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Adapting to Enlargement of the European Union: Institutional Practice since May 2004

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Contents

Starting assertions.....	1
Evidence from recent and current research.....	3
The key data on output from the EU institutions.....	5
Commission.....	8
Council.....	10
European Parliament.....	15
The European judicial system.....	16
European Ombudsman.....	18
Compliance.....	20
Treaty and non-treaty reform.....	21
Conclusions.....	22
References.....	24

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Starting assertions

Two contradictory assertions have coloured discussions over recent years about the case for treaty-based institutional reform in the European Union (EU). The first holds that the EU would become vulnerable to institutional paralysis or **gridlock** after enlargement in one form or another, in particular after the recent enlargements to take in 10 new member states in May 2004 and two more in January 2007. The second holds, on the basis of experiences from previous enlargements, that **business as usual** would be the more plausible scenario. Proponents of treaty-based institutional reform, in particular of its more extensive versions, have thus pleaded their case on the grounds that the decision to enlarge to central, eastern and southern Europe necessitated a thorough overhaul of the institutions. According to this view the prospect of yet further rounds of enlargement makes this case for reform even stronger. Those who are more sanguine about the likely impacts of enlargement have not seen treaty-based institutional reforms as either so urgent or as a precondition of successful adaptation to enlargement. According to this view the argument for treaty-based institutional reforms needs to be justified according to different criteria relating to the further development of the EU and its policies.

This is not a new debate. The Single European Act, agreed in 1985, was driven partly by the arrival of Portugal and Spain as members, as well as by some negative judgements of the post-accession problems of absorbing Greece in 1981 as a full member state. At the time of the Intergovernmental Conference (IGC) that led to the Treaty of Amsterdam

agreed in 1997, there were also fears that the enlargement to include Austria, Finland and Sweden would lead both to institutional malfunction in the EU and also to policy stagnation, especially as regards foreign, security and defence policies. The prospect of eastern enlargement was one of the main reasons for the IGC which led to the Treaty of Nice, agreed in 2000, and for its focus on exclusively institutional issues, in contrast to earlier rounds of treaty reform which had generally included both policy and institutional matters. Thus it was little surprise that the enlargement dimension should be so prominent in the debates around the Constitutional Treaty signed in October 2004, nor that it should figure as a feature in debate during the ratification processes, especially in those member states that submitted the Constitutional Treaty to referendums.

This paper explores how the EU institutions have adapted to the recent enlargements in 2004 and 2007. In this period the EU has expanded from 15 to 27 members, but with the Constitutional Treaty stalled in 2005 and its successor the Reform Treaty due to come into force only in 2009, no Treaty changes have been introduced since the implementation of the Treaty of Nice. The paper draws on evidence that has become available on practice since May 2004 when ten new member states joined, and (to a lesser extent) since January 2007 when a further two states joined. A couple of caveats need to be borne in mind as regards this evidence. First, these are still early days for a clear picture to emerge, not least since it takes a little time for new member states to play themselves into the operations of the EU institutions, however much they have observed and learned in the pre-accession period. This was so in previous rounds of enlargement as well, when post-accession adaptation was an important factor in smoothing or (more rarely) disrupting institutional practice. The early evidence does not yet shed much light on developments since the accession of Bulgaria and Romania in January 2007 in that aggregate data are not yet available. Second, there is an underlying issue about causality, in that changes in institutional practice may in any given period be the consequences of other factors as well as, or rather than, enlargement. In the current context there are several potential candidates for, in particular, decreases in output from the EU institutions. One such factor was the slowing down of economic growth in the EU in the early part of this decade, as discussed in the Sapir Report (2003). Another such

factor is the shift of emphasis to the ‘less is better’ slogan of the European Council and of the European Commission under the presidency of José Manuel Barroso, which has induced efforts to remove redundant EU legislation and to reduce the number of proposals for new legislation. Yet another has been the introduction of reforms to improve performance in relation to earlier problems, such as the accumulated overload of legal cases before the European Court of Justice (ECJ).

Evidence from recent and current research

Several studies have been produced recently – or are in progress – that seek to provide evidence, some of it statistically based, on institutional behaviour within and between the main institutions of the the EU since May 2004. These include in particular:

- a. Best, Christiansen and Settembri (eds.) (forthcoming, 2008), with the CONSENT research network (funded by the Sixth Framework Programme of the EU and coordinated by the European Institute of Public Administration(EIPA) in Maastricht), who look across the EU institutions – their data on legislative output compare the year July 2005 to June 2006 with previous years;
- b. Dehousse, Deloche-Gaudez and Duhamel (eds.) (2006) from Sciences Po, Paris, who examine all the main EU institutions – their data cover 2004 and 2005;
- c. Hagemann and De Clerck-Sachsse (2007) from the Centre for European Policy Studies(CEPS) in Brussels, who examine the Council of Ministers, with continuing work now at the European Policy Centre in Brussels – their data cover the period 1999 to 2006; and
- d. Some individual pieces on one or other EU institution, including work on the Council of Ministers by Mattila (forthcoming 2008) from the University of Helsinki, with data covering the period May 2004 to December 2006 and building on a data set on previous years. Other studies address particular phenomena, such as compliance, with an overview being undertaken by Sedelmeier (work-in-progress) at the London School of Economics and Political Science (for a Marie Curie Fellowship), and detailed qualitative work by Falkner and Treib (forthcoming 2008) at the Institute for Advanced Studies in Vienna. LSE), while

- e. Zubek(forthcoming 2008) has examined the transposition of EU legislation in several of the new member states during the pre-accession period.

There is considerable variation in the kind of evidence that has been collated in these studies, both as regards the time periods covered and as regards the robustness of the data (the academic sources are, for example, not entirely consistent on all of the statistical details and categories, a wider issue in the study of institutional performance in the EU¹). In particular we should note that much more complete information is available on legislative decisions that have been agreed than on decisions that have been stalled at one or other stage in the institutional processes. We also lack systematic compilations of non-legislative decisions, especially relevant for justice and home affairs(JHA) and for the common foreign and security policy(CFSP) / European defence and security policy(ESDP), although Mattila's data set extends to non-legislative as well as legislative decisions. Although the European Council is the summit of the EU's institutional structure it almost entirely escapes these analyses because it is not a legislative organ. The EU institutions do not (and never have) issued on a systematic basis the details of 'failed decisions', for which we are dependent on hearsay, press reports and so forth. A further limitation of the available statistical material is that there is no agreed basis weighting for the relative importance of the issues being addressed in EU decision-making. Best and Settembri (forthcoming 2008a and building on Settembri(2007)) have made an interesting attempt to ascribe different levels of salience to the data that they report. This is particularly important given that EU decision-making includes a good deal of routine regulation and management as well as the formulation of new policies, and it would not be unreasonable to expect variation across these categories.

These precautionary comments notwithstanding, a relatively agreed overall picture emerges from across these studies. They indicate that the 'business as usual' picture is more convincing than the 'gridlock' picture as regards practice in and output

¹ Most of the academic studies draw on data made available by the EU institutions, supplemented in various ways by complementary qualitative research.

from the EU institutions since May 2004. Some changes and variations can be observed, although not all of these can be tied to the impact of enlargement as such. It is also clear that there are some differences across policy domains, which need further exploration. These become more apparent once attention is turned to the implementation phase and the ways in which EU policies and rules are put into practice inside the new member states.

The key data on output from the EU institutions

- There has been a modest reduction in the volume of legislation (definitive legislative acts) adopted. Over the period 1999-2003 an average of around 195 legislative acts were adopted each year (but only 164 in 2002 and 165 in 2003); around 230 were adopted in 2004 (with a surge in April 2004 just before the EU15 became the EU25); some 130 were adopted in 2005: and 197 in 2006 . Data need to be added for non-legislative decisions, increasingly important in fields such as foreign policy and some aspects of justice and home affairs, where activity levels have been high. Mattila(forthcoming 2008) reports that some 942 acts other than legislative decisions were agreed between May 2004 and December 2006. Of the 360 (Hagemann and De Clerk-Sacchse 2007)² legislative decisions adopted between May 2004 and December 2006 some 43 were identified as revisions to existing legislation to incorporate the new member states. Settembri (2007) reports that decisions taken show an increase in ‘ordinary’ or ‘minor’ subjects, and a decrease of 11% in what he classifies as the more ‘important’ topics.
- In the context of the ‘less is better’ objective of José Manuel Barroso as President of the European Commission (an objective shared by the Council) we can observe only a modest drop in the number of proposals for legislative acts made by the Commission: 2003-491; 2004-526; 2005-411; 2006-482. In 2006 the Commission withdrew 68 proposals and put forward 33 ‘simplification’ proposals and 22 ‘codification’ proposals. In 2006 the Commission also tabled 324

² Nb Mattila 2008 reports 416 such decisions.

communications and reports, 10 Green Papers and 2 White Papers (covered in the *Annual Report 2006*, published in 2007).

- There has also been a drop in the proportion of proposals tabled by the Commission that are accepted by the Council: 2003-40%; 2004-44%; 2005-32%,³ but it should be borne in mind that there is a time lag between proposal and decision.
- There has been a reduction in the time lag between proposal and decision on both those subject to the unanimity rule and those based on qualified majority voting (QMV) treaty articles. This is so especially for decisions under the consultation procedures with the European Parliament (EP), including many on agricultural issues, where the data indicate a 5% reduction in the time taken to reach agreement. Issues subject to codecision take somewhat longer than before (Settembri (2007) notes that during the one-year period which he covers that this means some 22% more days). Interestingly, however, a rising proportion of decisions subject to codecision have been reached at first reading: 2003-34%; 2004-45%; 2005-64%; 2006-59%. In 2006 a revised joint declaration was adopted by the EU institutions, designed to improve the efficiency of the codecision procedure.
- As regards differences among policy sectors, Best and Settembri (forthcoming 2008a) indicate that environmental issues seem prominent among those that have taken longer to decide (plus 5%) in the period that they survey in detail. Hagemann and De Clerck- Sachsse (2007) report a dropping off of levels of Council output in both JHA and energy/transport sectors, despite a modest increase in proposals from the Commission in these areas. We should, however, note that output in JHA reached a high peak on 2002 and 2003, dipped in 2004 and 2005 and started to rise again in 2006, in a field where there is little recorded voting contestation but a high level of formal statements noting particular concerns by individual member states. Peterson and Birdsall (forthcoming 2008)⁴ comment that a further factor was the suspended status of the Constitutional

³ Calculated by Dehousse *et al.* (2006 p.37). Their study does not include the 2006 data.

⁴ They cite this from Hugh Brady of the Centre for European Reform.

Treaty, which included provisions to increase the aspects of JHA subject to QMV, where member states in the Council proved reluctant to agree to a number of Commission proposals that sought to activate the *passerelle* clause (this allows issues to be moved from the third to the first pillar). One other straw in the wind as regards JHA – on 12 June 2007 it was decided to move to incorporate the Treaty of Prüm within the EU framework, a Treaty signed originally entirely outside the EU by 7 old member states,⁵ rather than to persist with an initiative outside the EU framework. By April 2007 10 more EU members had already asked to accede, among which 5 new members (including Bulgaria and Romania). Further research is needed to establish how far enlargement as such might account for the yearly variations in output in individual policy sectors.

- The length of legislative documents has increased by approx 15%, a development argued by Best and Settembri (forthcoming 2008a and 2008b) to reflect the need to pay attention to the needs of a larger range of more diverse member states and their specific concerns.
- Best and Settembri (forthcoming 2008b) also report a decrease in the proportion of decisions that introduce comitology procedures. The reasons for this need further exploration.
- There is no evidence of declining ‘productivity’ in the judicial system of the EU, at least as regards the work of the ECJ (Naômé forthcoming 2008). On the contrary numbers of cases completed and pending compare favourably with the period before enlargement, one in which there had been rising concerns about the existing overload on the judicial system, even without the added impact of enlargement. There is no significant increase at least yet in the number of new cases. The length of Court proceedings also shows a downwards trend. The Court of First Instance (CFI) has not adapted so easily to the increased pressure of cases combined with its backlog of prior pending cases.
- As for what happens after decisions have been taken, the member states which joined in 2004 have an astonishingly good record in transposing decisions into national law, well comparable to the average performance of the old member

⁵ The Treaty of Prüm covers data exchange on DNA records, fingerprints and vehicle number plates.

states and mostly closer to the leaders than to the laggards in the EU15 (Sedelmeier work-in-progress). Similarly the new member states have been subject to fewer infringement procedures than the average among the EU15, and seemed to be rather speedy in resolving compliance problems. The Czech Republic (according to both Sedelemeier and Zubek, forthcoming 2008) seems to be the only outlier and then only marginally so. Neither Sedelmeier's nor Zubek's data include Bulgaria and Romania, where some serious doubts have been raised as to their standards of compliance, evident in pressures from several of the older member states on the Commission to be more vigilant in monitoring developments in these two new member states. Falkner and Treib (forthcoming 2008) have examined the implementation of three EU directives⁶ in the field of social policy in several new member states – the Czech Republic, Hungary, Slovakia and Slovenia. Their picture, based on qualitative research and process-tracing, is somewhat different in that they identify a considerable range of problems in these member states in moving from transposition to substantive implementation, albeit in a policy area that is quite tricky for the transforming economies. See below the further section on compliance.

Commission

- There are evident differences in the styles between the Prodi Commission and the Barroso Commission, in particular the commitment of Barroso to the 'less is better' objective. Peterson and Birdsall (forthcoming 2008) argue, for example, that the Commission has become more 'presidential' under Barroso.
- President Barroso has had to adjust to the consequences of the enlarged college of commissioners. He has introduced 'working groups' of Commissioners as a way of managing Commission business by broad policy areas. This seems to have had mixed results, although it is argued by Ciavarini Azzi (2006) that a greater proportion than previously of 'college' decisions are in effect being reached through these working groups or by forms of 'delegation', rather than in full

⁶ They look at Working Time Directive of 2003, the Equal Treatment Directive of 1976 and the Employment Framework Directive of 2000, all of which had been the subject of an earlier project on the EU 15.

college plenary sessions. There has also reportedly been an reduction in the number of decisions taken by 'oral procedure' in the college, as opposed to the use of the written procedure.

- The identification of individual commissioners with their own countries of origin is reported to have become stronger, notably now that the rule is that one Commissioner comes from each member state. Peterson and Birdsall (forthcoming 2008) suggest that the College has become more 'intergovernmental' in character.
- The recruitment of staff from new member states is progressing, although it is taking some time to reach the target numbers. By the end of 2005 7% of staff in the Commission came from new member states; and by July 2007 the figure was 12% (DG ADMIN website). Generally speaking it is easier to handle recruitment to the junior than to senior grades, since this process follows standard procedures and is less dependent on identifying individuals with very specific experience and expertise, as well as appropriate language competences (these latter are found more easily among junior than senior recruits). The Commission has a particularly strong need for talented officials from the new member states, given the Commission's role in developing and supervising policies that meet the needs of the new members.
- There is an even stronger predominance than before of English as the primary working language, which had already been boosted by the 1995 enlargement, although the minutes of meetings of the college of commissioners are still written first in French Ciavarini Azzi(2006). In 2006 the Commission reported (JTS website) that (of the one and a half million pages handled by its translation services) 72% came from English as the source language, 14% from French, 2.7% from German and 10.8% from other official languages. In practice it has proved difficult to recruit enough translators and interpreters to provide the language support which the EU institutions now need.
- The Commission has provided an impressive number of courses for officials from across the EU institutions to follow training in all of the languages of the new EU12 member states. Some 9708 course members (some following more than

one programme) are reported, the vast majority followed by officials from the European Commission.⁷

- As indicated above, there has been a modest reduction in the numbers of both formal proposals and other kinds of communications from the Commission compared with previous years, although it should be noted that there were surges in the proportions of propositions in justice and home affairs, and in energy and transport, reflecting evolving policy priorities (Ciavarini Azzi 2006).
- There is something of a centre-right bias in the composition of the current Commission college and in the political orientation of its proposals, including the revival of the Lisbon agenda and the adoption of the ‘better regulation’ key words for the Commission’s approach to legislation. This reflects changes in the composition of member governments which make the nominations of Commissioners, and is also reflected in the shifting composition of the Council as governments change. Thus the emphasis has shifted to some extent to softer forms of agreement than traditional hard law, and the hunt is meant to be on for repealing or simplifying legislation (as further emphasised by the Spring 2007 European Council). Peterson and Birdsall (forthcoming 2008) report that enlargement was encouraging the Commission to be more open to the use of new modes of governance (ie softer forms of policy development).
- The Commission is making more explicit efforts to be visibly and actively engaged in stakeholder consultations.

Council

- Voting statistics (recorded by the Council Secretariat) provide only one indicator of practice in the Council. Data are available only on decisions actually adopted by the Council under QMV. The records show that explicitly contested voting is recorded on only a minority of QMV-based decisions (depending on how you count some 20% of eligible decisions), since the long-established culture is one of consensus-reaching (Hayes-Renshaw *et al.* 2006). Recorded contestation is thus a form of signalling (probably mainly to domestic constituencies) about reluctance

⁷ Information provided directly to the author by DG ADMIN.

on a given issue or possible future implementation problems on issues where it is understood that the decision in question will go ahead. Contestation may be by no-voting or abstention, which have the same numerical effect under QMV. No data are collated on failed or blocked decisions. And by definition no systematic data are available on ‘implicit’ voting on issues where no explicit contestation is recorded. Thus explicit voting is not the big story and gives only a partial picture of what is happening in the Council.

- The long-established norm of reaching most decisions by consensus-building has persisted since enlargement (Dehousse and Deloche-Gaudez 2006), on decisions taken under QMV as well as by definition on those requiring unanimity – Mattila (forthcoming 2008) reports that around 90% were by consensus for both legislative and other acts. In 2004 and 2005 in particular a larger than usual proportion of legislative decisions reached were on issues subject to the unanimity rule.⁸ Mattila (forthcoming 2008) reports that 76% of legislative decisions reached were subject to the QMV rule, and that of these 82% were reached without explicit contestation, that some 97% of decisions agreed and subject to the unanimity rule were uncontested and also that some 91% of non-legislative acts were agreed without explicit contestation.
- In the patterns of recorded explicit voting there are a few changes from the *status quo ante*: a. somewhat fewer as a proportion of those issues subject to QMV provoked explicit voting in 2004 and 2005, after a peak in 2003 (22%), and the 2006 proportions are much the same as those for 2003; b. there were fewer ‘singleton’ no-sayers (Dehousse and Deloche-Gaudez 2006) – in the period before the last rounds of enlargement half of explicitly contested votes revealed opposition from only one member state (Hayes-Renshaw *et al.* 2006)), whereas since May 2004 singletons account for a third of the recorded votes, while another third consist of groups of two or three dissenting member states (Mattila forthcoming 2008); c. the most frequent no-sayers or abstainers were in particular Denmark, Germany, Italy, the Netherlands, Sweden, and the UK, with great variations among countries and among issue areas, although the most frequent

⁸ The decision rule in the Council depends on the legal base in any given proposal.

‘pair’ of contesting member states is that of Denmark and Sweden; among the new member states those more often contesting have been the Czech Republic, Hungary and Poland and Lithuania (especially in 2005) and Latvia (especially in 2006).⁹ The newer member states practised little explicit contestation in 2004, and in 2005 and 2006 their behaviour largely resembled those of medium-contesters among the old member states. In all cases the contestation concerns rather small numbers of decisions from which only limited generalisations can be drawn.

- Hagemann and De Clerck-Sacchse(2007) suggest that the use of formal statements in the Council minutes has increased significantly since May 2004 and argue that this indicates rising levels of contestation in the Council. Some care must, however, be taken with this inference, not least given the efforts made to reduce the number and length of oral interventions in Council meetings, which may have also contributed to the increased tendency to record formal statements in the minutes (Best and Settembri forthcoming 2008b). More formal statements are also apparently recorded than before on issues subject to the unanimity rule, but this is a level of contestation well below the salience of the veto right of every member state on unanimity-based issues.
- An attempt has been made Gros *et al.* (2007) to assess whether or not a different version of QMV would have made a difference to recent decision outcomes in the Council. They conclude on the basis of the data in Hagemann and De Clerck-Sacchse(2007) that in only very few cases would there have been a different outcome under either the Constitutional Treaty formula or the square root rule. This conclusion has, however, limited value in so far as it does not rest on any analysis either of ‘implicit’ voting on agreed decisions or of failed decisions where no qualified majority was present.
- Those dossiers which are agreed by explicit voting get processed by the Council slightly more quickly than before (Jan 2003-Apr 2004: 524 days; May 2004-Dec

⁹ There are some discrepancies in the sources, one of which reports a higher level of contestation from Slovenia than Latvia. It should also be noted that the equivalent statistics for 1995, the year in which Austria, Finland and Sweden joined the EU, showed negative voting behaviour by Sweden that was not repeated in subsequent years.

2006: 344 days). Surprisingly (according to Best and Settembri forthcoming 2008a) this seems to hold good also for ‘more important’ issues, where there has been only a small increase in time taken to reach agreement, notably those issues subject to codecision (see above).

- Issues also seem to get resolved with less frequent recourse to full ministerial discussions (Best and Settembri, forthcoming 2008b). Senior official committees of the Council seem to have made a successful investment in expediting business, although there are some differences among sectors – environmental decisions are slower, and agricultural decisions are quicker. Some practitioners report (Hagemann and Clerk-Sacchse 2007) that there is increasing recourse to informal methods of developing agreements, in which the Council presidency’s role is particularly important.
- Implicit voting is obviously important but very hard to pin down systematically, and hence it is hard to be certain how far the precise weighting of member states’ votes affects the outcomes especially re blocking minorities.
- No systematic coalition patterns can be derived in a substantive way from the explicit voting data. However, significantly there is no evidence of a strong cleavage between old and new member states, but rather there is evidence of subject-specific cleavages and coalitions as in the EU prior to enlargement. Thomson (forthcoming 2008) reports some signs of new member states voting together and working together on a couple of issues of evident primary concern to them, namely the European Neighbourhood Policy and the arrangements for the European Regional Development Fund —but this is hardly surprising. The explicit voting data, it should be noted, do not provide rich information on coalitions or cleavages and such evidence as is there does not suggest important changes between pre- and post-enlargement. One documented issue-specific and orchestrated coalition seems to have popped up in the recent academic literature, namely that reported by Best and Settembri (forthcoming 2008b) on the definition of vodka, an issue of considerable sensitivity for several new member states, notably Poland, as well as for Finland and Sweden. Recent qualitative research by Naurin and Lindahl (forthcoming 2008) reports that the networks of cooperation

among member states at working group level have altered little since enlargement. The ‘partners’ most sought are the larger member states and there is denser cooperation among the ‘northern’ (especially Nordic) member states than among the ‘southern’. There is no sign of either an east/west division or of the new member states as a whole aligning themselves to the ‘southern’ members (as many had expected). Rather they seem to prefer to cooperate with the more liberally inclined and more northern member states (albeit with some variations between the more northern and the more southern of the new member states), as reported by Best and Settembri (forthcoming 2008b), Naurin and Lindahl (forthcoming 2008) and Thomson (forthcoming 2008).

- As regards working methods, the Council agreed already in June 2002 the ‘Seville Reforms’ to improve the procedures and processes of the Council with a view to addressing a number of existing weaknesses and not only with enlargement looming.¹⁰ Procedural and practice changes were further developed to make meetings at all levels in the Council more efficient, with efforts to clarify member states’ positions in advance of meeting, to avoid repetitive and formal statements in meetings and so forth. Best and Settembri (forthcoming 2008b) provide further details on this and suggest that these reforms have been productive and also that they seem to be partly responsible for shifting more of the final resolution of many dossiers to stages before the sessions in which ministers are involved.
- As regards languages, there is a limit to how far the Council can go to reduce the numbers of languages used for interpretation or translation in meetings, given that the participants are chosen as delegates by the member states and not chosen according to linguistic competences. Irish has also recently been added to the list of official languages (at least for some purposes, an Irish ‘success’ which has generated some pressures for similar treatment of other languages such as Basque or Catalan), as well as those of the new member states. Best and Settembri (forthcoming 2008b) report that full interpretation is now more limited to certain kinds of meetings (ministers and some of the more important

¹⁰ See Hayes-Renshaw and Wallace (2006). Seville was followed up by the adoption of a new Code of Conduct in 2003 and further revisions in 2006 to the Council Rules of Procedure.

committees, while some have no interpretation, and for others requests have to be made for interpretation from a limited collective budget. It has proved difficult to recruit all the linguists needed to make the system operate and concerns are sometimes expressed about the quality of both interpretation and translation.

- Staff numbers in the Council Secretariat had in any case been growing in response to the Secretariat's increased role in both JHA and CFSP (Hayes-Renshaw and Wallace 2006). In 1995 the Secretariat had 2290 staff, and in 2005 it had 3038 staff. Some 670 posts were requested for the 2004 enlargement, and a further 97 for the 2007 enlargement, with a bias towards the language services (Best and Settembri, forthcoming 2008b). Recruitment has gone more slowly than hoped.

European Parliament

- Despite some nervous anticipation among its members of problems following enlargement, the European Parliament (EP) has not gridlocked either in terms of its working methods or its output (Costa 2006). This may be because party groups have become even more important in organising the work of the EP, with reduced opportunities for individual MEPs to stand out on particular issues.
- Enlargement has perhaps made the EP less 'federalist' in its composition with arrival of MEPs from new member states, although there are also claims made that new MEPs are being 'socialised' by those from the old member states.
- There are some indications that MEPs from new member states may be more 'nationalist' in orientation than those from most of the old member states.
- The inherited pattern of the main party groups continues much as before, with the Alliance of Liberals and Democrats for Europe continuing to play a 'pivotal' role, and with European Peoples' Party somewhat strengthened also by new arrivals in terms of left/right cleavage politics. This may partly account for the pugnaciousness of the socialists on the Services Directive, an unusual example of the Parliament forcing major amendments on the Council and Commission on an issue where there was a substantive issue relating to the impact of enlargement.
- The EP has been relatively insulated from the fall-out from the failed ratification of the Constitutional Treaty as regards its day-to-day business.

- As noted above, the EP now agrees more legislation subject to co-decision with the Council at first reading, and deals with at least some issues subject to consultation more quickly, although there are some examples of delays notably on issues dealing with aspects of JHA.
- The reduction in the volume of new legislative proposals and the new emphasis on ‘better regulation’ create a challenge for EP in pressing for adjustments for MEPs to working in different ways and on different kinds of issue, thus more about monitoring the existing stock of EU legislation than about developing new legislation. However, this has little to do with enlargement as such.

The European judicial system

In very many ways the role of European law and the work of the Courts of the EU, both the ECJ and the CFI, provide the anchor for the functioning of the EU system. Thus there has been a continuous discussion, which well precedes the recent enlargements, of ways in which the processes and procedures of the Courts could be periodically adapted to improve their functioning and effectiveness. Steady increases in the workload of cases falling on the Courts have taken place over the years, partly reflecting extensions of the Courts’ jurisdiction into new policy areas such as those introduced by the Treaty of Amsterdam, signed in 1997. There were concerns that the numbers of cases would accentuate the time lag needed between the introduction of cases and the judgements of the Courts being reached. Anticipation of the recent enlargements also of course played a role in these discussions, partly against the backcloth of the increased numbers of cases following the 1995 enlargement. In addition observers of the EU were inclined to expect that these most recent enlargements would put additional strains on the judicial system, in particular because the new members from central and eastern Europe had faced so large a challenge in reforming their domestic systems in their post-communist reforms. It was partly for this reason that so much effort was put by the EU institutions into helping the candidate countries with the practicalities of judicial reforms during the pre-accession period.

The broad picture which emerges of the adaptation of the Courts thus shows a range of changes intended to deal with both generic issues and the specifics of enlargement. Naômé (forthcoming 2008) provides an excellent overview of this process and in particular of developments in the ECJ, together with carefully gathered data on the details of emerging practices and patterns. This picture reveals the relevance of non-treaty reforms, both the revised Rules of Procedure agreed in May 2000 and many changes to working methods, as well as the changes to the Courts introduced by the Treaty of Nice (signed in February 2001 and in force since February 2003). Chaltiel (2006) provides some complementary material but covering a shorter period. The CFI has been much slower to address such issues of reform despite its increasing workload of cases, already evident some years ago. Hence, it now has to face the added impact of enlargement from a more uncomfortable base.¹¹

- One of the key changes introduced by the revisions mentioned above was to alter the ways in which the chambers of the ECJ were constituted in order to provide for a more efficient, more representative and potentially speedier process of dealing with the workload of cases (Naômé forthcoming 2008). In October 2003 and May 2004 the ECJ moved sequentially from working with two chambers of five judges (complemented by four chambers of three judges) to working with three chambers of five judges, with a fourth chamber of five judges added in October 2006 (just before the accession of Bulgaria and Romania). The intention was to assign the bulk of the caseload to these chambers of five, all of which would include judges from both older and newer member states. Chambers of three judges continue to operate for some purposes.¹² In addition ‘judicial panels’ can be created within the CFI, for certain kinds of cases, the first of which is the new EU Civil Service Tribunal. These changes have enabled the rapid integration of judges from the new member states into the day-to-day operations of the ECJ. On the other hand, the ECJ also sometimes operates in a Grand Chamber, comprising 13 (quorum of 9) out of the 27 members of the ECJ (one from each

¹¹ Less data is available so far on the adaptation of the CFI in recent years.

¹² Chambers of three deal with matters such as inadmissible or unfounded appeals, preliminary rulings when the ECJ lacks jurisdiction, or when the question is inadmissible, small cases against member states, and some technical questions such as customs classification. While these account for some 25% of cases, these are the less salient ones.

member state¹³), or for very important cases in plenary composition. This segmentation of the Court carries the potential risk of contradictory findings emerging from different compositions of the Court.

- As regards the output indicators, Naômé (forthcoming 2008) reports that in 2006 the volume of cases completed and cases pending compared favourably with the period before enlargement and indicate some success in dealing with a backlog from earlier years.¹⁴ Completed cases were in: 2000-526; 2001-434; 2002-513; 2003-494; 2004-665; 2005-574; 2006-546. Pending cases were: 2000-873; 2001-943; 2002-907; 2003-974; 2004-840; 2005-740; 2006-731. Interestingly as regards new cases, it had been expected, extrapolating from a surprisingly high number of Austrian cases in the years following its accession in 1995 that the volume of new cases would increase after the 2004 enlargement. On the contrary the numbers have slightly reduced: 2000-873; 2001-943; 2002-907; 2003-974; 2004-840; 2005-740; 2006-731. It is early days of course for cases from new member states to feed into the litigation before the Courts, but at least on the evidence of requests for preliminary rulings there is no sign yet of any marked increase in numbers.
- The statistics so far available (Naômé forthcoming 2008) indicate a downward trend in the average length of Court proceedings, as the Court took advantage of both its procedural reforms and the increased number of judges. In 2002 the average length for preliminary rulings was 24.1 months, and in 2006 19.8 months.
- The subject matter of cases over the most recent period shows an increasing weight of issues involving taxation, environment and market harmonisation (Chaltiel 2006). This was already a trend in the period immediately before enlargement.
- On the sociological side, judges from the new member states have professional backgrounds very similar to those from the old member states and are also somewhat younger (Naômé forthcoming 2008). All new member states have

¹³ The Reform Treaty of 2007 includes a provision at the insistence of Poland to increase the number of Advocates General in response to enlargement.

¹⁴ Statistics should be treated with care in that they do not distinguish between more and less important or more or less complex cases.

produced male judges, however, thus making the gender composition even more ‘unbalanced’ than before. Staff numbers at the Court have increased significantly: 1087 staff posts in 2004 and by mid-2007 around 2000, the increases being substantially in the translation services.

- As for the language question, the Courts continue to work primarily in French, bucking the trend in other EU institutions where English has displaced French. The Court also introduced a system of ‘pivot’ or relay languages (English, French, German, Italian and Spanish) to mitigate the linguistic challenge.

European Ombudsman

The European Ombudsman receives complaints from citizens and residents of the EU about maladministration in the activities of EU institutions and bodies. The workflow of the Ombudsman has in any case been steadily rising as his office, still relatively young, has become better known. Hence even without the impact of enlargement it had been expected that resources, including staff, would need to be increased. In addition the current European Ombudsman defined it as one of his priorities both to work with the new national ombudsmen in the post-communist countries and to ensure that his Office would be well-prepared for the anticipated rise in complaints.

- Numbers of complaints: in 2004, 2005 and 2006, complaints from the ten new member states amounted to respectively 17.6%, 18.9% and 14.4% of complaints received, which is not far out of line with the proportion (approximately 16%) of total EU population living in those states.
- The year 2004, however, represented a challenge for the Ombudsman because complaints from new member states accounted for only half of the 53% increase in total complaints that year. In other words, at the same time as dealing with complaints from the new member states, the Ombudsman also had cope with a higher rate of complaints from existing member states. In 2005 and 2006, the total number of complaints to the Ombudsman remained roughly stable, which made it possible to absorb the 2004 increase without lengthening response times.
- Dealing with additional languages: the Ombudsman was created by the Maastricht Treaty to help bring the EU institutions closer to citizens and must, therefore, deal

with complaints in all the Treaty languages. To ensure rapid and effective communication, the Ombudsman prefers to rely on in-house language skills rather than translation. In 2004-2006, this was possible for over 98% of complaints from the ten new member states.

- The European Network of Ombudsmen: the European Ombudsman co-operates with national and regional ombudsmen through what is now known as the “European Network of Ombudsmen”. National ombudsmen of the candidate countries were invited to join the Network a year before enlargement, to help them prepare to deal with the EU law aspects of complaints against public authorities in their Member States. In 2005, work began on preparing a Statement of the service that ombudsmen in the Network provide to persons who complain about matters within the scope of EU law. The Statement was adopted, by consensus, in October 2007.

Compliance

We are in only the early stages of being able to observe the patterns of compliance by the new member states with EU rules and of how far their records compare with patterns among the old member states, as indicated above. We should note that there is no single key factor that accounts for the differences in patterns of compliance among the 15 old member states, but that expectations were that the new members from CEE would be likely to find it particularly difficult to cope with the disciplines of implementing the EU *acquis*. Sedelmeier (work-in-progress) has made an analysis of the records over the early period of membership of the 8 new member states from central and eastern Europe which joined in May 2004 (ie excluding Bulgaria and Romania). His evidence suggests that:

- The data on transposition of EU directives into national law show that after an early period of difficulty the new member states are among the best performers (they hold four out of the top five places) in putting EU directives on to their national statute books, with only the Czech Republic lagging a little behind, and still better performing than the laggards among the EU15.

- The data on infringement (which have some shortcomings as a source) suggest that the new member states performed at least as well as the old member states in 2005 and 2006, with again the Czech Republic the least well performing and Lithuania the best performing.
- As regards the resolution of compliance problems, the new member states have by and large been faster to resolve problems than the old member states
- Rather few complaints have been lodged about the records of the new member states compared with the pattern for the old member states, although it is still early days to expect to find evidence of complaints.
- One key explanation may well lie in the way in which the pre-accession process was managed and the high premium set by the EU (notably the Commission) on using conditionality as a tool to prepare the new member states for fully effective membership. Zubek (forthcoming 2008) covers the pre-accession period in more detail.

The study by Falkner and Treib (forthcoming 2008) suggests that much more focused qualitative research is also needed to get under the surface of the statistics and to explore in detail emerging patterns of compliance. As their research indicates (outlined briefly above) there is a big difference between formal transposition and implementation, on the one hand, and substantive implementation, on the other hand. They have chosen perhaps particularly hard cases to examine, in that social policy may be particularly testing for new member states, as may also be the case, for example, of environmental policy, both being instances of policy areas that are easier to handle for the richer market economies. In any case difficulties of transposition and substantive implementation are not necessarily as such problems for the functioning of the EU institutions themselves, in that so much depends on actions within individual member states. However, downstream there will no doubt be additional pressures on the EU institutions if new member states prove particularly troublesome as regards their duties of implementation. The extra strains are likely to fall most heavily on the Commission as guardian of the treaties and responsible for surveillance of EU policies, and also in due course on the courts to the extent that litigation arises as a response to poor implementation.

Treaty and non-treaty reform

The evidence above suggests that the EU has functioned very much on the basis of 'business pretty much as usual' in the absence of treaty-based reforms. Only in the case of the workings of the ECJ do treaty-based reforms seem to have made a specific and productive difference to the institutional capacity to respond to enlargement, in this case as a result of the key changes to its work included in the Treaty of Nice, signed in 2001. This seems to be the only case in which a treaty change simultaneously addressed a well defined pre-existing need, against the backdrop of looming enlargement. As regards the other institutions non-treaty reforms have played important roles in altering processes and procedures so as to improve the capacity of the institutions to do their work. Thus in relation to the past three years' experience the striking evidence is of, first, pragmatic adaptation, as established working methods and practices have survived the arrival of new member states, and, second, the utility of non-treaty reforms. The studies cited in this paper highlight two areas in particular. One is the progress of the joint declaration on codecision which seems to have expedited the legislative process, albeit at the cost of channelling more of the mediation into the somewhat bureaucratic processes of codecision. The other is the impact of changes made within the Council to use informal methods of 'streamlining' business so as to make the larger number of participants 'more manageable'. Moreover there is probably further potential for continuing this approach of focused non-treaty reform. At least on the evidence of adaptations since May 2004 the situation looks more evolutionary than revolutionary, pending further treaty-based changes as and when the Reform Treaty agreed in Lisbon in October 2007 is ratified.

Conclusions

- The evidence of practice since May 2004 suggests that the EU's institutional processes and practice have stood up rather robustly to the impact of enlargement to EU25 in May 2004.
- It is too soon to have systematic evidence on the impact of the further enlargement to EU27 with the accession of Bulgaria and Romania in January 2007.

- Part of the ‘success’ of adaptation is related to the long period of prior adjustment and learning experiences of the pre-accession periods, including the establishment of ‘state and judicial capacity’ in candidate countries, even though the early evidence on implementation sheds some doubt on this at least in some instances.
- It is also the case that other factors are at work that probably account for some of the evolution in institutional practice and differential policy progress since May 2004, not least the reorientation of Council and Commission priorities for future business.
- The analyses published so far provide only limited insights into how far enlargement may have impacted on the scope for reaching agreement in particular policy areas. Some of the evidence suggests that the trickiest areas will be those that relate to levels of social and economic development, where any arising problems may be much more evident in the relevant member states than in the workings of the EU institutional system as a whole.
- Nonetheless there remains scope for continuing to identify practical and pragmatic ways and means of enabling the EU system through non-treaty reform to perform effectively in changed circumstances.

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