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# **Institutional Change and Legislative Stability: Explicit and Contested Decision-Making in the EU Council (1995-2010)**

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***DRAFT***

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## **Abstract**

*In contrast to general expectations the growth of EU membership as well as European treaty reform has not had any significant impact on the Council's overall legislative and roll call activity. On the basis of a new dataset representing the total population of public roll calls and recorded votes in the Council this paper explains why the EU Council has been so successful in guaranteeing legislative and roll call stability between 1995 and 2010. The quantitative and qualitative analysis finds that frontloading legislation, changing voting behaviour, reinforcement of existing coalition patterns and the successful adjustment of newer Member States to the EU Council have contributed to the EU Council's decision-making capacity during the observed 16 years. In explaining the apparent contradiction between institutional change and the Council's legislative stability this paper contributes to our knowledge of the functioning, the decision-making processes and the geography of contestation in the EU Council.*

## Introduction

Despite the EU Council's importance we are still unsure about Council decision-making and how it comes to an agreement. Usually consensual agreements among the Member states prevail in the Council but sometimes Member States cannot find a consensus and their representatives resort to calling a vote they subsequently decide to publish. During those public roll calls Member States cast an *explicit* vote and reveal to the public their preferences. The traditional consensual manner of taking decisions in the Council behind closed doors makes these public roll calls and their outcomes all the more telling. Roll calls and explicit votes provide the empiricist with an entry point for the analysis of EU Council legislative politics because they shed light on overt disagreements, the formation of majorities and minorities and explicit modes of decision making in the Council.

To that end a growing number of scholars have been analysing Council decision-making processes and contestation within the Council. Their findings conclude that the level of explicit contestation is low (20-25%)<sup>2</sup> (Hayes-Renshaw et al., 2006, pp 166-167) and concentrated in a limited number of EU policy domains (Hayes-Renshaw et al., 2006, Hagemann and De Clerck-Sachsse, 2007); that on the basis of Member States voting behaviour we can distinguish an emerging political space in the Council and that we can explain this political space by means of geography and domestic factors of the Member States (Mattila and Lane, 2001, Mattila, 2004, Hayes-Renshaw et al., 2006, Hagemann, 2007, Mattila, 2008, Mattila, 2009, Thomson, 2009, Hosli et al., 2011, Plechanovová, 2011b, Plechanovová, 2011a). These findings are the result of observations drawn from shorter time spans and they are more reliant on the period from which the data are drawn (see Annex: Overview of Selected Data Sources in the literature). They also present a rather static picture of contestation in the Council

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<sup>2</sup> The range is related to the different calculation methods depending on the voting procedure and accounting method of total Council legislative activity. According to our own calculations explicit contestation represents 20% on average (with substantial variation for individual years) calculated as a percentage of contested decisions of total definitive legislative acts.

The present research builds upon these studies but introduces a temporal element in the analysis using *a new dataset representing the total population of public rolls calls and recorded votes* covering the period between 1995 and 2010 representing over 1,300 contested roll calls and more than 27,000 observations of individual votes cast. The data were collated over a number of years from the *Council minutes* (1999-2010) and *press releases* (1995-2010) of individual Council meetings, the *summary statistics supplied by the Council Secretariat* (1996-2010) and the *monthly summaries of Council acts* (1999-2010). The triangulation of the individual roll calls from these publications allows us to access 16 years of roll calls with more detail for each vote. The new database permits the analysis of the Council's roll call and legislative activity on which a public vote was held, the structure of contestation over policy domains and voting procedure, Member States' voting behaviour and coalition formation over contested decisions as well as the effect EU enlargement has had on the Council. The data were supplemented with qualitative material from interviews with practitioners in the EU Council, the Council Secretariat and the Member States' permanent representations. The analysis' objective is to identify a number of patterns present in the data between 1995 and 2010 by means of descriptive statistics and cluster analysis.

The remainder of the paper is structured as follows: The first section presents the puzzle the data present followed by the empirical analysis of the Council's legislative and roll call activity (1995-2010) and the structure of contestation in the Council by Member State, policy domain and voting procedure. The second section provides a before-and-after analysis and measures the effect of the Big Bang enlargement (2004) on contestation, voting behaviour and coalition formation in the Council. The conclusions sum up the main findings followed by the appendix.

## **I. An overview of Council legislative and roll call activity (1995-2010)**

### **The Puzzle: Institutional Change versus Legislative Stability**

In contrast to general expectations the growth of EU membership from 12 to 27 Member States between 1995 and 2010 did not have any significant impact on the overall level of legislative and roll call activity in the EU Council. The stability of legislative and roll call

activity is puzzling because the growing heterogeneity of Member States in the Council generally has been associated with a more difficult decision-making environment. A larger EU Council is expected to encounter more difficulties to reach agreement among the Member States because it needs to cater for a growing number of preferences represented around the table. If such a mechanism were to be operating within the Council the likelihood of finding agreement would be smaller and we would expect a declining legislative output and/or more publicly contested legislation. The empirical evidence does not bear this out for the period 1995-2010 and also consecutive European treaty reforms appear not to have had any significant impact on the numbers. This finding is robust and based on the analyses of three different measures of Council legislative activity collected from three different sources each following a different accounting method.

The three measures represented in figure 1 show a high degree of similarity and do not confirm the so-called *gridlock hypothesis* (see Figure 1: Annual Council legislative activity and public roll calls (1995-2010)). In the longer run EU enlargement and European treaty reform appears not to have any significant impact on the Council decision-making capacity measured by the overall legislative and public roll call activity. These findings particularly contrast with the analysis that the EU has been paralysed, that EU enlargement has been too rapid and that the EU treaties are not functioning (Piris, 2012)<sup>3</sup>. On the contrary, the analysis highlights the remarkable stability of Council legislative and roll call activity against the background of profound institutional change defined by four consecutive European treaty reforms and the growth of EU membership from 12 to 27 Member States. This raises the question: *Why has the Council been so successful in guaranteeing legislative and roll call stability?*

### **Uneven Council Legislative and Roll Call Activity: Annual Up- and Downswings**

The answer to the research question can be found by prying open the newly collated data. The Council's *annual* legislative output and public rolls calls fluctuate significantly over the observed period.

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<sup>3</sup> PIRIS, J.-C. (4 November 2011) An EU architect writes: time for a two-speed union, in: *Financial Times*.



Measured as a percentage of total over the observed period between 1995-2010 the ups and downs of the data are easily distinguishable (figure 1)<sup>4</sup>. The Council's roll call activity runs parallel to its legislative activity but with a lag. Roll call activity is an indicator for contested legislation on which the Council cannot reach a consensual agreement. Contested legislation therefore takes longer to adopt because the Council might seek to assuage any possible opposition before resorting to a vote. In other words, the lag between roll calls and legislative activity is related to the Council's efforts to reach an agreement on legislation for which real opposition exists and requires more time to adopt (Golub, 1999, Dehousse et al., 2006, Häge, 2007).

The annual fluctuations of both legislative and roll call activity allow us to make three observations. First, they are a reminder that results based on cross-sectional analysis or those based on panel data running over a limited number of years are strongly reliant on the period from which the data are drawn (See Annex: Overview of Selected Data Sources in the literature). Second, the fact that the Council's annual legislative activity and contested decisions run in parallel suggests that the characteristics of public roll activity are more representative of total Council legislative activity than *hitherto* assumed. Finally and despite the variance of the official measures of the Council's legislative activity the observed fluctuations are not random but follow a pattern. Particularly the timing of the upswings and downswings of Council legislative and roll call activity is revealing with similar starting and end points of the 'humps' observed. The ups and downs of the data appear to coincide with consecutive European treaty reforms and EU enlargements. The upswings can be observed before the enlargement of 2004<sup>5</sup> and 2007 and the treaty reforms of 1999, 2003 and 2009. The downswings take place after EU accession (including for the accession of Austria, Sweden and Finland in 1995) and the entry into force of new European treaties. Also the Treaty reform of Nice (2003) and the big bang enlargement of 1 May 2004, originally planned for the end of 2003 (see the arrow on figure 1), are a case in point. In short, Council

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<sup>4</sup> A finding that has also been established for the period 1999-2005 in DEHOUSSE, R., DELOCHE-GAUDEZ, F. & DUHAMEL, O. (2006) *Elargissement, Comment l'Europe s'adapte*, Paris, Presses De La Fondation Nationale Des Sciences Politiques. p. 37.

<sup>5</sup> An observation that has also been made for legislative activity before the 2004 enlargement in *ibid.*, p. 26, p. 35.

legislative and public roll call activity go up before the entry into force of a treaty and EU enlargement; they decline subsequently<sup>6</sup>.

It is not surprising that the EU institutional changes between 1995 and 2010 influence Council's legislative and roll call activity. The Council catered for the entry into force of four treaty reforms (the Maastricht Treaty in 1993, the Amsterdam Treaty in 1999, the Nice Treaty in 2003 and the Lisbon Treaty in 2009) and the accession of 15 new Member States more than doubling its membership over the observed period of 16 years. While the changes have been mitigated by built-in *transition periods* in the (accession) treaties they generally triggered procedural and legislative uncertainty. The uncertainty on behalf of the Member States and the Council decision-makers is related to changes in the legal bases (Chalmers et al., 2006, p. 178-188, Chalmers et al., 2010p. 137-141, Piris, 2010, p. 212, 383, 369 ) of the different policy domains, new Council voting weights and ensuing Council majorities, and the adjustment of distributive outcomes for specific EU policy domains. Under such institutional uncertainty Member States tend to frontload and pass more EU legislation (and hence hold more roll calls) under the rules they are familiar with rather than to wait for the new rules to take effect eliminating potential legislative bottlenecks. Such an approach allows the Member States and the Council to adjust to a new institutional environment before they pick up the pace of legislative activity in the following period.

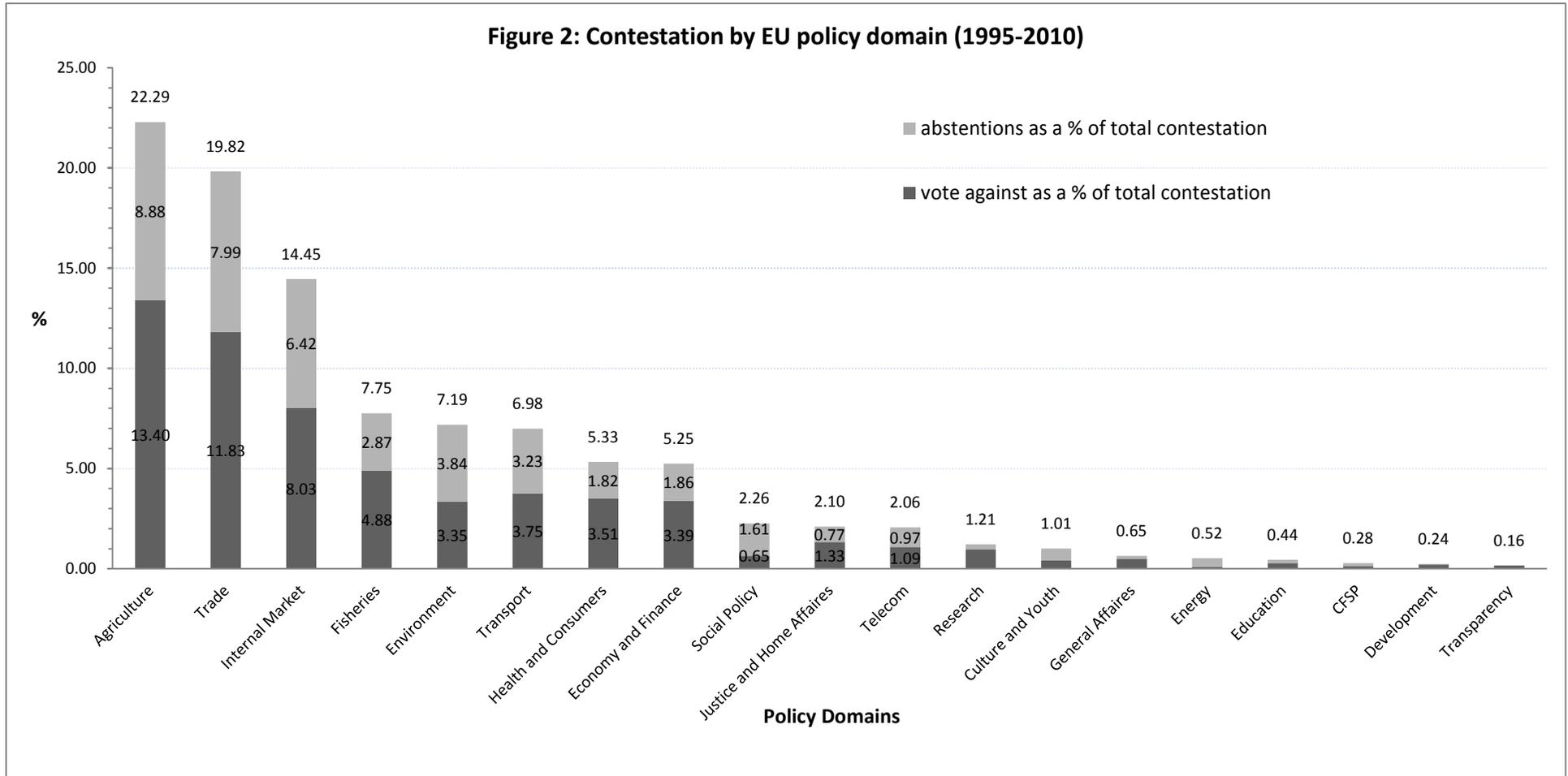
### **The Structure of Contestation in the Council: EU Policy Domains**

When considering EU policy domains the examination of contested legislation finds a similar legislative stability. Contested legislation – a measure that reinforces the effect of contestation relative to roll call analysis – is present in all EU policy domains (see figure 2: Contestation by EU policy domain (1995-2010)), but with Common Agricultural Policy (CAP), trade, internal market and Common Fisheries Policy (CFP) consistently eliciting higher levels of contestation from the Member States (64% of the total). Environment, Transport, Health and Consumer Affairs, and, Economy and Finance also feature prominently (25% of total).

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<sup>6</sup> A derived function confirms this observation both with respect to the timing but also in terms of intensity of the variation.

**Figure 2: Contestation by EU policy domain (1995-2010)**



**Legend:** As a % of total public contestation, i.e. public votes on legislative acts for the period 1995-2010.

**Sources:** All acts on which a vote was recorded under all voting procedures (QMV, Simple Majority and Unanimity) collated from the Council minutes and the Council press releases of all individual Council sessions between the 1826th Council meeting for Agriculture (23 January 1995) and the 3061st Council meeting for Environment (20 December 2010). They were triangulated with the data from the monthly summaries of Council acts (1999-2010) and the Summary statistics supplied by the Council Secretariat.

In these policy domains between 1995 and 2010 one or more Member States regularly cannot side with the majority in the Council and are compelled to show their opposition publicly.

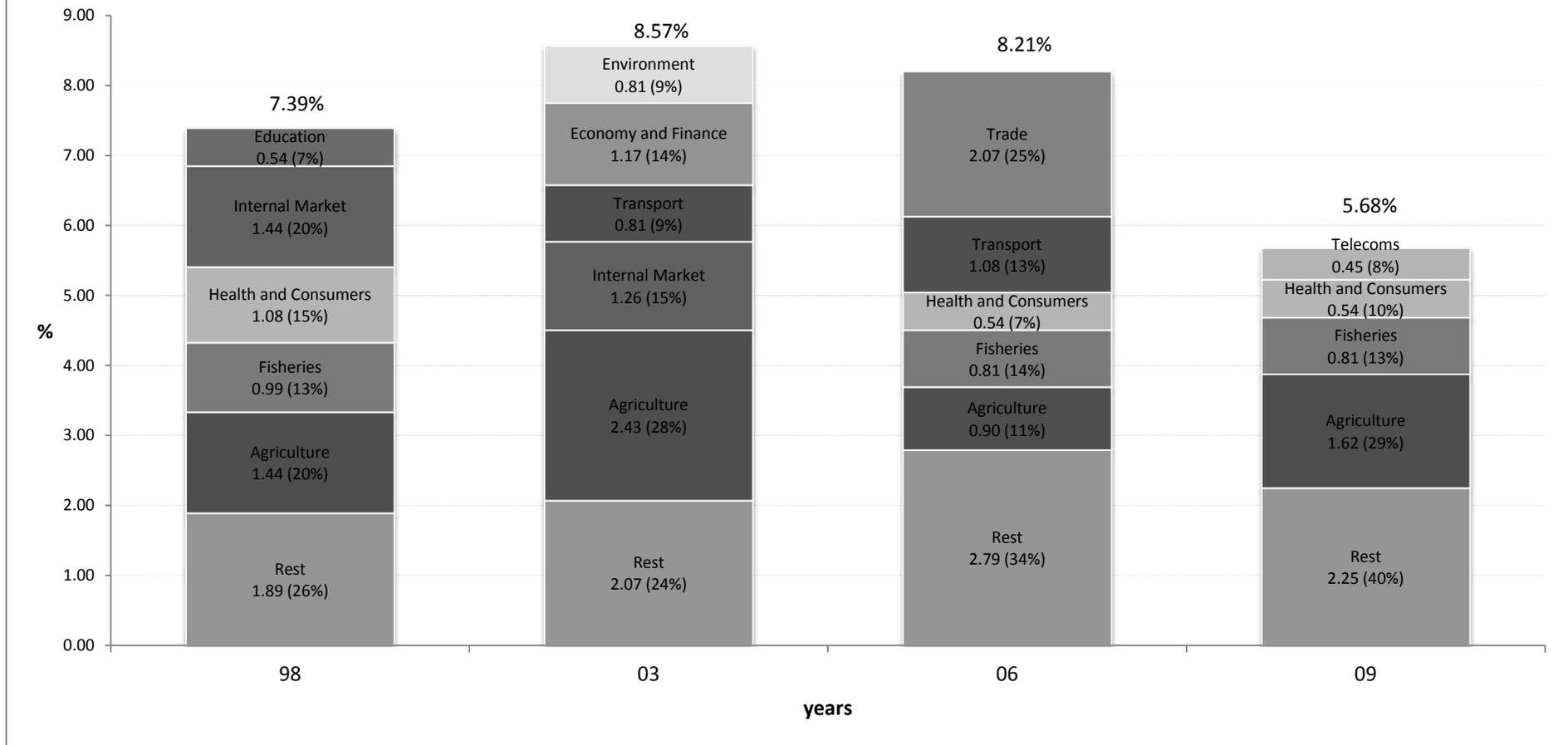
On an annual basis contested legislation is scattered across all the policy domains and also here the trend between 1995 and 2010 is relatively stable. As a single policy domain CAP dominates every single year representing 23% on average over the entire period except for the period 2004-2006 when the records display more contested legislation in the area of trade, environment and transport policy. The long tail of explicit votes in figure 2 includes legislative activity subject to a small number of unique votes. The most surprising of these is a vote in 2010 in the area of defence under the Common Foreign and Security Policy. For the final decision Denmark and the Netherlands could not join their fellow Member States on a decision to send an EU military mission to train Somali security forces<sup>7</sup>. The long tail in figure 2 consists of a whole set of these highly symbolic measures with the majority of roll calls held in the second half of the 2010s in areas considered to be traditionally part of the Member States' national sovereignty such as Justice and Home Affairs, Social Policy, Youth and Culture and Education policy.

While contested legislation is present in all policy domains it is remarkable that the more distributive EU policy areas elicit more contestation representing more than 50 % of the total. Member States contestation is higher on issues that have an impact on direct distributive budgetary policies (CAP and CFP) or indirect distributive policies such as EU trade policy and internal market. Furthermore, these policy domains attract more 'no votes' rather than abstentions demonstrating that Member States carry stronger preferences over these issues and prefer to express a stronger negative vote relative to other areas. When studying the years during which legislative activity peaks (1998, 2003 and 2006) it is not inconceivable to assume that rising membership has amplified contestation in these areas in anticipation of EU enlargement (see figure 3: Public roll call activity in the year before a new treaty and EU enlargement).

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<sup>7</sup> COUNCIL DECISION (15 February 2010 (2010/96/CFSP)) On a European Union military mission to contribute to the training of Somali security forces.

**Figure 3: Public roll call activity in the year before a new EU Treaty and EU enlargement**



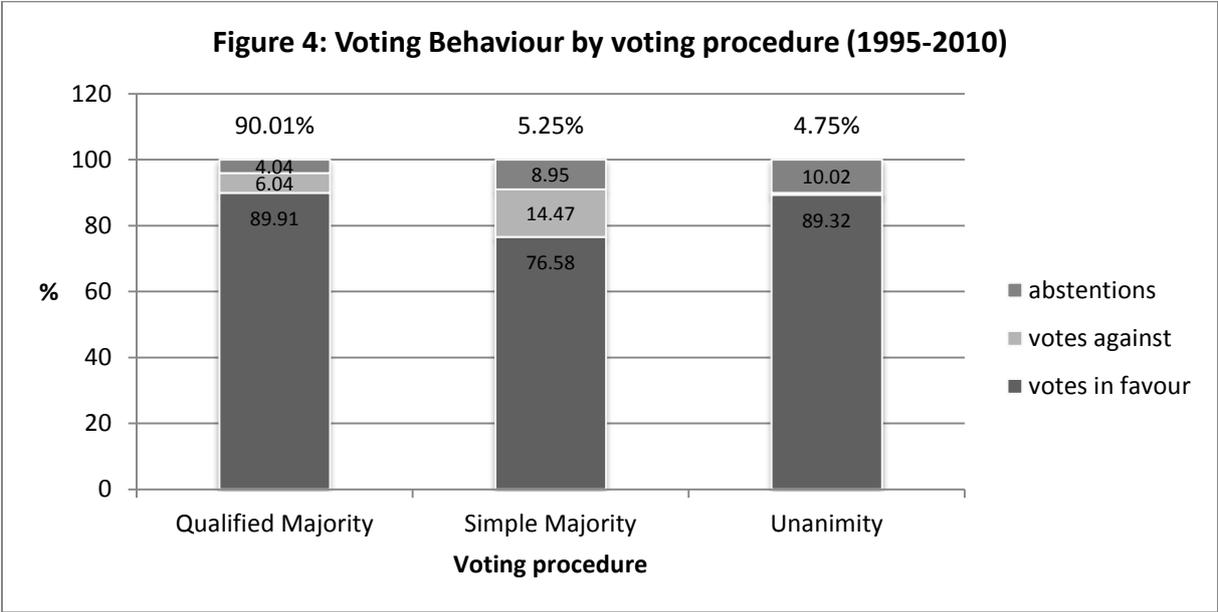
**Legend:** As a % of total public roll call activity for the period 1995-2010. Selected years represent the year of peak of roll call activity before the entry into force of a new treaty and/or an EU enlargement.

**Sources:** All recorded roll calls under all voting procedures (QMV, Simple Majority and Unanimity) collated from the Council minutes and the Council press releases of all individual Council sessions between the 1826th Council meeting for Agriculture (23 January 1995) and the 3061st Council meeting for Environment (20 December 2010). They were triangulated with the data from the monthly summaries of Council acts and the Summary statistics supplied by the Council Secretariat.

When concentrating only on the five single most represented policy domains and grouping all the other areas in a separate category roll call activity remains concentrated in the area of CAP, CFP and internal market. Health and Consumer Affairs, Transport, Education, Environment, and Telecom policy are the unexpected areas.

**The Member States’ Preferences and Voting Behaviour**

That more distributive EU policies attract more contestation and induce votes against rather than abstentions also reflects the Member States’ voting behaviour and an inclination towards the use of ‘no votes’ rather than abstentions. Overall Member States prefer to vote against (54%) a legislative act rather than abstain (46%) during a roll call, however, voting behaviour differs under the different voting procedures (see figure 4: Voting behaviour by voting procedure (1995-2010)) and they have a different effect. The QMV voting procedure represents the bulk (90%) of the total of votes on legislative acts with the rest almost evenly spread between simple majority (5.25%) and unanimity (4.75%). Under QMV Member States express opposition predominantly with a vote against (6%). Nevertheless, abstentions (4%) can be considered to be a vote against because they lower the probability of reaching the population threshold for a QMV.



**Legend:** The values above the bar represent the % of all voting procedures for the period 1995-2010. The values in each bar represent the % of the voting behaviour for each individual voting procedure.

**Sources:** All acts under all voting procedures (QMV, Simple Majority and Unanimity) on which a vote was recorded collated from the Council minutes and the Council press releases of all individual Council sessions between the 1826th Council meeting for Agriculture (23 January 1995) and the 3061st Council meeting for Environment (20 December 2010). They were triangulated with the data from the monthly summaries of Council acts and the Summary statistics supplied by the Council Secretariat.

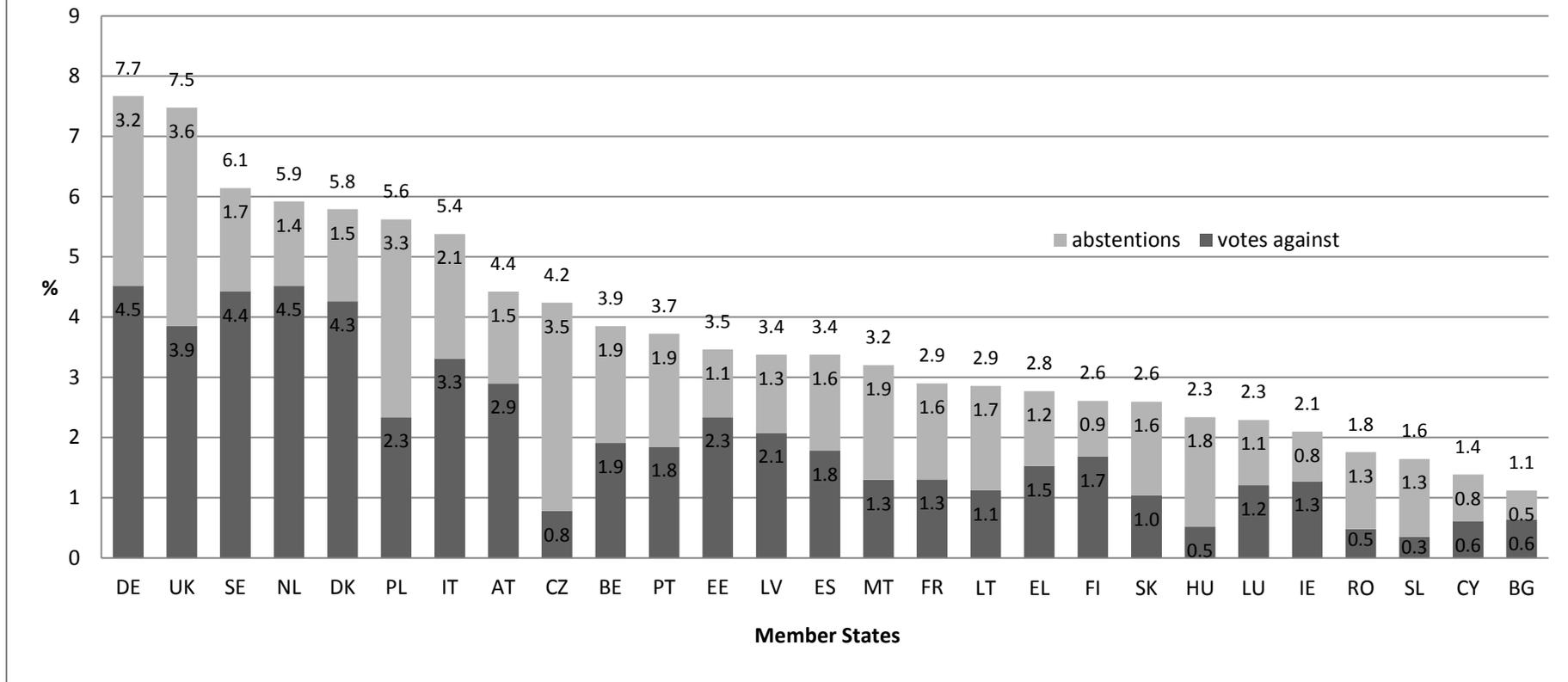
**Note:** Under the voting procedure unanimity we found failed public roll calls representing 0.66 % of total.

Abstentions under unanimity indicate that a Member State is not entirely satisfied with the measure but does not want to prevent the majority from moving forwards. The simple majority procedure elicits the highest numbers of contestation which is almost twice as high as for QMV.

Particularly older Member States prefer to use negative votes while newer Member States cast abstentions to show their discontent. By and large three groups of Member States with similar voting behaviour are present in the Council (see figure 5: Explicit Contestation of EU Legislation by Member State (1995-2010)). As a percentage of total public votes on legislative acts the first group is composed of Germany (7.7% of total contestation) and the UK (7.5%) that prefer least to join the majority in the Council and assist a consensual agreement. They also favour to vote against rather than to abstain. The second group comprises Sweden (6.1%), the Netherlands (5.9%), Denmark (5.8%), Poland (5.6%) and Italy (5.4%) sharing a preference to contest regularly. Poland is a more recent Member State that often votes explicitly, albeit more by means of abstention. Of the third group of countries Spain and France as rather large Member States vote less than half of their German and British counterparts and join the majority in the Council almost twice as much. They usually form part of the majority in the Council and rarely cast a negative vote. Their position is shared by 18 smaller Member States that often prefer in most instances not to use their explicit vote, abstain rather than vote against and find themselves more often in support of EU legislation rather than opposing it. These patterns confirm earlier findings that, on average, larger Member States and northern countries (Mattila, 2004, Hayes-Renshaw et al., 2006, Mattila, 2009, Thomson, 2009, Plechanovová, 2011b, Plechanovová, 2011a) are more likely to explicitly contest EU legislation while smaller and southern as well as eastern countries tend to be more silent.

Over the entire period the majority of newer Member States refrain from contesting relative to the older Member States. Except Poland and the Czech Republic the newer Member States have a lower frequency to contest, which is probably in part related to adaptation to the written and unwritten rules and norms prevalent in the Council legislative decision-making processes (Mattila, 2009, p 845).

**Figure 5: Explicitly contestation of EU legislation by Member State (1995-2010)**



**Legend:** As a % of total public contestation, i.e. public votes on legislative acts for the period 1995-2010. Country codes from two-letter ISO code (except Greece: EL, United Kingdom: UK).

**Sources:** All recorded votes under all voting procedures (QMV, Simple Majority and Unanimity) collated from the Council minutes and the Council press releases of all individual Council sessions between the 1826th Council meeting for Agriculture (23 January 1995) and the 3061st Council meeting for Environment (20 December 2010). They were triangulated with the data from the monthly summaries of Council acts and the Summary statistics supplied by the Council Secretariat.

**Note:** Measure of contestation calculated on the basis of total votes against and abstentions for individual Member States controlling for the number of legislative acts on which a Member State could vote over the observed period.

Some relate this adaptation process to a socialisation process (Beyers and Dierickx, 1998, Beyers and Trondal, 2004, Trondal, 2010). These studies argue that the views of EU committee members converge on certain issues as a result of working together. The newer Member States voting behaviour might also reflect a wait and see strategy highlighted by the downswings of contestation following EU enlargements.

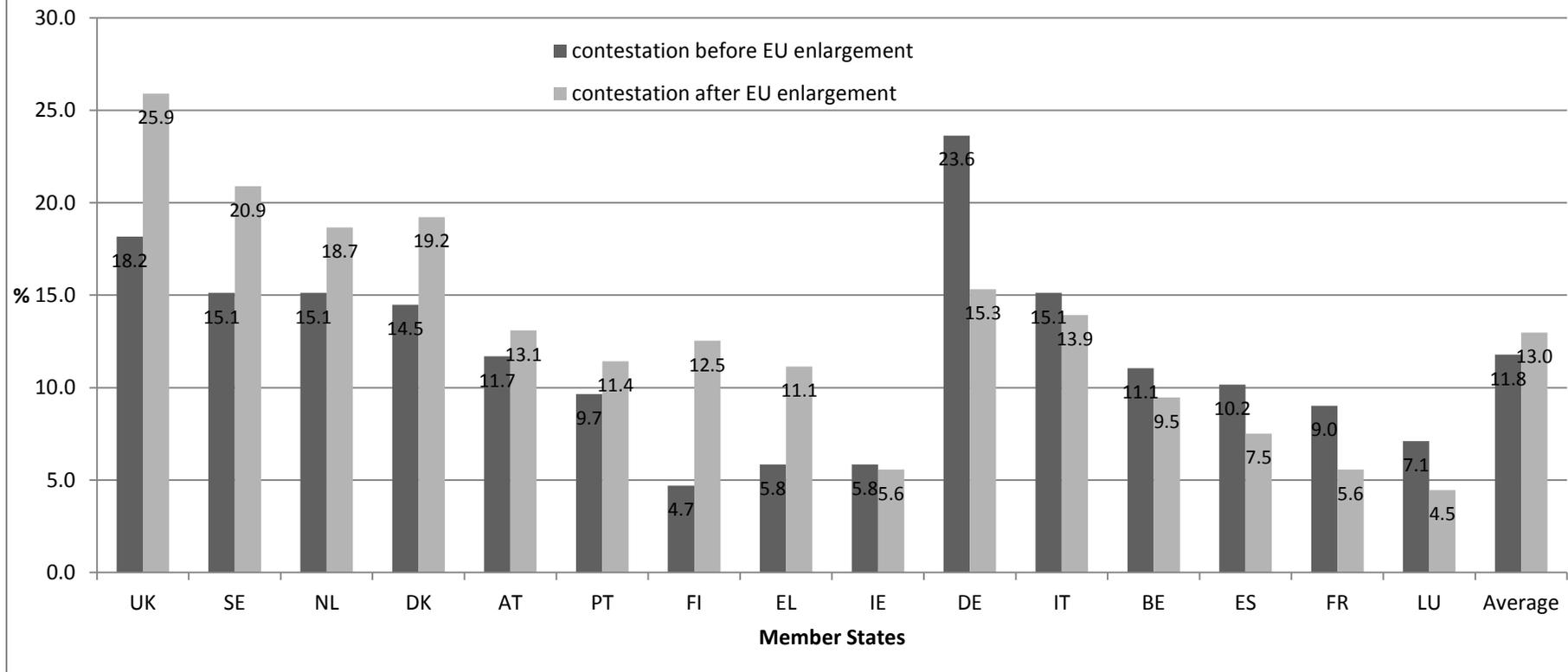
## **II. EU Enlargement: Changing Patterns of Contestation**

### **Contestation of older Member States before and after 2004**

Up to this point the analysis exposes the Council's stability of legislative and roll call activity in aggregate terms including for contested decisions over policy domains. However, the exploration of the data does not depict the evolution of individual Member States' voting behaviour within the Council. It also fails to explain why contestation as a share of legislative activity remains stable despite growing membership. A static analysis of contestation based on all contested decisions between 1995 and 2010 cannot help us in this respect. Similar to most analyses measuring the EU enlargement effect on contestation in the Council it considers the behaviour of all 27 member States together. It lacks a dynamic representation of contestation by comparing the decision making environment in the Council before-and-after the enlargement separately.

One way to measure the effect of EU enlargement on Council legislative politics is comparing the Member States' voting behaviour before and after EU-enlargement. The panel data of more than 27,000 individual votes over the period 1995-2010 collected for this paper is ideally suited for this exercise. A before-and-after comparison tells us whether the 15 older Member States are behaving differently in the period prior and subsequent to 1 May 2004 and permits an analysis of the variation of explicit contestation within a Council of 15 and 27 Member States. The group of newer Member States are excluded from the analysis because we cannot establish their initial conditions *ex ante*. For the older 15 Member States the comparison is drawn on the basis of their voting behaviour during the period of 1 January 1995 to 1 May 2004; and 1 May 2004 to 31 December 2010. Instead of normalising the Member States voting behaviour by the duration of membership I use the number of legislative acts for the two periods on which a public vote was recorded.

**Figure 6: Explicit Contestation of EU-15 before and after EU enlargement**



**Legend:** Country codes from two-letter ISO code (except Greece: EL, United Kingdom: UK).

**Source:** All recorded votes under all voting procedures (QMV, Simple Majority and Unanimity) collated from the Council minutes and the Council press releases of all individual Council sessions between the 1826th Council meeting for Agriculture (23 January 1995) and the 3061st Council meeting for Environment (20 December 2010). They were triangulated with the data from the monthly summaries of Council acts and the Summary statistics supplied by the Council Secretariat.

**Note:** Measure of contestation calculated on the basis of total votes against and abstentions for individual Member States as a % of total contested legislation before (1 January 1995-31 April 2004) and after (1 May 2004 – 31 December 2010) EU enlargement. On average Member States contestation has increased with 1.2%.

The resulting indicator tells us whether the Member States are behaving differently in the new Council decision-making environment (see figure 6: Explicit contestation of EU-15 before and after EU enlargement). As figure 6 shows the dog of EU enlargement does bark and old Member States' frequency of contesting a Council measure has gone up. By the most *conservative* measure, i.e. roll calls, the 15 Member States cast on average 1.2% more votes after 1 May 2004 compared to the period before. When prying open the average for the EU-15 some large variations emerge and individual Member states are behaving quite differently in the new Council environment. Predominantly smaller Member States, bar the UK (+8 of total votes cast), are publicly showing their opposition more often with Finland (+8%), Sweden (+6%), Greece (+5%) and Denmark (+5%) followed by the Netherlands (+4%), Portugal (+2%) and Austria (+1%) casting more votes after 1 May 2004. Ireland sits in the middle and its voting record has not changed. In contrast, the larger EU Member States vote less often after 1 May 2004 with Germany (-8%), Spain (-6%), France (-3%) and Italy (-1%) showing less opposition. The behaviour of Luxembourg (-3%) and Belgium (-2%) is similar to that of the two largest neighbouring countries but it contrasts with the behaviour of the third member of the Benelux countries, the Netherlands.

At first sight these findings do not chime with analysis based on data that emerged shortly after 2004 covering a shorter time span (Settembri, 2007, Mattila, 2009, Hosli et al., 2011) but a closer look indicates that they are complementary. These studies look at aggregate patterns rather than prying open the data and conclude that the level of public contestation in the Council has not gone up unless one takes into account formal statements in the Council (Hagemann and De Clerck-Sachsse, 2007). These analyses are dependent on observations immediately following EU enlargement (see Annex: overview of selected data sources in the literature) and do not reflect dynamic structural patterns given the volatility of EU legislative activity (see figure 1) indirectly confirmed by other studies (Golub, 1999, p. 740-741, Häge, 2011, p. 466, 473).

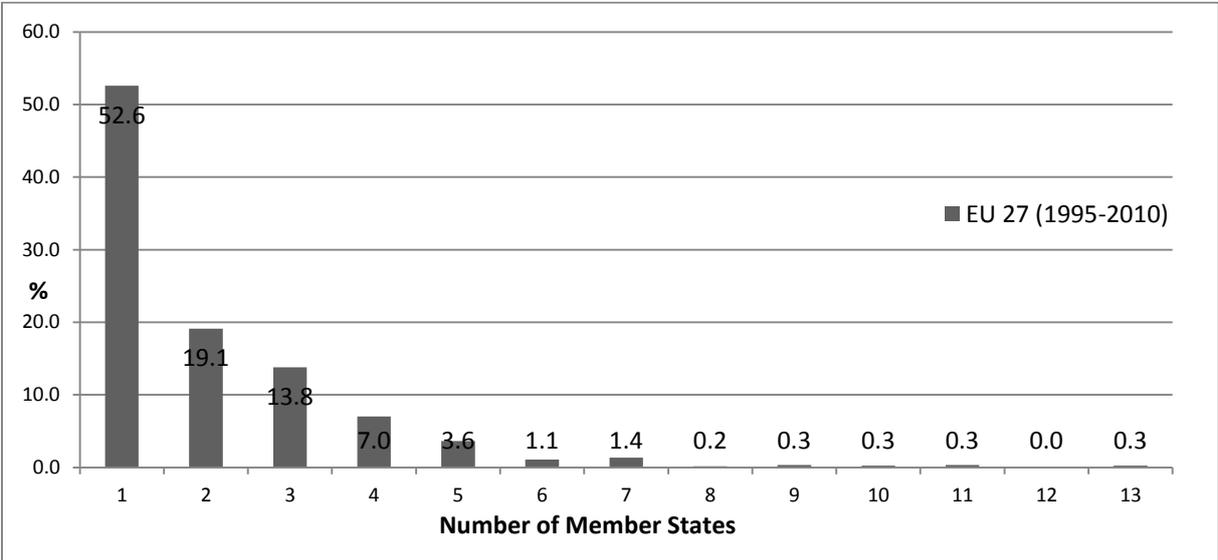
Comparing the before-and-after analysis (figure 6) with the overall frequency to explicitly contest (figure 5) for the period 1995-2010 we can observe that predominantly smaller countries (Finland and Greece) join the group of countries contesting more often in the period post 2004. Simultaneously the larger countries (Germany and Italy, bar the UK) are moving in the direction of the other larger countries France and Spain characterised by less

explicit opposition. In short, the frequency analysis indicates that subsequent to EU enlargement voting has risen slightly among the EU-15 in the Council. This development can be ascribed to explicit contestation on behalf of the smaller Member States of the EU-15 that have been opposing the majority more often and finding it somewhat more difficult to join the consensus within the enlarged EU. Simultaneously, the larger Member States, bar the UK, are explicitly contesting the majority less frequently and assist consensus building more often in the larger EU Council. These findings confirm earlier results (Plechanovová, 2011b, p 95) but appear somewhat in contradiction with respect to larger Member States (Mattila, 2009, p 845).

**Contesting Alone or Together: Coalition Formation in the Council**

One caveat of the before-and-after analysis is the failure to take coalitions of Member States into account. Individual voting behaviour needs to be complemented by coalition analysis as Member States often vote in coalitions in the Council. This section sheds light on whether EU enlargement had an effect on the size of these coalitions, their composition and their recurrence.

**Figure 7: Size of Coalitions in the Council (1995-2010)**



**Legend:** Number of Member States contesting together as a % of total legislative acts.  
**Source:** All recorded votes under all voting procedures (QMV, Simple Majority and Unanimity) collated from the Council minutes and the Council press releases of all individual Council sessions between the 1826th Council meeting for Agriculture (23 January 1995) and the 3061st Council meeting for Environment (20 December 2010). They were triangulated with the data from the monthly summaries of Council acts and the Summary statistics supplied by the Council Secretariat.

Also here the findings confound expectations and the post-2004 Council has not given way to numerous combinations of Member States voting together but instead to a reinforcement of existing patterns. Of total contested acts for the period 1995-2010, 52.6% was cast by individual Member States only, followed by a coalition of two Member States with 19.1%, three Member States with 13.8%, four Member States with 7%, and five Member States with 3.6% of contested decisions (see figure 7: Size of Coalitions in the Council (1995-2010)).

However, the picture changes dramatically with a before-and-after analysis comparing the EU-15 (1995-2004) and the EU-27 (2004-2010). Within the EU-15 individual Member States accounted for 59.2% of all contested legislative acts (see table 1: Size of Coalitions). This number declines to 41.1% in the context of the EU-27 but the pairwise contestation is similar (from 19.6% to 18.4%) while the frequency to contest legislation with three Member States or more rises substantially confirming earlier research (Hagemann and De Clerck-Sachsse, 2007, Mattila, 2009). In fact, the change is such that contesting individual Member States no longer represent the majority of contested decisions (Hayes-Renshaw et al., 2006, p. 169) and that contesting coalitions of two or more Member States have become the norm. A potential implication is that contestation might become more acceptable because it involves less individual Member States lowering the risk of standing out in the Council. More frequent than not, i.e. approximately 60% of all contested decisions, explicit contestation comprises more than one Member State. Member States are more inclined to 'formally vote against a proposal or abstain from voting when there are other Member States displaying the same choice' (Hosli et al., 2011, p 14).

When excluding *single* contesting Member States in the post 2004 period the data show that a significant part of contestations continues to come from coalitions composed of older Member States *only* accounting for 20.9% of total contested decisions. In contrast, the new Member States confound expectations that they would contest EU legislation *en bloc* and only 4.1 % of total contested decisions come from the new Member States *only*. They rather form mixed coalitions representing 33.8% and demonstrating that a majority of legislative acts are contested by coalitions in the Council from old and new Member States alike.

**Table 1: Size of Coalitions**  
**Before (1995-2004) and after EU enlargement (2004-2010, as a % of total)**

Number of Member States in Coalition	1	2	3	4	5	6	7	8	9	10	11	12	13	total
<b>EU-15 (1995-2004)</b>	<b>59.2</b>	<b>19.6</b>	<b>13.5</b>	<b>5.4</b>	<b>1.3</b>	<b>0.5</b>	<b>0.4</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>100.0</b>
<b>EU 27 (2004-2010)</b>														
of which only EU-15 (2004-2010)	32.2	9.7	4.6	3.4	3.2	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	53.1
of which only EU-12 (2004-2010)	9.0	3.2	0.2	0.7	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	13.1
of which only EU-27 (2004-2010)	0.0	5.5	9.4	5.7	4.4	2.1	3.0	0.5	0.9	0.7	0.9	0.0	0.7	33.8
<b>Total</b>	<b>41.1</b>	<b>18.4</b>	<b>14.3</b>	<b>9.9</b>	<b>7.6</b>	<b>2.1</b>	<b>3.0</b>	<b>0.5</b>	<b>0.9</b>	<b>0.7</b>	<b>0.9</b>	<b>0.0</b>	<b>0.7</b>	<b>100.0</b>

**Legend:** Number of Member States contesting together as a % of total legislative acts. EU-15= AT, BE, DE, DK, EL, ES, FI, FR, IE, IT, LU, NL, PT, UK, SE; EU12=BG, CZ, CY, EE, HU, LT, LV, MT, PL, RO, SK, SL

**Source:** All recorded votes under all voting procedures (QMV, Simple Majority and Unanimity) collated from the Council minutes and the Council press releases of all individual Council sessions between the 1826th Council meeting for Agriculture (23 January 1995) and the 3061st Council meeting for Environment (20 December 2010). They were triangulated with the data from the monthly summaries of Council acts and the Summary statistics supplied by the Council Secretariat.

These findings indicate that integration in the Council has been a success over the observed period and temper concerns over the potential emergence of new cleavages in the Council as a result of EU enlargement (Hosli, 1999, Zimmer et al., 2005). But the findings also reveal that the adjustment in the Council has come from the new Member States as older Member States continue to behave as before: they record high levels of contestation, their tendency to contest alone is unwavering and coalitions among older Member States *only* remain relatively high.

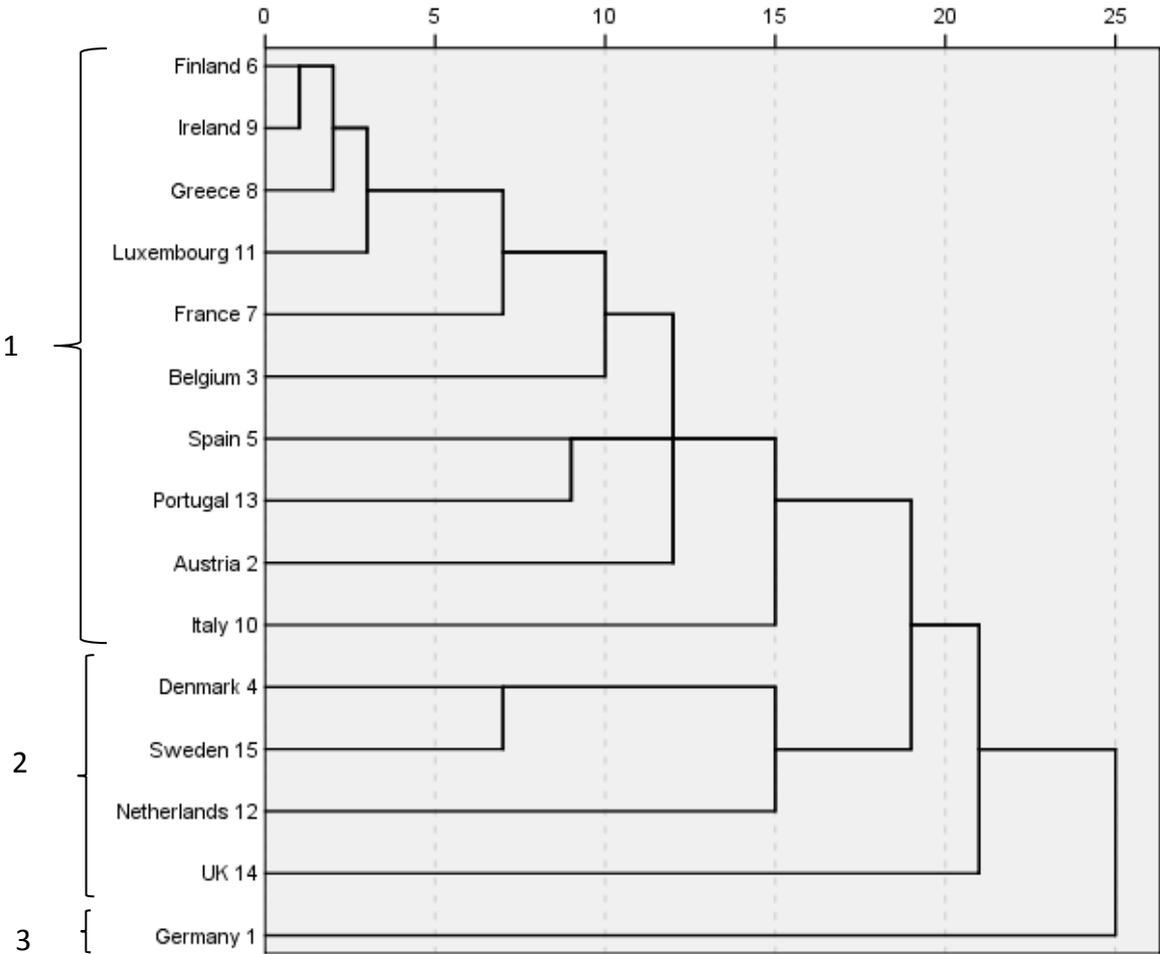
### **A Silent Majority and a Vocal Minority: Cluster Analysis and Dendrograms**

When combining the *ex-ante-and-ex-post analysis* in combination with *cluster analysis* the data tell us something about the nature and evolution of coalitions and more importantly the coalition's membership. Cluster analysis is a statistical technique that allows us to discern structure and associations in a data set without prior assumptions. The technique reduces the number of observations or cases by grouping them together into a smaller set maximising their similarity within the group and the dissimilarity between the groups. It allows us to see whether groupings of countries exist in the Council and how closely knit they are on the basis of their voting behaviour. One advantage of the technique is that we do not need to have any preconceived notion of whether groups of countries arise and what types of groups they might be. The clusters and groups are formed on the basis of a measure of distance between the variables, i.e. the explicit votes cast.

Cluster analysis is often represented by so-called dendrograms, which are fork like structures that characterise the proximity between the variables (see figure 8: Coalition formation over contested decisions in EU-15 (1995-2004)). The fork represents a similarity coefficient as a horizontal scale ranging from high similarity on the left side (close to 0) to low similarity on the right side (close to 25) of the fork. The closer the lines connecting the countries on the left side of the fork the more alike they are in their voting behaviour. The longer the lines connecting the countries and the more the bifurcation points move to the right side of the axis the less proximate they are to each other in their voting behaviour. In short, as the proximity in voting behaviour decreases and the bifurcation points move towards the right side in figure 8 Member States become less similar until the dendrogram ends up with a single linkage of the fork representing one grouping of all EU Member States.

Following the brackets that were added to the cluster structure to help the interpretation the dendrogram reveals three groupings of Member States for the period 1995-2004. The group at the top left (1) represents the so-called *silent majority* in the Council composed of countries that contest less and are seldom outvoted.

**Figure 8: Coalition Formation over Contested Decisions in EU-15 (1995-2004)**



**Legend:** Similarity measure of voting behaviour (EU-15, 1995-2004): Dendrogram (complete linkage).

**Source:** All recorded votes under all voting procedures (QMV, Simple Majority and Unanimity) collated from the Council minutes and the Council press releases of all individual Council sessions between the 1826th Council meeting for Agriculture (23 January 1995) and the 3061st Council meeting for Environment (20 December 2010). They were triangulated with the data from the monthly summaries of Council acts and the Summary statistics supplied by the Council Secretariat.

This group represents 7 smaller countries (Finland, Ireland, Greece, Luxembourg, Belgium, Portugal and Austria) and three bigger countries (France, Spain) with Italy joining last<sup>8</sup>. The second but less tightly knit group (2) is made up of a vocal minority of Denmark, Sweden and the Netherlands with the UK joining only at a looser end<sup>9</sup>. And then there is Germany (3) in a league of its own as the most vocal Member State closer to the vocal minority but still least similar of all other EU Member States when contesting specific decisions. Germany bowls in a league of its own and joins the other groupings last<sup>10</sup>.

In the period following 1 May 2004 the EU-15 continues to be characterised by three groups of Member States (figure 9: Coalition formation over contested decisions in EU-15 (2004-2010)). The silent majority (1) in the Council continues to make up 10 Member States but with Germany moving within the group but only at a later stage. The group now represents four bigger member States and six smaller with France and Spain tightly aligned. The vocal minority (2) continues to be more loosely packed but it has been joined by Finland. The UK plays in a league of its own but still does not find itself as removed as Germany was in the pre-2004 period.

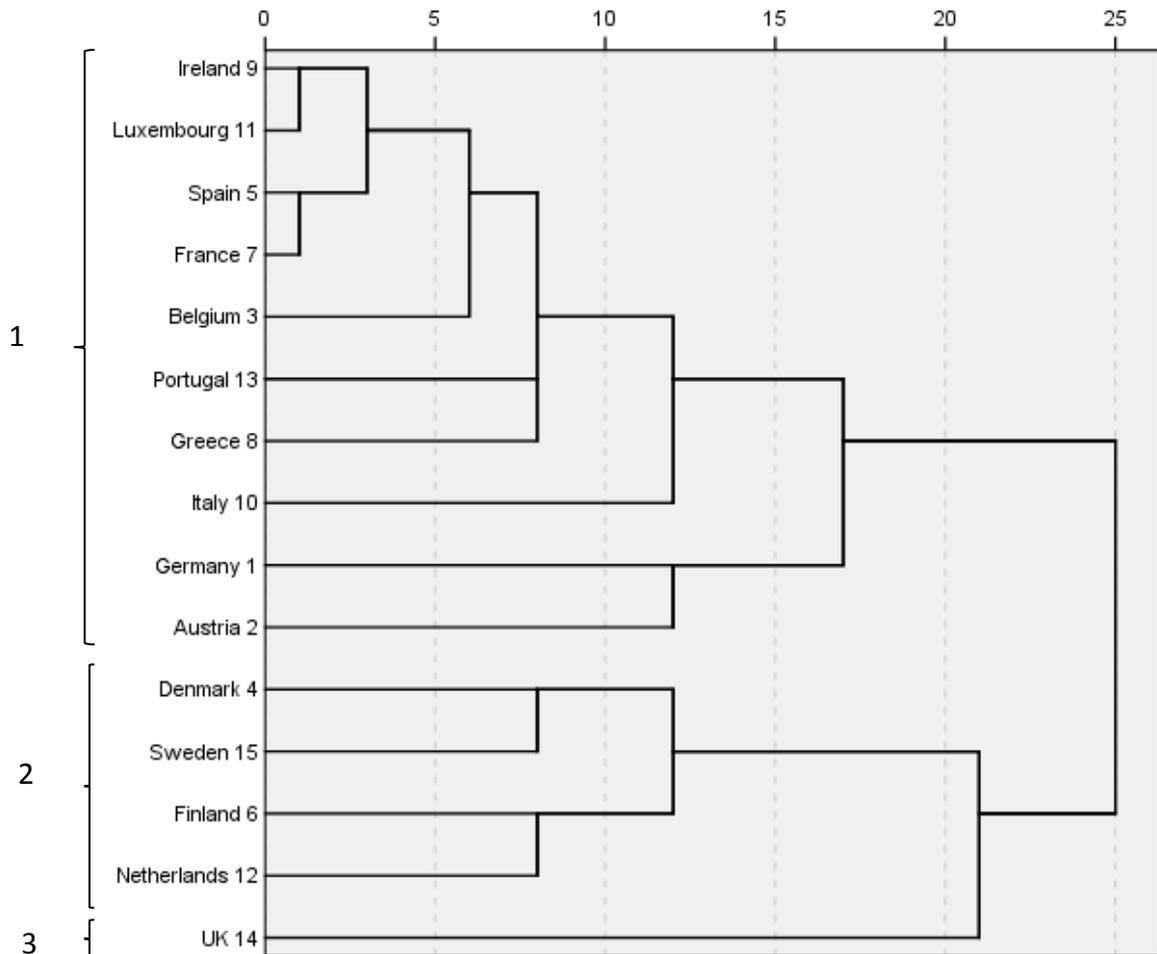
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<sup>8</sup> They represent 55 out of 87 weighted votes falling 7 votes short of a qualified majority (1995-2004).

<sup>9</sup> They represent 22 out of 87 weighted votes falling 4 votes short of a blocking minority (1995-2004).

<sup>10</sup> The analysis is similar to earlier findings using cluster analysis. See HAYES-RENSHAW, F., VAN AKEN, W. & WALLACE, H. (2006) When and Why the EU Council of Ministers Votes Explicitly, in: *JCMS: Journal of Common Market Studies*, 44, 161-194., p 189, Figure 5.

**Figure 9: Coalition Formation over Contested Decisions in EU-15 (2004-2010)**



**Legend:** Similarity measure of voting behaviour (EU-15, 2004-2010): Dendrogram (complete linkage).

**Source:** All recorded votes under all voting procedures (QMV, Simple Majority and Unanimity) collated from the Council minutes and the Council press releases of all individual Council sessions between the 1826th Council meeting for Agriculture (23 January 1995) and the 3061st Council meeting for Environment. They were triangulated with the data from the monthly summaries of Council acts and the Summary statistics supplied by the Council Secretariat.

Turning to the EU-27 the diversity has increased to four groups (see figure 10: Coalition formation over contested decisions in EU-27 (1995-2010)). The silent majority (1) is now composed of 18 countries with 14 smaller and 4 bigger Member States (France, Spain, Italy and Poland)<sup>11</sup>. France and Spain still make up the core of the silent majority as countries that infrequently express their opposition and vote on more similar issues. They rarely find themselves outvoted in the Council and are joined by a silent grouping of newer Member States. The vocal minority (2) now represents six countries with two new and more similar countries in voting behaviour, i.e. Malta and the Czech Republic<sup>12</sup>. Interestingly, Germany and Austria (3) stand somewhat apart and form a pivot that joins the silent majority and the vocal minority in the Council last. The UK (4) is now the only country in the EU that is least similar in its voting behaviour to other Member States.

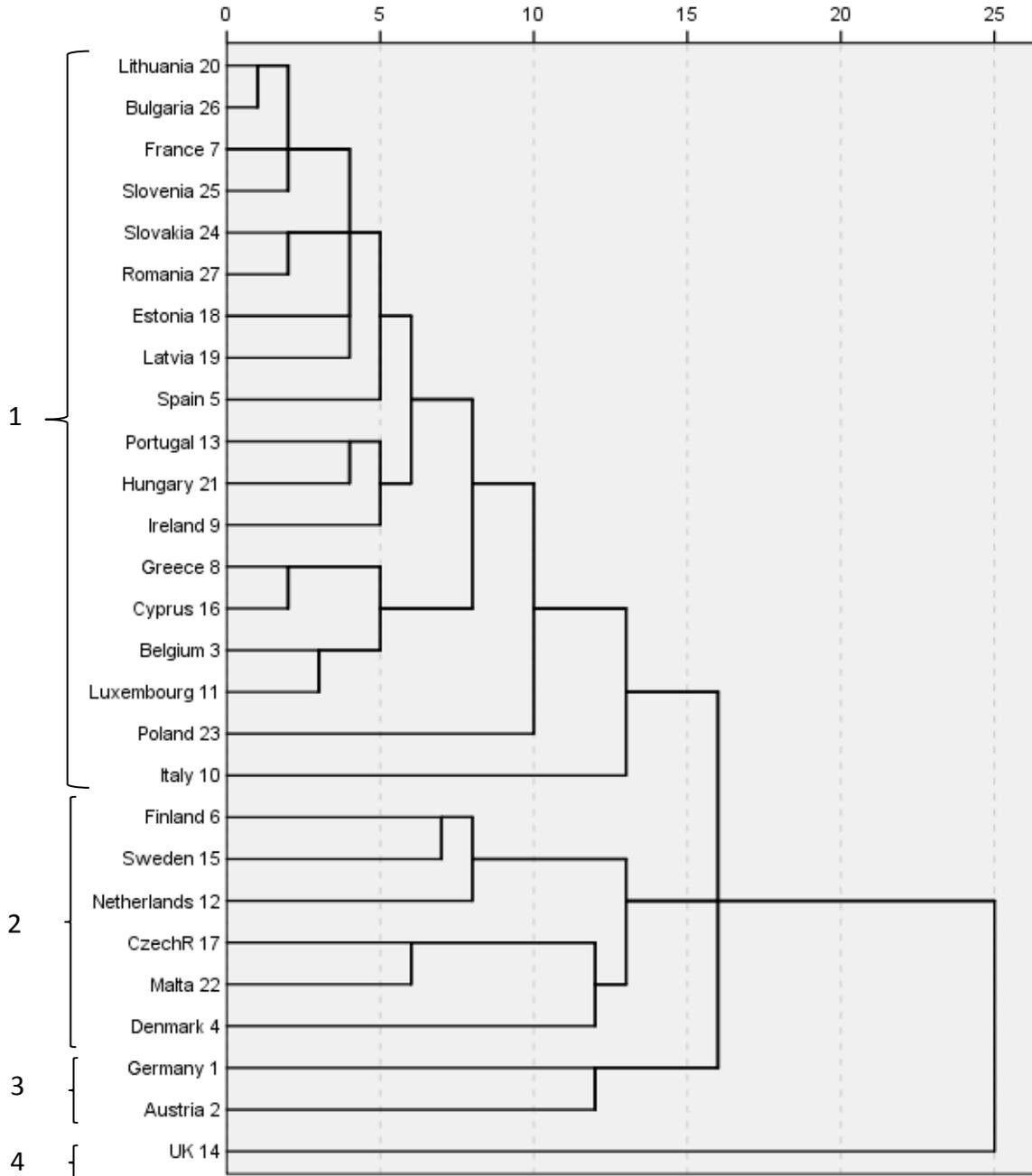
These findings are robust as the dendrograms confirm the results from the descriptive statistics as well as that of other cluster analysis (Plechanovová, 2011a, p. 262, figure 6): The geography of contestation in the Council evolved from a North-South before 2004 to a North and South-East divide after 2004. The evolution is largely the result of the voting behaviour of the newer Member States and their adjustment to the Council.

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<sup>11</sup> They represent 225 (201) out of 345 (321) votes falling 30 (31) short of a QMV for weighted votes calculated under the Nice Treaty with 25 (27) Member States.

<sup>12</sup> They represent 52 votes falling 38 (39) votes short of a blocking minority QMV for weighted votes calculated under the Nice Treaty with 25 (27) Member States.

**Figure 10: Coalition Formation over Contested Decisions in EU-27 (2004-2010)**



**Legend:** Similarity measure of voting behaviour (EU-27, 2004-2010): Dendrogram (complete linkage).

**Source:** All recorded votes under all voting procedures (QMV, Simple Majority and Unanimity) collated from the Council minutes and the Council press releases of all individual Council sessions between the 1826th Council meeting for Agriculture and the 3061st Council meeting for Environment. They were triangulated with the data from the monthly summaries of Council acts and the Summary statistics supplied by the Council Secretariat.

## Conclusions

This paper presents an aggregate picture of contestation in the Council of the EU. It is based on a new dataset representing the total population of public roll calls and recorded votes covering the period between 1995 and 2010. The data were collated over a number of years from the *Council minutes* and *press releases* of individual Council meetings, the *summary statistics from the Council Secretariat* and the *monthly summaries of Council acts*. The laborious triangulation of the individual roll calls from these publications allows us to access 16 years of roll calls with more detail for each vote. The data were analysed using descriptive statistics and cluster analysis and the findings supplemented with qualitative material from interviews with EU Council practitioners in the Council secretariat, the Council and the Member States permanent representations.

At the most aggregate level the data show that Council legislative activity has been relatively stable between 1995 and 2010. The data also reveal that Council's roll call activity runs parallel to the Council's legislative activity suggesting that the characteristics of public roll activity are more representative of total Council legislative activity than *hitherto* assumed. On an annual basis Council legislative and public roll call activity fluctuates significantly and is characterised by regular up- and downswings over the observed 16 years. This finding has methodological implications and highlights that analyses based on a shorter time span is reliant on the period from which the observations are drawn.

The timing of the ups and downs of the Council legislative and public roll call activity coincides with consecutive European treaty reforms (1999, 2003 and 2009) and EU enlargements (1995 and 2004, 2007). Council legislative activity and public roll calls rise before the entry into force of a new EU treaty and the accession of new Member States; they decline subsequently. The pattern can be explained on the basis of uncertainty triggered by changing legal bases in the different policy domains, new voting weights and Council majorities as well as anticipated corrections to more distributive EU policies. Under such uncertainty the Member States pass more legislation (and hence hold more roll calls) under procedures they are familiar with rather than wait for new procedures to take effect. This approach of frontloading EU legislation and eliminating the risk of bottlenecks

subsequently contributes to the functioning of the Council and its decision-making capacity in the longer run. During the downswings of legislative and roll call activity the Council digests change, leaving room for adjustment to the new institutional environment.

This explanation goes some way in understanding one of the more interesting puzzles that the data reveal: In contrast to general expectations the growth of membership from 12 to 27 Member States has not had any significant impact on the Council's overall level of legislative and roll call activity. The stability of Council legislative and roll call activity is puzzling because the growing heterogeneity of Member States has been associated with a more difficult decision-making environment characterised by declining legislative output and more publicly contested legislation. The empirical evidence does not bear this out and in the longer run EU enlargement appears not to have had any significant impact on the Council decision-making capacity.

At a lower level of aggregation the research finds that contested legislation is present in all EU policy areas with CAP, trade, internal market and CFP consistently eliciting higher levels of opposition. Environment, transport, health and consumer affairs, and, economy and finance also feature prominently. On an annual basis contested legislation is scattered across all the EU policy domains and also here the trend is relatively stable: CAP dominates every single year except for the period 2004-2006 when the records display more contested legislation in the area of trade, environment and transport policy. These findings indicate that EU policy areas with a more distributive impact on the Member States such as CAP, CFP, trade policy and internal market induce more contestation. Moreover, they attract 'no votes' rather than abstentions demonstrating that Member States carry stronger preferences over these issues and prefer to express a stronger negative vote compared to other policy domains. The anticipation of EU enlargement appears to have amplified contestation in the more distributive policy areas during the years in which legislative activity peaks (1998, 2003 and 2006).

Contestation with 'no votes' rather than abstentions in more distributive EU policy domains also reflects the Member States' overall voting behaviour. Particularly older Member States

use ‘no votes’ while newer Member States prefer to cast abstentions. Germany, the UK, Sweden, the Netherlands, Denmark, Poland and Italy respectively contest more and are regularly outvoted in the Council. Two larger Member States (Spain and France) and 18 smaller Member States<sup>13</sup> contest occasionally and support EU legislation more often. In terms of size and geographical location the data demonstrate that larger and more northern Member States contest more often *and* with ‘no votes’ – Italy being the only southern Member State. In contrast, smaller Member States from the South and the East oppose EU legislation less frequently. The latter usually make up the majority in the Council and prefer abstentions relative to ‘no votes’. France and Spain are the only two larger EU countries that share this type of voting behaviour.

These overall voting patterns have a large influence on the analysis of coalition formation and the geography of contestation in the Council even when adding EU policy domains to the equation. The research finds the presence of four groups of EU Member States in the Council: The first group represents the *silent majority* and is composed of a tightly knit set of 18 countries with 14 smaller<sup>14</sup> and four bigger Member States (France, Spain, Italy and Poland). France and Spain are deeply embedded in this coalition while Italy and Poland are located near the edge of this group. The silent majority is rarely outvoted, takes a similar position on most policy issues and is characterised by Member States from the South and the East. The second group exemplifies the *vocal minority* in the Council and comprises a more loosely packed set of six countries (Finland, Sweden, the Netherlands, the Czech Republic, Malta and Denmark). The vocal minority is regularly outvoted and with the exception of Malta includes more northern Member States. With a higher frequency of contestation but not necessarily in similar policy domains Germany and Austria represent the *pivot* between these two groups. The *UK* follows the most singular course being furthest removed in its voting behaviour from the other coalitions in the Council.

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<sup>13</sup> Austria, Czech Republic, Belgium, Portugal, Estonia, Latvia, Malta, Lithuania, Greece, Finland, Slovakia, Hungary, Luxembourg, Ireland, Romania, Slovenia, Cyprus and Bulgaria.

<sup>14</sup> Lithuania, Bulgaria, Slovenia, Slovakia, Romania, Estonia, Latvia, Portugal, Hungary, Ireland, Greece, Cyprus, Belgium and Luxembourg.

Supplementing this static picture of contestation with an *ex-ante-and-ex-post* analysis the research shows that the Big Bang enlargement of 2004 altered the Member States voting behaviour and had an effect on the coalition formation in the Council. Before 2004 contestation in the Council was dominated by single Member States opposing EU legislation while after 2004 contesting coalitions of two or more Member States became the norm. Against this background, contestation in the Council might have become more acceptable as growing membership lowers the risk for individual Member States to stand out.

These changes are entirely related to the voting behaviour of newer Member States. They oppose EU legislation more often in coalitions and confound expectations by not contesting EU legislation *en bloc*. Only a fraction of all contested decisions come from coalitions made up of newer Member States *only* while mixed coalitions of older and newer Member States represent over a third of total coalitions highlighting that in just over five years their integration in the Council has been highly successful. In contrast, the older Member States continue to behave as before: Their level of contesting alone is unwavering, coalitions among older Member States represent as much as one third of all coalitions in the Council and they continue to record higher levels of contestation overall.

There are, however, some significant changes to the geography of contestation: After 2004 the smaller Member States, in particular Finland, Greece, Sweden, Denmark and The Netherlands vote more frequently while bigger Member states (Italy, France, Spain and in particular Germany) vote less frequently. The only exception is the UK, which contests more often since the Big Bang enlargement.

These individual shifts have a substantial influence on the coalition formation analysis in the post-2004-era particularly for Finland, Greece, Germany and the UK. Until 2004 Finland rarely expressed contestation with a vote. The combination of more frequent contestation in similar policy domains has made the country move from the silent majority in the Council towards the vocal minority. Greece has followed a similar path and moved towards the outer edge of the silent majority coalition. Before 2004 Germany was the EU's most frequent contesting Member State. In the post 2004 era Germany has become more proximate to other larger Member States in the Council because its level of contestation dropped and its

voting behaviour became more similar to that of the silent majority. Only the UK moves away from all other coalitions and is now a Member State that stands apart in the EU Council.

This research paper concludes that frontloading legislation, changing voting behaviour, reinforcement of existing coalition patterns and the successful adjustment of newer Member States to the EU Council have contributed to the EU Council's decision-making capacity during the observed 16 years (1995-2010). The analysis provides a plausible answer as to 'why the Council been so successful in guaranteeing legislative and roll call stability'. The results contribute to the explanation of the apparent contradiction between profound institutional change and legislative stability in the Council. The findings not only improve our knowledge of the functioning, the decision-making processes and the geography of contestation in the EU Council but they also paint a rather counterintuitive portrait of Council decision-making processes during a period of consecutive European treaty reform and EU enlargement.

## Annex: Overview of Selected Data Sources in the literature

Author(s)	Source(s)	Period	Type(s)
<b>(Mattila and Lane, 2001)</b>	Summary Statistics from the Council Secretariat	1994-1998	Final decisions (definitive legislative acts)
<b>(Mattila, 2004)</b>	Summary Statistics from the Council Secretariat	1995-2000	Final decisions (definitive legislative acts)
<b>(Heisenberg, 2005)</b>	Summary Statistics from the Council Secretariat	1994-2002	Final decisions (definitive legislative acts)
<b>(Hayes-Renshaw, F., Van Aken, W., Wallace, H., 2006)</b>	Council minutes of individual Council meetings, Council press releases of individual Council meetings, Summary Statistics from the Council Secretariat,	1994-2004	Final Decisions (definitive legislative acts and other acts)
<b>(Dehousse et al., 2006)</b>	Summary Statistics from the Council Secretariat and Database L'observatoire des institutions européennes	1 January 2003-31 December 2005	Final decisions (definitive legislative acts) on which a vote was recorded
<b>(Hagemann and De Clerck-Sachsse, 2007)</b>	Council minutes of individual Council meetings and Prelex database	September 2001 to December 2006	final and non-final decisions adopted in the observed period and on which a vote was recorded.
<b>(Hagemann, 2007)</b>	Council minutes of individual Council meetings and Prelex database	January 1999– May 2004	final and non-final decisions ('all legislation adopted') on which a vote was recorded. Member States 'serious concerns' or stating 'direct disagreement' about a decision in the formal statements was treated as opposing a majority.
<b>(Settembri, 2007)</b>	Prelex and monthly summaries of Council acts	2003 (Greek and Italian Presidencies);	Definitive legislative acts and other acts (acts adopted on a proposal

		2005 (UK Presidency); and, 2006 (Austrian Presidency)	from the Commission or Member State and acts having as a legal basis a treaty article or a piece of secondary legislation)
<b>(Mattila, 2009)</b>	monthly summaries of Council acts	1 May 2004-31 December 2006	Final Decisions (definitive legislative acts and other acts) on which a vote was recorded
<b>(Thomson, 2009)</b>	Council agendas	1999, 2000; 1 May 2004-December 2005.	politically important legislative proposals subject to consultation or co-decision with directives, regulations and decisions before 2004 and directives and regulations after 2004.
<b>(Deloche-Gaudez and Beaudonnet, 2010)</b>	monthly summaries of Council acts	2002-2008	Final Decisions (definitive legislative acts) on which a vote was recorded
<b>(Plechanovová, 2011b)</b>	Provisional agendas of individual Council meetings, Council minutes of individual Council meetings, Council press releases of individual Council meetings, monthly summaries of Council acts and Prelex database.	1 May 2004-December 2006	final and non-final decisions on which a vote was recorded
<b>(Plechanovová, 2011a)</b>	data survey of various documents potentially including information on position of EU member governments on proposed legislation in the Council	May 2004-June 2009	final and non-final decisions on which a vote was recorded (all proposals presented to the EU Council)
<b>(Hosli et al., 2011)</b>	Monthly summaries of Council acts	1 May 2004 - 31 December 2006	Final and non-final decisions (definitive legislative acts and other acts) on which a vote was recorded

<b>(Van Aken, 2012)</b>	Council minutes of individual Council meetings, Council press releases of individual Council meetings, Summary Statistics supplied by the Council Secretariat, monthly summaries of Council acts.	23 January 1995-20 December 2010	Final and non-final decisions (definitive legislative acts and other acts) on which a vote was recorded
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