,000 Commission proposals for all binding EU legislation introduced prior to the end of 1996. Focusing on the period since the mid-1980s, we compare the adoption rate of all Commission proposals which were initiated under Council of Ministers (CM) unanimity and majority provisions as well as with and without parliamentary participation.

Second, we confront the problem of how the institutional framework will be threatened by further enlargement regarding a higher status quo bias and common support. Because neither present nor prospective preferences of the Union's legislators are available, we calculate the decision probability of EU legislative decision-making using a simplifying concept that takes into account the number of all winning coalitions (König and Bräuninger, 1998). This approach certainly underestimates the fear associated with the upcoming Eastern enlargement because it is rather unlikely that member-state preferences are uniformly distributed. This means that our analysis will somewhat overestimate the positive effects of the Nice results, and therefore underestimate how much EC member-states need to adopt further institutional reform. Because the Union requires both high common support and enough potential for policy change, we base our argument on the trade-off between more Council majority voting and increased parliamentary inclusion. Our findings show that the Nice results do not sufficiently prepare an enlarged Union for proper functioning.

To answer these questions we proceed as follows. In the next chapter we introduce the Union's present institutional framework by giving a brief overview of the various voting procedures and their changes over time. We then present data on the amount and speed of EU legislation between 1984 and 1996 and show that voting rules are indeed relevant to the present EU decision-making process. Concerning the forthcoming enlargement, we discuss the likely accession scenarios. Finally, we turn to the problem of the EC members' constitutional choice of voting rules. We analyze the likely effects of EU decision-making procedures in the context of an enlarged Union.

CONSTITUTIONAL DEVELOPMENT OF EU VOTING PROCEDURES

According to the outcome of the 1996 Turin summit of the 15 EC members, current institutional reform aims to increase the functional

efficiency and transparency of EU legislation with respect to higher parliamentary legitimacy (Steunenberg, 1997, p. 2). While today a puzzle of about 20 different procedures apply to various policy areas, the 15 EC members have principally agreed to reduce the number and the complexity of EU legislative procedures (Nentwich and Falkner, 1997, p. 2). The main procedures install the Commission as the sole initiator of proposals in order to safeguard the supranational character of EU legislation (Nugent, 1994, p. 115). The CM as the dominant voting body decides by either unanimity or qualified majority voting, while the EP acts as either a counseling, amending or co-deciding institution.

According to the consultation procedure established by the Rome Treaties in 1958, legislation originates with the Commission, and the CM adopts the proposal according to a simple, qualified majority or unanimity depending on the Treaty article. In the consultation procedure, the EP gives its opinion, the Commission and CM explain their opinion to the EP, but they do not operate through the parliament. This exclusion of parliamentary control has provoked much criticism of the Union's intergovernmental decision-making modus, and recent modifications have been particularly concerned with strengthening the role of the EP. The EP has become an additional voting body in EU legislation, which is visibly documented by the introduction of three further legislative procedures, the co-operation and assent procedures in 1987, and the co-decision procedure in 1993, all of which refer to the role of the EP in EU legislation (Bradley, 1997, p. 230).

Compared with the consultation procedure, the bicameral co-operation procedure (Article 252, ex-Article 189c) offers two sets of winning coalitions in the adoption of EU legislation: currently, the first set encompasses the Commission, at least 62 CM votes and half of the parliamentary votes; the second set consists of the unanimous member-states with at least the absolute majority of parliamentary votes.[1] In the co-decision procedure (Article 251, ex-Article 189b) as introduced by the Maastricht Treaty, the Commission no longer has the right to withdraw its proposals when the CM and EP conciliate their views in the second reading. In order to raise parliamentary involvement, the Amsterdam Treaty modified the co-decision procedure, giving agenda-setter function to parliamentary delegates in the conciliation committee. Prior to Amsterdam, the first set of the co-decision procedure encompassed the Commission, more than 62 CM votes and at least half of the parliamentary votes; its second consisted of the unanimous member-states with at least the absolute majority of parliamentary votes. The modified co-decision procedure changed this second set: it decreases the CM's voting quota to a qualified majority. Hence, the combination of two sets of winning coalitions leads to a semi-tricameral system, as the Commission can be excluded from the second set under the co-decision procedure. According to the fourth main procedure, the EP must give its 'assent' to CM decisions. The assent

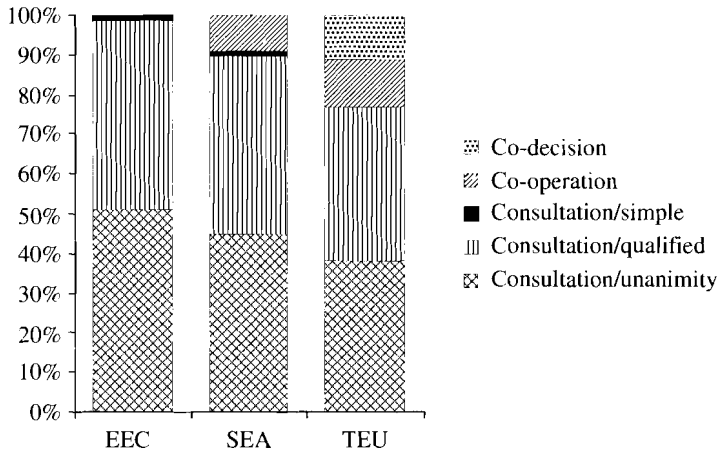

Figure 8.1 The share of Treaty provisions.

procedure is therefore the only single reading procedure and does not allow the EP to make amendments.[2]

In addition to stepwise parliamentary integration, the treaties specify the application of the procedures for each policy area. Figure 8.1 lists the constitutional proportion of procedural settings that came into operation with the Treaties of Rome, the SEA and the TEU.[3]

Both reforms made the decision-making process even more complicated by integrating the EP as an additional voting body (Steunenberg, 1994; Tsebelis, 1994; Schneider, 1995; Scharpf, 1997). The constitutional share of Treaty provisions involving the EP has increased continuously with these reforms, and presently 20 per cent of all Treaty articles provide for the application of the bicameral co-operation and the co-decision procedure. Moreover, even though both reforms expanded the Union's scope, the TEU still allowed the ever-growing CM to fall back on unanimous voting in almost 38 per cent of all cases. Under these circumstances, forthcoming extension of the Union's scale, particularly the accession of Eastern and Southern countries along with former Communist economies, is considered to threaten the proper functioning of the internal market by overstressing the status quo bias of EU legislation. For this reason, even British Conservatives conceded to accepting a limited extension of qualified majority voting in the CM in the early stages of the 1997 Amsterdam IGC.

EMPIRICAL DEVELOPMENT OF EU LEGISLATION

In spite of the Union's constitutional development, many arguments against the empirical impact of voting rules on the Union's day-to-day

decision-making can still be found. Looking at the history of the Union's constitution, CM majority voting was already applicable in 1958, but events like the so-called French 'Politics of the Empty Chair' or the recent British blockade as response to the Union's reaction on the 'Mad Cow Disease' have demonstrated the shortcomings of its constitutional principles on majority voting. A primary reason is that EU legislation needs high common support, because its effectiveness is still dependent on member-states' compliance with implementing EU law (Weiler, 1995; Howe, 1995). Moreover, EU legislators may simply refuse to apply specific procedures.

In order to examine the empirical impact of voting rules on the Union's legislative decision-making process, we use data from the official database, CELEX, which contains information on the progress of EU legislation (König and Schulz, 1997). Figure 8.2 shows the number of Commission proposals and CM adoptions therefrom, as reported in CELEX. As the CELEX database is still incomplete for the period prior to 1984, little EU legislation before the 1980s is observable. As a consequence, we restrict the following analysis to those binding Commission proposals initiated between 1984 and 1996, thus including so-called directives, regulations and decisions, all of which are based on Treaty provisions. Having executed the first wave of proposals previous to the ratification of the SEA, the number of adoptions again reached a maximum just before the ratification of the TEU. Since completion of the internal market project in 1993, the amount of legislation decreased in the years leading up to 1996.

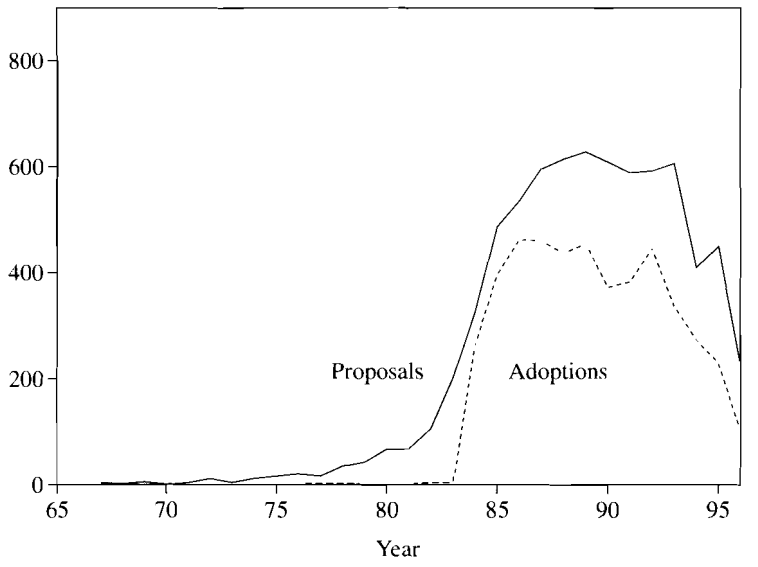

Figure 8.2 Number of Commission proposals and CM adoptions per year.

Table 8.1 Descriptive statistics on all binding commission proposals since 1984

Variable	*Characteristics*	*Number*	*%*
Status	Adopted	3952	69.3
	Not yet decided	1749	30.7
Council voting rule	Unanimity	1256	22.0
	Majority	4445	78.0
European Parliament	Included	523	9.2
	Excluded	5178	90.8
Sum		5701	100

As Table 8.1 illustrates, our sample of 5,701 Commission proposals has a high adoption rate of about 70 per cent. Two reasons for this result may be of importance: First, compared with most other legislatures, the EU decision-making system does not experience the phenomenon of opposition proposals, which normally decreases the adoption rate in the event of a clear majority/opposition divide. Second, since the Union sets no limit on governmental terms, pending proposals may be adopted at any time, even if procedural provisions have been modified by Treaty revisions.[4] Compared to the constitutional provisions, a 50–60 per cent share of majority voting provisions, proposals allowing CM majority voting dominate the Union's legislation. About 80 per cent of all Commission proposals are based on Treaty provisions that make CM majority voting possible. Conversely, although parliamentary inclusion is already limited to a small number of constitutional provisions, only about 10 per cent of all proposals provide for participation of the EP.

As a central indicator for the impact of voting rules and the gridlock danger in different EU legislative decision-making procedures, we use the adoption rate of Commission proposals, hereby distinguishing between CM qualified majority voting and unanimity, as well as between parliamentary participation or exclusion. Since EP participation also allows for CM qualified majority voting, we look at three groups of proposals: The first group contains 1,256 unanimous proposals, the second consists of all 4,039 qualified majority proposals, both of which exclude EP participation in the consultation procedure. The third group encompasses the 406 proposals introduced under either the co-operation or co-decision procedure, both bringing party politics into EU legislative decision-making.[5] As Figure 8.3 shows, the adoption rate of CM qualified majority and unanimity proposals differs widely. The overall adoption rate of qualified majority proposals is about 75 per cent, while only about half of all unanimous proposals pass the final CM decision. Despite their higher absolute number, we find that the annual adoption rate of CM qualified majority proposals is almost always higher than that of unanimous proposals.

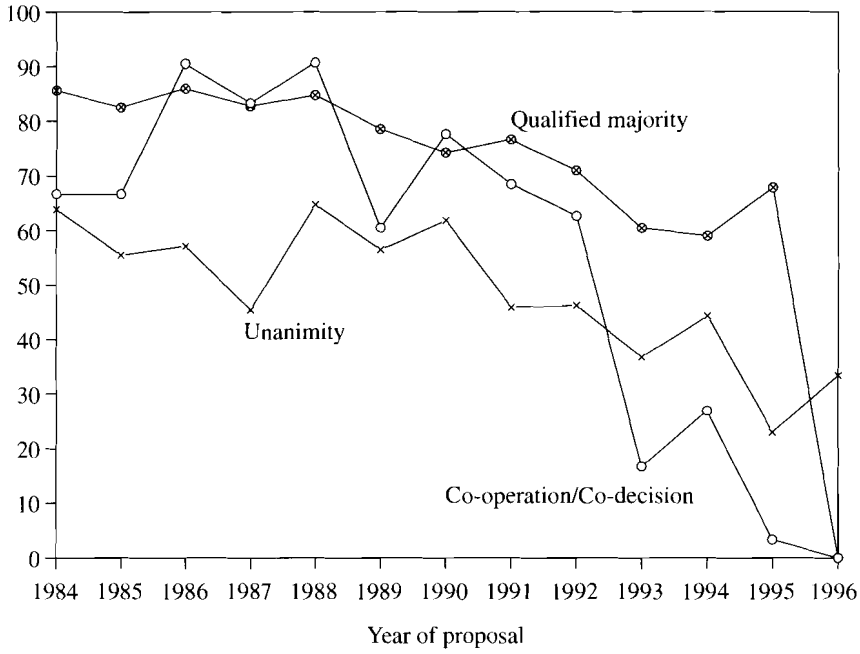

Figure 8.3 Adoption rate of Commission proposals (%).

Compared to the difference between the two CM voting rules, the adoption rate of proposals with and without EP participation fluctuates greatly. To interpret these results, we take a closer look at three periods: First, there are 33 proposals introduced before 1987 – the constitutional start of EP participation – which were later adopted with EP participation. The reason is that the constitutional provision of these proposals was changed by Treaty revision, and adoption became possible under modified rules. Second, between 1987 and 1992 proposals with parliamentary participation sometimes have a higher and other times a lower adoption rate than CM qualified majority proposals which are never lower than that of unanimous proposals. In this period, parliamentary inclusion was limited to the co-operation procedure, which not only allowed for CM qualified majority voting but also for the out-voting of the EP in the event of CM unanimity. Third, from 1993 onwards, the adoption rate of proposals with parliamentary inclusion falls below that of unanimous proposals. Since this does not result from the introduction of the co-decision procedure but rather because of different time lags between Commission proposal and CM decision-making, we can only interpret data up to 1993.

Before interpreting these results, we must address the censoring problem of our data collection, which is especially important when we

study the trade-off between unanimous Council voting and parliamentary inclusion. The censoring problem is indicated by the right-shifted curve of adoptions, which means that there is an overall time-lag of about one or two years between the Commission proposal and the final Council decision. If the time lag differs for each group of proposals, a lower adoption rate may depend not on the procedural settings, but on the date of our data collection because these proposals generally need more time to be adopted than others. In order to take into account different proposal-decision time lags, Figure 8.4 gives the median time-lag for each procedure, referring to the median duration of a proposal based on all proposals, whether adopted or pending. A median duration of 100 days, e.g. would indicate that exactly half of the proposals made at any given point in time are adopted within the next 100 days. We choose the median as an appropriate measure for central tendency since the more common mean would be highly biased by the observation time due to the large number of pending decisions. By contrast, the median is robust in the context of censored data as long as the number of pending decisions does not exceed 50 per cent. For all 4,039 qualified majority proposals, the median proposal-decision time-lag is always lower than that of others, but is increasing almost continuously. Compared to the median proposal-decision time-lag of 84 days in 1984, the 1996 figure has more than tripled.

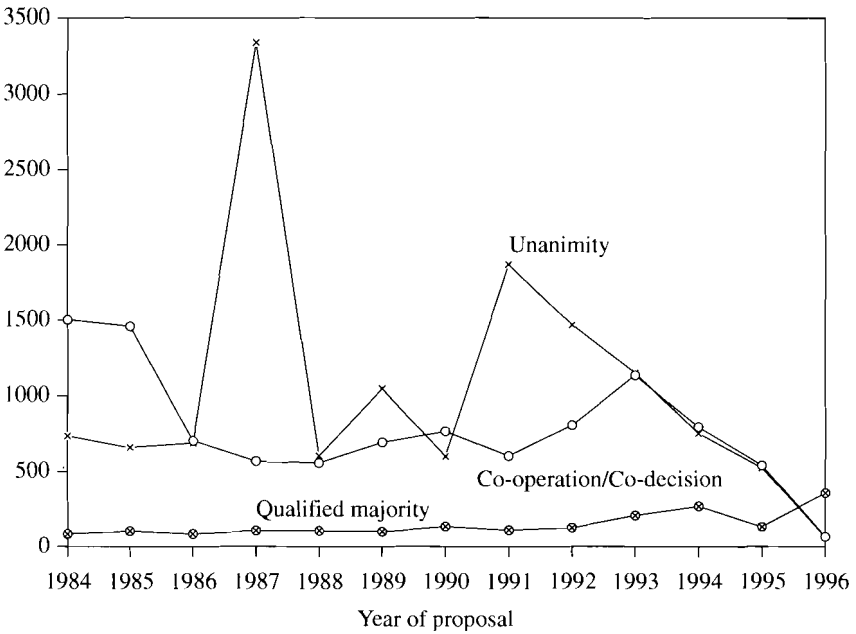

Figure 8.4 Median proposal-decision time-lag (days).

The median proposal-decision time-lag of both unanimous and parliamentary proposals is about two to three years. As a consequence, we can only examine the proposal-decision time-lag prior to 1993. Accordingly, our results only concern the co-operation procedure, as the co-decision procedure was applied to Commission proposals initiated in 1993 and thereafter. Except for the artificial numbers before 1987, the time-lag of proposals with parliamentary inclusion proceeds similar to that of qualified majority proposals though at a higher level. The median proposal-decision time-lag proves to be increasing continuously, doubling from about 553 days in 1988 to around 1,135 days in 1993. The time-lag of unanimous proposals generally exceeds parliamentary proposals, ranging from 599 days in 1988 to 1,866 days in 1991. In sum, the median proposal-decision time-lag differs greatly between procedural settings; however, Council qualified majority voting decreases the danger of legislative gridlock because neither its adoption rate nor its median proposal-decision time-lag is higher than that of the other groups. With respect to unanimous and parliamentary proposals, the latter have a higher adoption rate and a lower median proposal-decision time-lag in the period between 1987 and 1992. Having considered the censoring problem of pending proposals, the adoption rate of proposals under the co-operation procedure is in-between proposals under that of Council unanimity or qualified majority under consultation procedure. The proposal-decision time-lag has few fluctuations ranging from 600 and 1,000 days, while that of unanimous proposals ranges from 600 and 3,300 days.

In our view, the empirical analysis reveals two patterns in the Union's legislative decision-making process which are important for institutional reform: First, voting rules do indeed affect EU legislative decision-making. CM qualified majority voting facilitates the adoption of Commission proposals as compared to unanimity, while additional parliamentary inclusion reduces the rate and the speed of decision-making. Second, we state that there is a growing danger of legislative gridlock in EU legislation, since the adoption rate decreases over time, while the number of Commission proposals remains almost constant. This means that the decision-making system is indeed in danger of becoming an ever-slower Union, but as voting rules affect the functioning of EU legislation, they are thus meaningful instruments for institutional reform.

What conclusions can be drawn from all this with regard to the institutional reform of a further enlarged Union? Qualified majority voting may certainly decrease the danger of legislative gridlock, but intergovernmental out-voting is considered to lower common support. Parliamentary inclusion also reduces the Union's decision probability in EU legislation, but the procedures combining CM and EP majorities may provide a solution to the present problem of EU legislative decision-making suffering from an excessive business load and low common support. The adoption rate of proposals with parliamentary participation comes

close to that of CM qualified majority proposals, while the time-lag between initiation and final decision is almost always lower than that of proposals providing for CM unanimity. By and large, member-states had good reasons for institutional reform when facing the danger of gridlock. This will likely increase in the event of further accessions. In order to prepare the EU for future enlargement, member-states modified the rules for Council voting at the Nice IGC. However, it is questionable whether these modifications can preserve the Union's capacity to act with a Council of some 20–27 member-states.

ACCESSION SCENARIOS: TWO WAVES OF ENLARGEMENT

The Union's enlargement with the countries of Eastern and Southern Europe is an opportunity to end the four decades enduring division of Europe. Right after the decline of Soviet hegemony at the end of the 1980s, most Eastern European countries expressed their desire to depart from the Soviet – and later – Russian sphere of influence and return to Europe by applying for EU membership. Though varying in their saliency, all EC members generally supported eastward enlargement as a way of promoting stability and prosperity in Europe (Grabbe and Hughes, 1998, p. 4). In 1993, the so-called Europe Agreements with Hungary, Poland, the Czech Republic, Slovakia, Romania and Bulgaria, and later, with Slovenia, Estonia, Latvia and Lithuania formalized the first step towards accession (Müller-Graff, 1997, p. 9). Formal accession negotiations with a first group of five states began in March 1998, substantive negotiations with the remaining five started in February 2000 (Schimmelfennig, 2001). Along with eastward enlargement, the EC also reaffirmed its willingness to consider Cyprus and Malta as new members of the Union.[6] As time goes by and the number of applicant countries increases, the question arises under which conditions will the EC realize further enlargement.

The source of the EC's hesitation is that, from today's perspective, forthcoming enlargement will affect the Union's structure more than any previous one. The accession of all applicants would increase the Union's population by around 40 per cent but its gross domestic product (GDP) by only 4 per cent. Regarding the Union's budget financing, structural funds and Common Agricultural Policies, the risks and costs of further enlargement pose a considerable problem not only for potential, but also for present EC members who are already spending 1.27 per cent of their GDP on EU budgetary affairs (Streit and Voigt, 1997, p. 227). The Union's agricultural sector and its poorer regions currently receive about 80 per cent of all EU spending and, since the Eastern applicants are populous, poor and agricultural, an unchanged Common Agricultural Policy

would increase the Union's budget by nearly 40 billion euro. Moreover, extending the Union's structural funds would raise the annual costs by 26 billion euro (Baldwin, 1995, p. 477). Tax raising, however, is not a feasible policy to cope with these deficits, so that enlargements will most probably be accompanied by spending cuts.

Under these circumstances, EC members have quite different views on eastward enlargement. It is less favored by southern, poor and agricultural member-states which consider the Union's budgetary transfer to the south to be endangered by the accession of even poorer countries. Conversely, most northern incumbents expect gains from deepening their trade relations (Michalski and Wallace, 1992, p. 54). Despite the fact that the Union's overall gain will be positive, these benefits are likely to be unevenly distributed across its members, with Germany, France and the UK getting about 70 per cent of the total gain (Baldwin *et al.*, 1997; Grabbe and Hughes, 1998, p. 26).

Most accession scenarios accordingly focus on the economic performance of applicant countries, but even though all applicants have been given the status of an associate country, we argue that the economic criteria of the Commission's Agenda 2000 proposal alone are not sufficient to determine exactly the exact set of new members. The accession of the most promising candidates Hungary, Poland, the Czech Republic and Estonia from Eastern Europe, and Slovenia and Cyprus from Southern Europe will depend on their meeting other criteria. During the 1993 Copenhagen meeting of the EC, a French proposal specified the formal requirements for membership, as repeated by the Commission's Agenda 2000 and laid down in Article O TEU. This admission catalog includes not only measurements of economic development and a functioning market economy, but it also requires a quantifiable level of social protection, control over public debt and inflation, an open economy, a modern fiscal system and the administrative capacity to implement EU legislation (Baldwin, 1994, p. 155). Under these conditions, the economic and geopolitical situation of applicant countries is important, which has to take into account not only the liberation from Russian hegemony, but also the ongoing crisis in the Southern hemisphere.

We therefore expect two waves of enlargement, the first wave will be limited to five new members, and the second wave will contain the remaining seven applicants. For the first wave, only Slovenia meets the economic preconditions, but it is likely that Hungary, Poland and the Czech Republic will also make up the next group to achieve accession due to their geographical proximity and their institutional embedding in the Visegrad-4 group (Hagen, 1997, p. 375). These four countries also account for over three-quarters of the total imports and exports between the Union and the Eastern countries, making them more interesting for the Union than for others. Compared to Latvia and Lithuania with their Russian minorities, Estonia had started to promote itself as more of

a Scandinavian than a Baltic state, and we expect that it will be pushed by Sweden and Finland to join as the fifth new member of the first wave. In contrast to the Commission's Agenda 2000, we consider Cyprus unlikely to be an entrant of the first wave, since its accession would presuppose the unlikely support of Greece and Turkey. In addition to Latvia, Lithuania and Cyprus, we assume that Slovakia will be excluded from the first wave, because it is not yet willing to guarantee minority rights for its Hungarian and Czech population. Due to their economic and political situation, Bulgaria and Romania will also have to wait for the second wave despite French support for Romania's membership. Finally, Malta, the most recent applicant, will be member of the second wave.

ENLARGEMENT AND PARLIAMENTARY INCLUSION: THEORETICAL CONSEQUENCES

Like parliamentary inclusion, both waves will have consequences with regard to the Union's gridlock danger. In conducting an analysis of the Union's enlargement and institutional reform, a major problem is how to evaluate the likely consequences of future legislation. As constitutional choice precedes policy choice, constitutional actors know *ex ante* neither their preferences nor the preferences of the other actors involved in future decision-making processes (Buchanan and Tullock, 1962, p. 78). For this reason, we measure the danger of legislative gridlock with the inverse of the decision probability using the concept of simple voting games. Assuming that the constitutional actors are uncertain about their future vote and therefore consider their Yes- and No-vote to be equally likely, decision probability is determined by two components, the voting rule and the number of participating actors. The strong criterion of unanimity restricts the decision probability of an n-actor committee to the single favorable winning coalition of all feasible 2^n coalitions, while weaker majority rules increase decision probability with the possibility to form smaller winning coalitions. Accordingly, decision probability relates the number of existing winning coalitions to all feasible coalitions.[7]

Applied to the Union's procedural settings, decision probability in the consultation procedure involving the Commission and a unanimous CM decreased from 0.0078 for the original 6 to almost 0.0001 for the 12 member-states. This dramatic decrease in decision probability indicates why the 12 decided to apply qualified majority voting under consultation procedure in order to complete the internal market project in 1986. With reference to our empirical findings, we contend that member-states successfully agreed on a trade-off between the likelihood of preserving and changing the status quo at this time. For this reason we use the 1986 qualified majority decision probability in the consultation procedure as the baseline value for institutional reform.

Table 8.2 Change of decision probability $P(v)/P_0$[a]

	Weighting				
	Pre-Nice			*Post-Nice*	
	1986–95 (12[b])	*1995–2005* (15[b])	*2005* (15[b])	*First wave* (20[b])	*Second wave* (27[b])
Consultation (CM qualified majority)	1.00	0.79	0.84	0.50	0.30
Consultation (CM unanimity)	0.002	0.0003	0.0003	0.00001	0.0000001
Co-operation/ Co-decision I (CM qualified majority)[c]	0.63	0.50	0.53	0.32	0.19
Co-decision II (CM qualified majority)	–	0.79	0.84	0.50	0.30

Notes

a Decision probability in 1986 consultation procedure with CM qualified majority.

b Member-states. *EU 1986–95 (Pre-/Post-Nice weighting)*: France (10/29), Germany (10/29), Italy (10/29), United Kingdom (10/29), Spain (8/27), Netherlands (5/13), Belgium (5/12), Greece (5/12), Portugal (5/12), Denmark (3/7), Ireland (3/7), Luxembourg (2/4); *1995*: Austria (4/10), Sweden (4/10), Finland (3/7); *first wave*: Poland (–/27), Czech Republic (–/12), Hungary (–/12), Estonia (–/4), Slovenia (–/4); *second wave*: Romania (–/14), Bulgaria (–10), Lithuania (–/7), Slovakia (–/7), Cyprus (–/4), Latvia (–/4), Malta (–/3).

c Identical decision probabilities for both procedures.

Table 8.2 shows the changes in decision probability relative to that of the 12 member-states under qualified majority voting in the 1986 consultation procedure ($P_0 = 0.0491$). In the rows of Table 8.2 we differentiate between five procedural settings: consultation with either CM unanimity or qualified majority voting, co-operation and (modified) co-decision I and II.[8] The columns show changes by the Nice institutional reform and past and future enlargements. Extending majority voting in 1986, the group of 12 significantly increased their decision probability with respect to unanimity, being only 0.003 of the baseline likelihood under the qualified majority provision in the consultation procedure. Compared to the 1986 baseline, the accession of Austria, Finland and Sweden in 1995 already decreased the decision probability to about 79 per cent. One task of the Nice reform was to preserve the Union's capacity to act. Yet columns 3 to 6 show that this purpose was not achieved. Although decision probability in the EU-15 under the post-Nice provisions will be higher than under the present ones, the difference is negligibly small.

Even after the Nice reform, decision probability will be lowered to 50 per cent with the first wave of Poland, Hungary, the Czech Republic, Estonia and Slovenia and to 30 per cent of the baseline probability with

the second wave of Romania, Bulgaria, Lithuania, Slovakia, Cyprus, Latvia and Malta. As a result of additional parliamentary inclusion, decision probability in the co-operation and the old co-decision procedure is always lower than in the consultation procedure. With the second enlargement, it will be decreased to 19 per cent of the likelihood of 1986 CM qualified majority voting, and will thus be similar to the situation of CM unanimity during the 1970s, after Denmark, Ireland and the UK had joined the Community. This dramatic decline of decision probability indicates that the latest institutional reform failed in this respect.

The theoretical findings derived from our inclusiveness concept on decision probability correspond to our empirical findings on the adoption rate of EU legislative proposals. Compared to unanimity, CM qualified majority voting enormously increases decision probability in EU legislation, but parliamentary participation and further enlargement might in fact reverse this effect, leading to legislative gridlock. Although the decision probability in the co-decision procedure is in-between the values of the consultation procedure with either unanimity or CM qualified majority, the accession of new states will probably dilute the Union's legislative agenda. In order to guarantee EU legislative activity, there seems to be only one way of reforming the procedural settings: Decision probability can only be raised by decreasing the CM voting quota.

In this respect, the new co-decision procedure can be expected to increase the Union's effectiveness. Its decision probability is similar to that of the qualified majority consultations procedure. If parliamentary participation indeed raises common support, the current modified co-decision procedure may guarantee proper functioning because the positive effect of CM majority voting on the Union's effectiveness will not be reversed by the inclusion of the EP.

DESIGNING THE UNION FOR ENDING EUROPE'S ARTIFICIAL DIVISION

The history of EU integration is characterized by two fundamental developments, the expansion of the Union's competencies and the accession of new member-states. Compared to the 6 founding members of the late 1959, today's Union consists of 15 member-states tripling its original population to about 372 million. For Europe, Eastern enlargement is also an historic opportunity to end the artificial division of Europe, and therefore it is interesting to look for strategies that may serve the cause of institutional reform for future EU legislation more appropriately. In this regard, the question of how to vote has already caused considerable friction. A major topic of the 2000 Nice IGC was to prepare the Union for further enlargement. Despite the almost positive echo of EC officials, the Nice Treaty provisions on the reform of EU institutions concentrate

on the redistribution of power between the 15 member-states, but postpone the reforms required for forthcoming enlargement.

This chapter is concerned with the dilemma of EU decision-making, trying to guarantee both proper functioning and common support, regarding the accession of new member-states from Eastern and Southern Europe. In order to give a satisfactory answer, we first tested whether there is a need for institutional reform. Our empirical analysis of all binding proposals since 1984 suggests that what was actually intended as becoming an ever-closer Union otherwise runs the risk of becoming an ever-slower Union. In particular, it revealed two patterns of the Union's legislative decision-making: On the one hand, voting rules can affect the functioning of legislative decision-making. We find that Council qualified majority voting better facilitates the adoption of Commission proposals than does unanimity, while the additional parliamentary inclusion reduces the rate and the speed of decision-making. On the other hand, there is a growing danger of legislative gridlock since both the adoption rate and the median proposal-decision time-lag have increased continuously over the years. In sum, the Union is indeed endangered by legislative gridlock, but voting rules can affect the functioning of legislative decision-making and are, thus, meaningful instruments for institutional reform.

For this purpose, almost all constitutional actors conceded in the early stages of the 1997 Amsterdam IGC to accepting a limited extension of majority voting in cases of higher parliamentary inclusion. However, neither the Amsterdam nor the Nice IGC were ultimately successful in this respect. Accordingly, the future debate will consider what exactly constitutes legislative majority in a Union of 27. In order to approach EC members' constitutional choice of voting rules, we second theoretically determined their expected effects on the Union's potential for policy change. Our analysis showed that the 12 member-states enormously increased their decision probability when applying qualified majority voting in order to complete the internal market project, but the accession of Austria, Finland and Sweden as well as the increased parliamentary inclusion have reversed this effect. With regard to further enlargement, the second wave will particularly raise the danger of legislative gridlock. Regarding the dilemma based on proper functioning and common support of EU legislation, majority voting may certainly decrease the danger of legislative gridlock, but intergovernmental out-voting is considered to be lower common support, particularly in an enlarged Union. Parliamentary inclusion also reduces the Union's potential for policy change, but it may increase common support. Combining Council and EP majorities, however, seems to be an efficient way out of the dilemma of European decision-making. Whether the strong bicameral setting of the modified co-decision procedure also provides an efficient solution, still remains an empirical question which cannot yet be answered.

NOTES

1 We conceptualize the Commission as a unitary actor in EU legislation with the responsible Commissioner as its agent; as we argue that each Commissioner is provided with his or her own portfolio, carries the main leadership responsibility, and is independent of the Commission President in determining how to act on EU legislative decisions (Spence, 1994, p. 92; Westlake, 1994, p. 9). In the CM, the governments of the member-states are represented by delegates mediating between their own governments and those of other delegates (Johnston, 1994, p. 27). National governments instruct their delegates, who then cast their votes homogeneously in the CM (Sabsoub, 1991, p. 40). In the EP the political group affiliation of parliamentary representatives has proved to dominate coalition formation in such a way that the political groups can be conceptualized as EP entities with weighted votes.

2 In the following analysis we exclude the assent procedure due to the specific and small number of articles and Commission proposals that provide for the application of this procedure.

3 Since the number of Treaty provisions that refer to the assent procedure or allow for simple majority voting in the consultation procedure is extremely small, we disregard these provisions.

4 König and Schulz (1997, p. 12) report that a 1984 proposal to harmonize value added tax (VAT) exemptions, for instance, was passed as late as in 1994, after 3,626 days.

5 We do not distinguish between the two procedures because of the low number of co-decision proposals prior to 1996.

6 The application of Malta was frozen between October 1996 and September 1998.

7 We consider the simple game v of n actors $N = \{1, \ldots, n\}$ with Yes- and No-votes, where $v(S) = 1$ if the coalition S is winning, and $v(S) = 0$ else. According to Coleman (1971, p. 278) the decision probability is:

$$P(v) = \frac{\sum_{S \subseteq N} v(S)}{2^n}$$

8 We conceptualize the EP as a voting body consisting of two major and two minor parliamentary groups. Each major group is provided with two votes and each minor group has one vote to fulfil the absolute majority criterion. Simplifying the EP does not obstruct our findings, on the contrary, it helps make the effects of different enlargements on the incumbents comparable.

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