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**Constitutional Reform in the light of EU Enlargement.
Negotiating Efficiency, Legitimacy and Distribution**

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1. Introduction

The Eastern Enlargement of the European Union (EU) doubled the number of member states almost at once from 15 to 27. From the Amsterdam Treaty (1997) until the Lisbon Treaty (2007) member states tried to find an institutional setting for the enlarged EU ensuring efficient and legitimate decision making as well as a new distribution of power. The crucial issues discussed were the composition of the European Commission and European Parliament and the weighting of votes in the Council, including the introduction of a Double Majority. We can observe that the institutional capability to action and the fear of gridlock were dominant features in the discussion about these reforms. At the same time it took the European Council almost 10 years to agree unanimously to a final sufficient version of these changes. At the first glance it is puzzling for outside observers why the negotiation about decision making rules was such a long-term and cost-intensive process - which is not finalized yet¹. Obviously, member states are not only concerned with EU's institutional capability to action and the fear of gridlock when reforming institutions to cope with enlargement. When thinking about the five-day-and-night struggle at the Nice Treaty negotiations² or Poland's fight for "Nice or death"³ on the eve of the adoption of the Constitutional Treaty we can assume: Distributional interests of every individual member state play role and hindered the community to find a quick and collectively satisfying solution for institutional reform.

The above described dramatic and rigorous fight for a reform of the decision making institutions in the light of EU's Eastern Enlargement points to one crucial political and theoretical problem: The design and change of decision making institutions in international organisation. The enlargement case shows that institutions which define the "rules of the game" for a certain community are twofold: On the one hand, they have to ensure efficient decision making in the group to be able to solve collective problems, on the other hand every member of the community wants to satisfy its individual interest and get the biggest "piece of the pie". Thus, the general theoretical phenomenon of interest in this paper is the design of decision making rules in international organisations and how they are intentionally changed in the light of an increase of group size. While the emergence of international organizations and their institutional design is comparatively well explored

¹ The Lisbon Treaty is not in force as it is not ratified by every member state yet. In this paper I assume that the Lisbon Treaty will be the final outcome of the negotiations.

² For more information see e.g. Weidenfeld, W. (2001). *Nizza in der Analyse*. Gütersloh: Bertelsmann Verlag. .

³ More information on: <http://www.warsawvoice.pl/view/3562/> (April 2, 2009).

(Bräuninger 2000), we know quite less about the process of institutional *change*. This applies for the nation state (Voigt 2001, Benz et al. 2006) as well as for international organizations (Hug/König 2007: 105). In this paper, the objects of interest are decision making rules and the distribution of power and participation rights defined by them. A modification of these rules, laid down in the European Treaties, follows a formal, long-term procedure: After negotiations at the Intergovernmental Conference (IGC) and consultation of supranational actors, the amendments have to be accepted with unanimity. The case of EU enlargement and the following IGCs about institutional changes (Amsterdam 1997 – Lisbon 2007) are chosen as empirical examples. I argue that this recent process reflects the problem of institutional design and its consequences for collective and individual interests, for efficient decision making and distribution of power in an international organization very well.

Beside the theoretical implications, the issue is of high practical relevance. Enlargement is an important element of EU foreign policy as well as its identity (Schimmelfennig 1997). In this context, the question of the institutional capability to action and the “absorption capacity” of the EU is a crucial factor when deciding over future enlargements (4. *Copenhagen Criterion*)⁴. As seven countries from the Balkans and Turkey have an official status as candidate or potential candidate countries, it is likely that the EU will enlarge to 32 or even more member states⁵. The aim of this paper is to elaborate what we can learn from the recent Eastern Enlargement about the behaviour of member states when changing the rules of the game to cope with an increase of group size.

From a normative perspective one could question which institutions are the “best” (fair and efficient) for the enlarged community with 27 or even more than thirty member states. This paper rather aims to shed light on this problem by analysing how negotiating governmental actors do behave when changing the rules of the game and which motives are the central driving forces. Is enlargement a functional need to reform the institutions and does the process of institutional change leads to simply more efficient decision making rules? Obviously this is not the case. Or is enlargement intentionally used by member states to renegotiate the distributional outcome of

⁴ The Copenhagen Criteria define the conditions the EU set for membership. The European Council held in June 1993 in Copenhagen decided on them. They require that candidate countries have stable democratic institutions, a functioning market economy and the ability to absorb the *acquis communautaire*. Additionally the Union’s capability to absorb new member states was added as a 4. Copenhagen Criterion and stressed at the end of the 90’s (http://europa.eu/scadplus/glossary/accession_criteria_copenhagen_en.htm),

⁵ Croatia, Former Yugoslav Republic of Macedonia and Turkey have the official status as candidate countries and accession negotiations are opened. Albania, Bosnia & Herzegovina, Montenegro, Serbia and Kosovo have the status as potential candidate countries (see: http://ec.europa.eu/enlargement/the-policy/countries-on-the-road-to-membership/index_en.htm)

rules, which would not have been possible without the argumentative link to enlargement? – as Steunenbergh (2002: 97) argues. Or are even discriminatory decision making rules introduced, which give new members a worse position than the old member states? – as Schneider (2009, 2006, Plümper/Schneider 2007) shows for the distribution of material gains from the EU Structural Funds and the Common Agricultural Policy. To answer these questions, I will first present the negotiated changes in the decision making rules from the Amsterdam to the Lisbon Treaty. I analyse in how far the outcome was an enhancement of the EU’s institutional capability to action or rather reflects the fight for distributional interest of member states (part 2). Following this, I will turn to an analytical framework for why and how an extensive analysis of negotiations is needed to gain insights into the process and outcome of institutional change. Therefore, I will develop a theoretical and methodological approach for analysing rhetoric action in EU treaty negotiations (part 3 and 4). Finally (part 5), the empirical results of a negotiation analysis of the Amsterdam and Nice Treaty negotiations are presented.

2. Enlargement and Treaty Change

This chapter shows what we can learn from the empirics of institutional development in the light of previous EU enlargement. We can see in the table below that the EU increased from originally six to nowadays 27 member states by three big “enlargement rounds”.

Figure 1: Enlargement 1973-2007

Year of Enlargement	New MS	No of new MS	no of MS after enlargement
1973	United Kingdom, Denmark, Ireland	3	9
1981	Greece	1	10
1986	Portugal, Spain	2	12
1995	Austria, Finland, Sweden	3	15
2004	Poland, Czech Republic, Slovakia, Slovenia, Hungary, Estonia, Latvia, Lithuania, Cyprus, Malta	10	25
2007	Bulgaria, Romania	2	27

The aim of this paper is to identify how member states solved the problem of an increase of group size and institutional adaption to ensure representation of the new member states and, at the same time, efficient decision making.

2.1 Theoretical Assumptions

How are changes in the issues of interest (composition of Commission and EP, weighting of votes in the Council, threshold of majority in the Council) covered in the literature? In general, an analytical connection between enlargement and these obviously enlargement triggered changes is quite rare (Schneider 2002). Whereas the weighting of votes was intensively covered, the composition of the Commission and the EP did not raise much attention in the literature. Regarding the general problem of intentional institutional design – which an EU treaty change process is- Tsebelis argues, that it cannot lead to collective-efficient outcomes (1990: 104). As the “veil of ignorance” (Rawls) is missing, actors can anticipate their position under the rules in question and create institutions which are in their individual favour and not in the favour of the community. Efficient institutions which provide a net-gain for everyone can only be created under the “veil of ignorance”, by which the actors do not know their future provision under the new rules (Tsebelos 1990:100, Frey 1997: 110). Transferring this assumption to institutional change in the light of EU enlargement one has to expect an outcome most favourable for the most powerful (in terms of negotiation power) actors. Rational actors reflect about the consequences of an increasing membership size and of a certain institutional setting. This anticipation leads to a certain institutional reform, preserving the pay-off of the current member states after enlargement.

A research strand dealing with the consequences of EU enlargement for Council decision making emerged in the wake of the recent Eastern Enlargement (Dobbins 2003; König/Bräuninger 2000, 2004; Schneider, Dobbins et al. 2004). The research interest of these studies is mainly in how far enlargement will change decision making procedures (not rules itself) in the council due to growing heterogeneity. König/Bräuninger (2000) ask how the voting scheme in the council has to be reformed to avoid increasing gridlock and redistribution danger after Eastern enlargement⁶. Among the rational-choice-school it is a popular endeavour to apply power indices to possible voting systems in the council (Strategic Power Index, Shapley Shubik, Banzhaf Power Index). Most of the studies are using the Banzhaf Power Index to assess the expected likelihood of a certain member state of being decisive in a political assembly like the EU Council (Felsenthal/Machover 1997, Lane/Maeland 2002, Leech 2002). These studies provide information on consequences of a certain institutional design of the weighting of votes for the distribution of power. The outcome of negotiations about these rules is only explained by the power considerations of member states. I

⁶ In later studies they came to the result that beside voting power the heterogeneity of policy preferences is crucial to gain a realistic view on the consequences of eastern enlargement (König/Bräuninger 2004).

argue that power considerations are an important motive when changing rules, but – as I will show in this paper - efficiency considerations like the EU's ability to action has to be regarded as well.

Steunenberg (2002) combines power indices with an argument based on the rhetoric of actors: He claims that enlargement can induce institutional change in so far as "current member states can employ enlargement as a strategy of renegotiation in order to improve their own position" (2002: 97). The reweighting of votes in the Nice Treaty in favour for the bigger member states was only due to the fact that it was related to enlargement: "Here enlargement clearly provided an opportunity for change, which otherwise would not have been possible" (97). However, he does not provide evidence for the causal mechanism of how member states linked the reform need with enlargement and if the outcome can be traced back to the argumentative behaviour. Still, power considerations of individual member states are the central factor when analysing rule changes.

Christina Schneider focuses on the redistribution of enlargement gains, but not in respect of power rights but material gains and losses (Schneider 2009; Plümper/Schneider 2007). She argues that old member states introduced discriminatory rules for new member states regarding the distribution of material gains. Transferring this to decision making rules, one has to assume that old member states design rules of the game which systematically discriminate new member states. When solving the problem of efficiency and distribution by unequal distribution of power rights for the new member states, the consequences of enlargement are not so costly for old member states. In the following I will present the institutional development of the EU in line with the several enlargement rounds. The aim is to assess if we find empirical evidence for the above mentioned theoretical assumptions.

2.2 Successive Enlargement and Institutional Adaption (1973 – 1995)

With the first enlargement in 1973 (United Kingdom, Denmark, Ireland) the Community enlarged from six to nine member states. At this time, a major debate about institutional reform did not occur (Preston 1997). It was agreed that the UK should be represented in the institutions in the same proportion as France, Germany and Italy. Thus the commission was expanded to fourteen with the UK having two commissioners and 36 members of the EP. The number of votes was changed in that respect that it was multiplied by 2.5, but the threshold was maintained at 71% (Preston 1997: 181f).

The Mediterranean enlargement (1981: Greece; 1986: Spain, Portugal) doubled the number of member states and raised a debate on institutional reform (European Commission 1978a and 1978b). Reform plans like the *Genscher-Colombo Initiative* (1981) or the *Dooge-Comitee Report* (Comitee for Institutional Affairs 1985) proposed reforms of the institutional provisions to enhance efficiency in the Union: with the argument of the challenge and thread of enlargement the actors claimed for an increased use of QMV, a reduction of Commissioners (one per country) or enhanced power of the EP. At the end, all major institutional principles remained the same: The numerical representation in the Commission reaffirmed the basic principle that all member states must be represented; the weighting of votes in Council was allocated according the existing principle. The same applies for the distribution of seats in the EP: Even though the relative power of every member state changed, the absolute number of representatives for every member state remains the same.

The next enlargement took place in 1995 integrating Finland, Austria and Sweden into the European Union. For the first time, a vital debate took place on the allocation and weighting of votes for Qualified Majority after the increase of group size. The *Ioannina Compromise*⁷ solved this Problem at least temporarily; it defined a threshold of 71% for a Qualified Majority and the weighting of votes remained the same for the old member states. The compromise reinforced the classical method by refusing to undertake major institutional reforms (Preston 1997: 190).

So far we can conclude, that enlargement is not automatically used as an occasion to renegotiate institutional provisions⁸. Further on, for the case of previous enlargement we can observe that new member states were not discriminated when distributing power rights. The numerical adoptions were made according the same principles as for the old member states. According this brief empirical overview, the theoretical assumptions of Steunenberg (2002) or Schneider (2009) cannot

⁷ The *Ioannina Compromise* takes its name from an informal meeting of foreign ministers in the Greek city of Ioannina on 29 March 1994. Among the decisions taken at the meeting was a Council decision concerning the specific question of qualified majority voting in an enlarged 16-member Community. The decision was later adjusted in the light of Norway's decision not to join. The resulting compromise lays down that if members of the Council representing between 23 votes (the old blocking minority threshold) and 26 votes (the new threshold) express their intention of opposing the taking of a decision by the Council by qualified majority, the Council will do all within its power, within a reasonable space of time, to reach a satisfactory solution that can be adopted by at least 68 votes out of 87. Following the re-weighting of votes in the Council of Ministers, the Treaty of Nice puts an end to the Ioannina compromise. (Source: http://europa.eu/scadplus/glossary/ioannina_compromise_en.htm; accessed: 03 March 2009)

⁸ The *weighting of votes* in the Council: from 1973 until 1995 the voting weight remained the same despite three enlargements. The required votes for QMV increased but the threshold remained the same. Up to the 1995-enlargement the *number of members of the EP* was simply added – from 410 in 1979 to 518 in 1986 and increased 1995 to 626. *Composition of the Commission*: With more than 15 member states there was a need to reduce the number of Commissioners. Up to 1995, new member states had one or two Commissioners, according their size.

be confirmed for the change of decision making rules during previous enlargement rounds: First, Enlargement does not generally trigger institutional reforms in the EU and second, enlargement does not need generally lead to permanent or transitional discriminatory decision making rules for the new member states.

2.3 The Institutional Challenge of Eastern Enlargement (1997 – 2007)

At the beginning of the 90's the EU was confronted with accession applications from 12 post-communist countries, internal demands for greater accountability and democratic legitimacy of the decision making system and, at the same time, demands for greater efficiency and use of majority voting. Despite the head of states obviously agreed on the need for reforms in the light of enlargement and wanted to ensure efficiency and legitimacy (Maastricht Treaty Annex 1992, Presidency Conclusion Corfu June 1995:11), the reform of institutions to allow for the accession of more member states was a ten-year long process leading to four treaty revisions. For sure, the selected issues were not the only issues on the agenda for treaty change, but still they were one of the most crucial "bones of contention". In the following I will present the reform steps of these provisions from the Amsterdam Treaty in 1997 until the (so far) final outcome of the Lisbon Treaty.

Table 1: Institutional Evolution 1997 - 2007

	Amsterdam	Nice	Convention Outcome	Constitutional Treaty	Lisbon
Commission: Composition					
Maximal members	20 members	One member per member state	13, plus President, one Vice-President and European Foreign Minister	First Commission until 2014: one member per MS, after that: rotation principle (2/3 of MS)	First Commission until 2014: one member per MS, after that: rotation principle (2/3 of MS)
EP: Composition					
Maximum	700	732	736	750	750
Min. each MS	6	6	4	6	6
Max. each MS	99	99	not fixed	96	96
Council: Weighting of Votes					
Decision I (by COM-initiative)	1 threshold (62/87 votes)	1 threshold (169/237votes)	Majority of MS, 3/5 population	<i>Double Majority</i> 55 % of MS (at least 15 countries), 65 % of population	<i>Double Majority</i> 55 % of MS (at least 15 countries), 65 % of population
Decision II (not by COM-initiative)	2 thresholds (62/87 votes must represent at least 10 MS)	2 thresholds 169/237 votes must represent 2/3 of MS	Double Majority 2/3 MS 3/5 population	<i>Double Majority</i> 72 % of MS (at least 15 countries), 65 % of population	<i>Double Majority</i> 72 % of MS (at least 15 countries), 65 % of population

Source: Own illustration

The *Composition of the Commission* was subject of negotiations since the Amsterdam Treaty. In the light of 27 member states the system of one or two commissioners per country could hardly be

upheld. Almost every member state agreed to a reduction of the commission. Two alternatives were discussed: first, the number of commissioner should be reduced according the principle “one commissioner per country”; the second option foresees a fixed number of commissioners or a fixed number of member states, which would imply a rotation principle. After a limitation to “one state, one commissioner” member states agreed on the principle of 2/3 of member states should be represented in the commission. This case is a very good example for the trade-off between collective and individual gains: It is efficient to reduce the number of commissioners; but at the same time this implies an abdication of ones own commissioner. Interestingly, the member states commonly agreed on a certain reduction. But, this rule can be changed by the council unanimously without a formal treaty revision. This means that the rule is quite flexible and could be used – as the Irish case shows⁹ – according the needs of member states and changed again when new accession countries are entering the club. The *Composition of the European Parliament* and the introduction of a fixed ceiling of members were discussed. Until 1995 the number of members increased with every enlargement round and member states lost relative power, but the absolute number of representative for every member state remains the same¹⁰. In the recent treaty change negotiations member states agreed on a ceiling of 750 members. The distribution is not fixed yet, but can be decided upon unanimous council decision. Also this issue did not attract much discussion: most of the countries agreed to a ceiling and a reduction of the absolute members. The most salient issue was the *Weighting of Votes in the Council*. The discussion went from the question of threshold of votes to the introduction of a Double Majority. At the end, the system changed from weighted votes (agreed on in Amsterdam and Nice) to a system of *Double Majority* agreed on in the Convention.

We can observe that member states came to an institutional solution which reduces the relative and absolute power of most of the member states after enlargement: The number of commissioners was reduced to one commissioner per country. From 2014 onwards the commission should be reduced to a number of commissioners representing 2/3 of member states. This is a clear reduction of power for every member state. Interestingly, in this case a transitional period was introduced as Schneider shows for the distribution of material gains. Nevertheless, this transitional period does not favour

⁹ After the negative result of the Irish referendum on the Lisbon Treaty member states agreed to ensure Ireland a permanent commissioner. It might be possible that member states will introduce the rule “one state, one commissioner” instead of fixing a number.

¹⁰ Up to the 1995-enlargement the number of members of the EP was simply added – from 410 in 1979 to 518 in 1986 and increased 1995 to 626.

old member states, but was rather an instrument to postpone the losses of power for *every* member state.

It is puzzling, why member states agreed to these changes. When assuming a rational, power-maximizing actor this can hardly be fully explained as according these assumptions every member state aims at gaining the biggest “piece of the pie” (Tsebelis 1990). When taking into consideration that efficient decision making is a gain for the EU as a whole, but also for the individual member state, this might explain the institutional outcome. From this might follow, that member states are not only following an individual rationality but take into consideration a collective rationality. Still, it is interesting to note that member states redistribute the need for change among them and did not transfer the main burden to accession countries – as Schneider (2009, 2006) has shown for case of the redistribution of material gains (Schneider 2009).

Despite these results might be surprising from a rational choice theoretical point of view we can find two explanations for this “institutional turn”.

- One explanation follows the orientation of power-seeking, utility-maximizing actors, but enhances the sources of utilities: Probably the pay-off of a certain institutional design is not only affected by its allocation of power. Other sources of utility might exist, which are reflected in the final institutional outcome. I will come back to this argument later on.
- A second explanation might be derived from the norms and standards of the EU and “rhetoric action” of member states: The “capability to action” was an important argument when discussing consequences of Eastern Enlargement. In public statement of the EU and member states it was commonly agreed on that the EU had to adopt institutional changes to cope with the increase of membership size.

Already in the Annex of the Maastricht Treaty (1992) member states added a final provision on the introduction of a new Intergovernmental Conference to cope with the challenge of enlargement. In 1995, the European Council of Madrid asked for an Intergovernmental Conference and established a reflection group (Presidency Conclusion, European Council Madrid, 1995). This reflection group should “elaborate options in the perspective of the future enlargement of the Union on the institutional questions set out in the conclusions of the European Council in Brussels and in the Ioannina agreement” (Presidency Conclusion Corfu, 1994). Were this the real driving forces of member states when changing the rules of the game or were member states “entrapped again” (Schimmelfennig 2008) by their rhetoric commitment to enhance the EU’s capability to action and

its absorption capacity? In the following I will present the argument of “rhetoric action” and how actors’ rhetoric commitment to a certain normative principle might lead to decisions, which are not expected when assuming consequently member state governments as rational, power-seeking actors.

3. Negotiating the Rules of the Game

Schimmelfennig (2000, 2001, 2003) elaborated the theoretical concept of “rhetoric action” when he aimed to explain EU’s decision to enlarge to the East. As the adoption of post-communist countries is a central part of the community’s identity – so his argument – even opposing member states could not frankly oppose an accession, but had to support it (Schimmelfennig 2003: 279). Schimmelfennig argues, that member states’ strategic, rhetorical commitment to the Eastern Enlargement “entrapped” them: At the end, they could not deny the enlargement anymore without losing their credibility.

I argue that it is a fruitful endeavour to transfer this assumption of “rhetoric action” to the analysis of treaty change negotiations in the EU. In most negotiations – and this applies also for the EU – actors have to justify their positions. In this case, not only Schimmelfennig assumes that pure interest-based preferences are strategically hidden behind norm-based arguments (Holzinger 2001a, Risse 2001, Schimmelfennig 2003, Schimmelfennig/Rittberger 2007, Hafner-Burton 2008, Benoit 2001). Before elaborating an analytical framework to find evidence for rhetoric action in EU treaty negotiations, I will present the theoretical concept of “rhetoric action” more detailed. Therefore I will integrate it into a greater theoretical debate, the “arguing-bargaining-debate”, on general approaches for analysing and categorizing forms of communication in international negotiations.

3.1 Communication in International Organizations

Elster (1998) prominently introduced the concept of communication in collective decision making about constitutional rules. He identifies three forms of collective decision making: arguing, bargaining and voting (1998: 5) and assumes that groups reach decisions about constitutional rules by one of these procedures or even by a combination of them. In this context, he defined “arguing” and “bargaining” as certain forms of communication, whereas voting is not (1998: 6). According Elster, “arguing” is based on a mode of communication aiming to persuade the opponent and let

the better argument win. In contrast, “bargaining” is based on power and an aimed equilibrium between actors’ preferences; the actor with the biggest bargaining power wins.

Negotiations in an international community were subject of various International Relation studies (*selection*: Risse 2001 Schimmelfennig 2003, Allan/Schmidt 1994, Frey 1997). Beside formal game-theoretic bargaining models, which analyse negotiations based on preferences and utilities, a research strand arose, based on communication modes between actors. This research strand roots in the dichotomy between arguing and bargaining developed by Elster. The central question is: Are states are rather arguing or bargaining when negotiating in an international environment for international agreements (Müller 1994, Schneider 1994, Risse 2001, Holzinger 2001a). Holzinger made a contribution to the arguing-bargaining debate in International Relation research with denying the constructed dichotomy between arguing and bargaining and introduced the communication mode of “strategic arguing” (Holzinger 2001a, 2004). According her, arguing can be used strategically as a “means for bargaining”, which is called “strategic arguing” (Holzinger 2004: 202). Schimmelfennig’s concept of “rhetoric action” (1997, 2003) contains the basic idea of strategic arguing: He assumes that actors in international negotiations strategically employ certain normative arguments and calls this process “rhetoric action”. As a consequence, he claims, actors get rhetorically entrapped and cannot realize their preferences perfectly when these preferences contradict the community ethos. Holzinger’s conception of “strategic arguing” and Schimmelfennig’s notion of “rhetoric action” base on a very similar assumption: the strategic use of norm based arguments. Nevertheless, whereas Holzinger does not strive for identifying possible consequences of “strategic arguing”, Schimmelfennig’s central argument is that “rhetoric action” entraps actors and leads to unexpected decisions. Second, Holzinger does not cover where do the “arguments” come from, and what they are based on to have a powerful effect as “strategic arguments”. Schimmelfennig claims that the “community environment” is the basement, as rhetoric action has to refer to certain normative facts which are acknowledged in this negotiation environment. In the case of the EU enlargement, the important features of the “community environment” were its liberal principles and values and the claim to act according this liberal norms (Schimmelfennig 2003: 78).

When analysing rhetoric action in the context of this paper, one has to identify which principles and values constitute the relevant community environment when negotiation decision making rules in the EU. For the further analysis I assume, that the strategic use of norm-based arguments

has an effect on the outcome of negotiations and thus explanatory power for negotiation results. Hence, I will use the terms “strategic arguing” and “rhetoric action” synonymously when analysing actors’ behaviour.

3.2 Hypotheses on Actors’ Argumentative Behaviour in International Negotiations

Can we transfer the theoretical assumptions of “rhetoric action” to treaty change in the EU and which hypotheses can we derive from that? As the European Union is based on a normative framework and constitutes a “community environment” one can assume that actors use “strategic arguing” as a negotiation tactic in EU negotiations, not only when deciding over enlargement (Schimmelfennig 2003, Rittberger/Schimmelfennig 2007). Two effects of the theoretical concept of rhetoric action can be derived: First, one assumes that actors use certain norm-based arguments strategically to reach a certain interest-based outcome. Second, one assumes that the “community environment” and its goals and (normative) standards create a compulsory “rhetoric frame” in negotiations, which actors cannot oppose without damaging their image and their credibility in the community environment. Regarding institutional change in the light of enlargement, the community environment can be constituted from the officially agreed on need for efficient decision making and the fear of gridlock after enlargement. *Efficiency*, the *capacity to action* and *legitimate representation* of member states were dominant features in the discussion¹¹. Based on the two effects of the community environment, I state two working hypotheses

1. Argumentative behaviour and intentional use of “strategic arguing”:

The officially agreed on need for efficient decision making and the fear of gridlock after enlargement is used by member states as an argument to renegotiate decision making rules and reach a better distributional outcome for their individual member state.

2. The rhetoric power of the “community environment”:

The officially agreed on need for efficient decision making and the fear of gridlock after enlargement hinder member states to oppose institutional changes for efficiency and legitimacy, even though they are losing power rights.

¹¹ A more detailed, systematic analysis of EU documents can be provided evidence for this statement. I derived my information from the following documents: European Commission (1992), European Commission (1978a), European Commission (1978b), European Presidency (1994,1995), Committee for Institutional Affairs (1985), Genscher, H.D. and E. Colombo (1981).

3.3 How provide Evidence for Rhetoric Action in International Negotiations?

Theoretically it is convincing that actors use strategically norm-based arguments in international negotiations and might get entrapped by this “rhetoric action”. Methodologically it is a challenging task to differentiate arguing, bargaining and strategic arguing, and provide evidence for rhetoric action or the existence of a rhetoric “community environment”.

Most challenging is to disentangle the *strategic* from the *sincere* use of norm-based arguments. Without knowing actors’ preferences we cannot distinguish *real arguing* from *strategic arguing*. So far, we have no trustable method for identifying preferences (Bräuninger 2000: 42), as preferences are not necessarily identical with publicly stated positions. As a consequence, we cannot know if member states are deterred by the “community environment” from fighting frankly for their distributional interests, or if other factors are effective. Despite these difficulties, some empirical applications for identifying arguing, bargaining and even strategic arguing exist and might provide methodological inspirations.

The concept of arguing and bargaining was employed to European Union treaty negotiations (Panke 2006, Schimmelfennig/Rittberger 2007). Panke tries to analyse if the institutional design of the Nice IGC in contrast to the Convention leads to more arguing than bargaining. Panke uses the communication mode as the dependent variable (and the treaty change forum as the independent variable). A methodological more sophisticated approach is presented by Holzinger (2001b). She suggests identifying arguing and bargaining in negotiations by analysing speech acts and their characteristics. Still, this approach does not provide a tool for detecting “strategic arguing”. Further on, discovering the distribution of arguing- and bargaining- speech-acts in a certain negotiation is not the aim of this research paper, as it does not contain much information on the object of negotiations. I argue that the object of negotiations and its characteristics are central for strategic actors when establishing arguments and positions. Additionally, protocols of the oral negotiations should be available for the speech-act analysis which is not the case for most EU treaty negotiations. Rittberger/Schimmelfennig themselves transfer the concept of “rhetoric action” to the process of EU constitutional change (2005, 2007). They empirically analyse the existence of rhetoric action in the process of parliamentarization of the EU and the institutionalization of human rights in EU treaties. They state *a priori* that the community effect of rhetoric action exists (Rittberger/Schimmelfennig 2007: 11 – 14) and aim at identifying context conditions under which the strength of this community effect varies. Still, an exact examination of how rhetoric action

proceeds (e.g. which norms function as a resource for norm-based arguments) and how it can be identified is missing.

I claim that for this purpose, an analysis of actors' argumentative behaviour in negotiations is needed. In the following I will present my analytical framework to assess the argumentative behaviour of member states' when negotiating the selected rules. I argue that the object of negotiations and its characteristics are central for establishing arguments and positions. Based on this, I aim to overcome the methodological problems by developing categories, which are based in the characteristics of the negotiated institutions itself and not so much in the communication mode.

4. Analytical Framework: Negotiating Efficiency, Legitimacy and Distribution

The aim of this paper is to identify the effect of normative standards and goals ("community environment") on the argumentative behaviour of governmental actors in European treaty negotiations. With Schimmelfennig and Holzinger I assume, that actors use normative arguments strategically to reach an interest-based outcome. This strategic use of norm-based arguments is called "rhetoric action" (Hypotheses 1). Further on, I aim to examine if the rhetoric community environment as such hindered governmental actors stating their interest-based positions (Hypotheses 2). How can we identify rhetoric action in actors' statements when negotiating the composition of the Commission or the European Parliament or when establishing the rules of interest of this paper? For answering this question the terms "normative standards and goals of the community" and "interest-based positions/outcome" should be made applicable to an empirical analysis of actors' statements.

4.1 Standards and Goals of the Community: Efficiency, Legitimacy – and Distribution?

Before analyzing the negotiations, I will conceptualize the type of negotiations we are confronted with when the respective "rules of the game" are negotiated in the EU. The object of interest are collective decision making rules (composition of the COM, composition of the EP, weighting of votes, extension of QMV) which are laid down in EU treaties. What are the characteristics of these rules and in how far can they entail "normative standards and goals of the community" or "interest-based positions"?

At the beginning the terms "efficiency" and "distribution" were used to describe a certain institutional outcome. This can be used as a starting point when analysing the normative dimension of a certain institutional design. Institutions define by a certain design the efficiency of

decisions and at the same time the distribution of influence every certain member state has on a decision. I suggest adding the legitimacy of decisions as an important feature of EU politics. These three principles – 1. Efficiency of decisions, 2. Legitimacy of decision and 3. Distribution of influence a MS has on the decision – are utility resource of member states when negotiating the rules of the game.

1. Efficiency of decisions:

Efficiency of a decision defines how quickly and cost-intensive a decision is taken. It is related to the number of involved actors, the time a decision needs and the number of negotiations which are needed to come to a solution.

2. Legitimacy of decisions

Legitimacy of a decision defines in how far the taken decision represents the will of every member state. According Scharpf's distinction between input- and output-legitimacy in the EU (1999), I define legitimacy as input-legitimacy. It is related to e.g. the number of member states which are able to influence the decision, a fair representation according their population size and a connection of the decision making actors to the European population and concerns about the "fairness" and legitimacy about these rules.

3. Distribution of influence among member states

The influence of a single MS on the decision is defined by the institutional rules, as well. It is related to e.g. if a member state is simply represented in a decision making body, if he has voting rights and if yes, which voting rights the MS has in comparison to other member states. For example, the design of the weighting of votes distributes different shares of voting rights to member states. Another example from the composition of the Commission: Germany used to be represented by two commissioners while Belgium by one; in this case, the distribution of influence differs from member state to member state.

These principles are interconnected: It has effects on the collective efficiency how many member states are involved when taking decisions or if every member state has the same voting right or if a majority can be reached only by a few member states (which would enhance the efficiency). Legitimacy is affected by the fact how member states are able to influence a decision as the representation should be considered as "fair" according principles like the population size.

Tsebelis argues that conscious, intentional institutional design does not lead to collective-efficient outcomes (1990: 104). He assumes, that without the "veil of ignorance", actors create institutions

which are in their individual favour, and not in favour of the community. Tsebelis distinguishes between efficient and redistributive decision-making institutions (1990: 104). According to him institutions are *efficient*, if they improve the condition of all and institutions are *redistributive* if they improve the conditions of one group in society at the expense of another (104). Simply speaking: Efficient institutions aim at increasing the pie for the whole group, whilst redistribution institutions are related to the piece a single member will gain. According to the argument of “rhetoric action” this would not be possible: Instead of claiming for an institutional design in their individual favour, member states have to claim for institutions, which are in favour for the community and get entrapped by these strategic claims.

When negotiating decision making rules in the EU we have to assume, that the above outlined principles and types of negotiation will occur *at the same time*. This simultaneity opens the space for strategic arguing and rhetoric action. Rhetoric action assumes that individual preferences which contradict the community ethos are hidden behind norm-based preferences. From this follows that – in line with the concept of “rhetoric action” - distributional preferences cannot be stated frankly, but have to be justified with normative arguments related to efficiency and/or legitimacy. For the whole group it is important that decisions are efficient and perceived as legitimate by every - or at least the majority of- member states. Legitimacy and efficiency are in so far normative concepts as they are related to norms and a collective gain and thus to the “community environment”. Beside the normative implication this is also a functional need and a rational goal to ensure the stability of the EU.

From this follows the assumption that:

Actors are not able to oppose a reduction of commissioners or a certain unfavourable weighting of votes, as it contradicts the community norms of efficiency and legitimacy. This would lead to a loss of credibility and carry costs for the member states by opposing the normative standards of efficient and legitimate decision making.

4.2 Consequences for the Analysis

Efficiency and legitimacy are defined as collective interest of the EU and constitute the community environment. Distribution is related to the individual interest of every member state and should be hidden behind norm-based arguments. I will examine, if we can observe the occurrence of these arguments and positions in member states’ position papers. For this purpose I developed a detailed code-book and conducted a text analysis for all official documents published by member

states before the official negotiations (a complete list of the documents can be found in the Annex). From these results we can learn that the reforms of these issues were framed with arguments related to efficiency and legitimacy as well as to distributional considerations. For providing evidence for “rhetoric action” I have to show that distributional preferences are hidden behind arguments related to the norms of efficiency and legitimacy.

Assuming power-seeking actors, for a single member state the distribution of power among member states should be the most important principle when elaborating preferences on institutions. On the one hand, these simple assumptions about institutional preferences are convincing. On the other hand, one can question if they are realistic. Assuming that legitimacy and efficiency are normative concepts but still resources of rational preferences, we are facing a difficulty: when analysing negotiations and want to differentiate preferences, stated positions and strategically used arguments, we do not know if we are confronted with arguing or strategic arguing. But still, it is not necessarily a matter of norm-guided behaviour when establishing efficient and legitimate institutions – in most cases it is very rational. For example, an inefficient Commission can be more costly for a member state as the loss of one Commissioner¹². Nevertheless, for the purpose of this analysis I state these distributional preferences temporarily *a priori* as ideal preferences and test if they can be found in publicly stated position papers.

5. Empirics: Evidence for Rhetoric Action in EU Treaty Change Negotiations

For identifying positions and rhetoric in international negotiations we have three options: First, conducting interviews with relevant actors, second, analysing protocols of these negotiations or third, position papers. Negotiation protocols could provide one with information about the process and change of positions in oral negotiations. For the case of EU treaty negotiations no protocols of the actual oral negotiations are available. Interviews with all participants are time- and cost-intensive, plus interviews do not reflect the negotiations situation very well. Position papers provide stated arguments before the actual negotiations start and serve as a good base for analysing member states’ positions and stated arguments. For the Amsterdam and Nice Treaty negotiations position papers of almost every member state are available on the internet (see Annex). For the Rome and Lisbon IGC no systematic collection of position papers is available. For

¹² For example: A reduction of commissioners will enhance the efficiency of the commission. Even though distributional interests of an individual member state are harmed, still the pay-off of this institutional solution might be higher than an e.g. an inefficient commission or a decision-rule in the council leading to permanent gridlock.

the European Convention the EU published detailed minutes of every meeting and even audio protocols of the plenary sessions on the internet¹³. But as I aim at analysing negotiations at IGC, the Convention debates are not the focus of my interest.

In the following I will present a detailed analysis of member states' position papers, which are published at the beginning of the Amsterdam and Nice IGC. I have to note, that due to the missing documents for the Convention and the Lisbon Treaty, I cannot provide an explanation for the final results as laid down in the Lisbon Treaty. Nevertheless, my analysis of the Amsterdam and Nice IGC position papers provide fruitful insights to the argumentative behaviour of member states.

5.1 Process of Document Analysis: Sample, Codebook

I developed the categories of efficiency, legitimacy and distribution as important features of an institutional design, and expect these features being present when negotiating the rules of the game in the EU. The concrete aim of analysing the documents is to identify, if institutional positions are framed by "normative arguments" based on efficiency and legitimacy.

- Selection of Documents

For the Amsterdam and Nice Treaty negotiations, position papers were published at the beginning of the IGC and are available on the internet¹⁴. I conducted a content analysis with all official documents published by member states before the official negotiations. The documents are available in the online-archive of the European Council and the European Commission.

- Codebook

I created codes related to the four identified central reform steps: (1) reform of the commission, (2) reform of the composition of the EP, (3) the re-weighting of votes in the Council/ the possible introduction of a double majority. I assessed if claims for these reforms were linked to efficiency-considerations (EFF), legitimacy-consideration (LG) or consideration about a distribution of power (DP). Combining these information, nine codes could be generated:

- Reform of the Commission: EFFcom, DPcom, LGcom
- Composition of the European Parliament: EFFep, DPep, LGep
- Weighting of Votes in the Council: EFFwv, DPwv, LGwv

A category for general claims for institutional reforms in the light of enlargement was added, as many documents enhance statements about the "general need to reform decision making

¹³ See: <http://european-convention.eu.int/> (April 2, 2009).

institutions in the light of enlargement". This claim is also linked to efficiency, legitimacy and distribution of power: EFFgen, DPgen, LGgen. At the end, 12 codes were established. The more detailed codebook can be found in the annex.

- Coding Process

The coding was undertaken by a computer based (*MAXqda*) manual coding process. To ensure inter-coder reliability a second coder was asked to employ the established codes to the same documents again, without knowing the result of the first coding¹⁵. At the end, the number of codings was counted.

5.1 Results: Argumentative Behaviour by Issue

The results of this document analysis should allow making statements about actors' negotiation behaviour by giving information on how often an issue is framed by which argumentation. A first glance on the results shows, that all possible argumentations – efficiency, legitimacy, distribution – are employed to all institutional reform steps. Nevertheless a certain distribution of arguments and dominant arguments for some reform issues can be observed in the Amsterdam and Nice Treaty negotiations.

- **General reform:** When claiming for a general reform of the institutions in the light of enlargement most claims were linked to efficiency and only very few to distribution of power or legitimacy. In general, enlargement seemed to be used as a trigger for reform as actors officially agree to the need to ensure efficiency. Problems of legitimacy and distribution are only rarely mentioned.

Issue	General reform					
	Amsterdam			Nice		
Argument	EFF	DP	LG	EFF	DP	LG
Absolute number	22	3	5	29	3	2
Percentage	73%	10%	17%	85%	9%	6%

- **Composition of the Commission:** When claiming for a new composition of the Commission, picture is more diverse: At the Amsterdam IGC most of the claims were linked to power distribution. These power-arguments include statements which claim for a certain number of commissioners – but entail arguments for a reduction of commissioners as well. Whereas

¹⁴ See: <http://www.consilium.europa.eu/showPage.aspx?id=245&lang=en> (April 3, 2009)

¹⁵ The coding results show a major correspondence. Some open coding-problems have to be reassessed.

at the Nice IGC arguments were made regarding efficiency as well as the distribution of power. The low numbers of coding in the Nice documents can count for a lesser relevance of this issue.

Issue	Composition of the Commission					
	Amsterdam			Nice		
Argument	EFF	DP	LG	EFF	DP	LG
Treaty						
Absolute number	9	17	3	6	4	1
Percentage	31%	59%	10%	55%	36%	9%

- **Composition of the EP:** When reflecting about a new composition of the EP most arguments were related to efficiency. Intuitively one would assume legitimacy-arguments, as the representation in the parliament is closely linked to legitimacy. In the Amsterdam position papers these arguments were totally absent, whereas in the Nice IGC position papers stated legitimacy arguments are an important category. The distribution of power is rarely mentioned by member states.

Issue	Composition of the European Parliament					
	Amsterdam			Nice		
Argument	EFF	DP	LG	EFF	DP	LG
Treaty						
Absolute number	7	4	0	18	1	11
Percentage	64%	36%	0%	60%	3%	37%

- **Weighting of Votes/Introduction of Double Majority:** When claiming for a change in the weighting of votes, actors' behaviours is quite the same in the Amsterdam and Nice Treaty negotiations. As one would intuitively assume, most claims were linked with distributional arguments. Still, efficiency and legitimacy arguments are stated as well.

Issue	Weighting of Votes/ Introduction Double Majority					
	Amsterdam			Nice		
Argument	EFF	DP	LG	EFF	DP	LG
Treaty						
Absolute number	4	17	4	3	16	2
Percentage	16%	68%	16%	14%	76%	10%

From these results we can learn, that all arguments occurred in member states' position papers. Efficiency and legitimacy are dominant arguments. Still, distributional interests are stated quite

often and are not generally hidden behind norm-based statements – even in officially published position papers. From this results we can learn, that normative argument are present when negotiating decision making rules in the EU, which might point to the existence of strategic arguing. Nevertheless, we do not know if the normative arguments are strategically used or base on member states' real beliefs. I have shown, that we can observe different framings of an issue. The frames I identified are related to efficiency and legitimacy arguments, as well as statements about distributional preferences.

5.3 Results: Stated Positions by Member States

As stated above, we do not know if the preferences are “real preferences” or strategically used arguments. In the next step I will analyse the documents without a deductively developed coding scheme, and look for the actually stated positions. Without the theoretical framing of efficiency, distribution and legitimacy we can assess, if the stated positions claim for an improvement of the individual position or rather of the whole community. In the following I will present positions which are stated by member states regarding the issues in question. The base of my analysis are the same documents as used before.

- **European Commission**

When making suggestion for a new composition of the commission the majority of member states support a reduction according the principle “One commissioner per country”. Only the large member states – France, Germany, Italy – claim for a fixed limitation, which can be less than the number of member states. It is interesting to note, that the countries which were having at the time of discussion two commissioners claimed for a fixed limitation which would imply a rotation. Smaller countries obviously wish to be represented in the commission by one commissioner. This is a reduction in the number of commissioner, but still not a final solution when expecting 30 or more member states. Thus, the stated efficiency argument does not seem to be reflected in the real positions. In the final outcome member states agreed to reduce the number of commissioner to $\frac{2}{3}$ of the number of member states. It is interesting to note, that despite the initial positions “1 commissioner per country” member states finally agreed on an even more power-cutting rule.

Composition of the Commission

<i>Position</i>	Fixed Limitation: 20 Commissioners	Fixed Limitation: 10 – 15 Commissioners	1 Commissioner per Country	No statement
<i>Country</i>	Germany Italy	France	Belgium , Netherland, Luxembourg, Ireland, United Kingdom, Spain, Portugal, Finland, Austria, Sweden	Denmark Greece

- **European Parliament**

Regarding the composition of the European Parliament after enlargement the majority of member states wishes a fixed limitation to 650 – 700 member states. At the end, member states agreed to a ceiling of 750 members. This might point to a strategic use of a position in line with the community norm of efficiency (fixed limitation to 650-700), but an actual decision to more members. It is interesting to note, that many countries do not make any explicit statements about their positions regarding the composition of the EP.

Composition of the European Parliament

<i>Position</i>	Fixed Limitation to 650 – 700 Members	Fixed Limitation to 750 Members	No statement
<i>Country</i>	Italy, Netherlands, Belgium, Luxembourg, Finland, Greece, Portugal	Denmark	Germany, France, Ireland, UK, Spain, Austria, Sweden

- **Double Majority and Population Threshold**

The introduction of a Double Majority and the population threshold needed for QMV was one of the biggest bones of contention. Regarding the Double Majority we can observe a general support for its introduction. Only Greece and the UK are against a weighting of votes based on the population. The population threshold shows the diversity of positions among member states. It is interesting that even smaller countries like the Benelux states claim for a threshold of 70% of the population and not less, as Italy or Denmark.

Double Majority

<i>Position</i>	Supports Introduction of DM	Adjustment needed: Reweighting or DM	No weighting based on population/ no DM	No statement
<i>Country</i>	Germany, France, Spain, Belgium, Netherland, Italy	Finland, Austria, Portugal	Greece, UK	Sweden, Ireland

Population Threshold for QMV

<i>Position</i>	50 – 60% of population	70% of population	No changes, preservation of 71%	No statement
<i>Country</i>	Italy, Denmark,	Belgium, Netherland, Luxembourg	Greece, Spain (<i>Ionnina compromise</i>), UK (<i>Luxembourg compromise</i>), Portugal, Austria, Sweden	Finland, Ireland, Germany, France

From the analysis of the explicit positions we can learn, that member states do not necessarily claim for an institutional design, which would be expected from their direct distributional interests. For example, we can observe that big member states claim for a reduction of commissioner or small member states want a high population threshold for Qualified Majority Voting.

6 Conclusion

The aim of this paper was to analyse the process of rule change in the EU in the light of enlargement. From the empirical analysis we could see, that the rules in question changed in the light of the Eastern Enlargement, but these changes did not generally reflect an enhancement of individual gains of member states, as classical rational-choice theories assume. In contrast, the changes demonstrated that member states agreed on rules, which reduce their individual power rights (e.g. a reduction of the number of commissioners). Instead of leading to a pure distributional outcome, we can observe that the institutional outcome reflects - at least partly- the principles of efficient and legitimate decision making. Obviously, distributional interests cannot be the only factor when negotiating decisions making rules (Chapter 2).

Following this, the paper aimed at analysing how actors behave when changing the rules of the game and which motives are the driving forces in the negotiation process. Based on Schimmelfennig’s concept of “rhetoric action”, I assessed if normative principles related to the EU

“community environment” are present, when negotiating the rules of the game. For this endeavour I developed a theoretical and methodological approach for analysing “rhetoric action” in EU treaty negotiations. In contrast to classical approach of an arguing-bargaining-analysis, my analytical framework is based on the characteristics of the institutions and not so much the mode of communication. As possible normative principles I identified the goals of efficiency and legitimacy reached by a certain institutional design. According this, the officially agreed on necessity for efficient and legitimate decision making and the fear of gridlock after enlargement should be adopted as an argument by member states. These arguments can be used by member states to hide claims for distributional changes and hinder them to oppose institutional changes for the sake of efficiency and legitimacy - even though they are losing power rights (see chapter 3 and 4). With this analytical framework a document analysis - based on member states position papers from the Amsterdam and Nice Treaty negotiations - was undertaken. From these results we could learn, that efficiency and legitimacy arguments as well as frank distributional claims occurred in member states’ position papers. Hence, normative arguments are present when negotiating decision making rules in the EU, which might point to the existence of strategic arguing (chapter 5).

In this paper I used a deductively developed coding scheme, which provided general insights into the use of certain argumentative schemes by member states. Nevertheless, in further research the deductively developed coding scheme could be replaced by a more explorative approach, to gain insight into the real arguments, and not only rather abstract categories. A first step in this direction was the analysis of explicit positions stated in the documents. From this analysis we could learn, that member states do not necessarily claim for an institutional design, which would be expected from their direct distributional interests. In further research it would be interesting to assess which exact arguments are stated by which member state for a certain position – and how this affects the outcome of negotiations.

So far I could show that efficiency, legitimacy and distribution are important goals when negotiating the reform of decision making rules in the EU. Beside the argument of “rhetoric action” another explanation might be found for the occurrence of these principles (efficiency, legitimacy) in arguments and positions. Probably the pay-off for member states of a certain institutional design is not only affected by its allocation of power, but also by efficiency and legitimacy. Intuitively, one would subsume distributional preferences as a driving force of rational actors, whilst claims for efficiency and legitimacy are either based on “strategic arguing” of rational actors or the real norm-

orientation of actors. I argue, that this classical dichotomy of actors' behaviour is not sufficient when analysing the process of rule change in the EU. All principles - efficiency, legitimacy, distribution - can be subsumed under a rational-choice concept of actors' behaviour. This would preserve the theoretical frame of power-seeking, utility-maximizing actors, but enhance the sources of utilities from only distributional preferences to the realization of efficiency and legitimacy. I argue that from the realization of all these principles within a certain institutional design member states gain a certain utility. This statement has only one reservation: Whereas efficient and legitimate institution will affect the individual *and* the collective gain, distribution is only relevant for the individual gain. One example for these theoretical claims from the rules of the game in question: The reduction of commissioners in the Commission will bring a gain for every member state from more efficiency. But, as some member states have to abstain from nominating a commissioner, the distribution of power will create losses for these member states. Still, it might be rational to agree to a reduction of commissioners. Costs of an inefficient commission might be higher than these from the loss of an own commissioner.

So far we can conclude, that in international organisations like the EU a level of common gains of cooperation and a level of distribution of these common gains among actors exists. These gains are reflected in the design of decision making rules. Now it is interesting to know, how member states solve the trade-off between distribution, efficiency and legitimacy. This phenomenon is described in literature on international negotiations as both a cooperative and a conflictive endeavour in which negotiators share an interest in solving a common problem, but disagree on the appropriate settlement. Establishing and changing international institutions can – when using a game-theoretic approach - in most cases best conceptualized as a mixed-motive-game (Schelling 1960: 89). From this follows that it is even more difficult to disentangle arguing, bargaining and strategic arguing in negotiations about decision making rules in the EU. This theoretical argument – and the following methodological problem - cannot be elaborated in this paper. Nevertheless, when analysing EU negotiations about decision making rules it should be integrated into further analytical concepts.

Annex

Table 1: Codebook for the Coding process presented in Chapter 0

Codebook

General Claim for reforms

EFFgen	Efficiency - general	Actors claim for institutional reforms in the light of enlargement (without naming explicit a certain reform step) to ensure efficiency or efficient decision making.
DPgen	Distribution of power - general	Actors claim for institutional reform in the light of enlargement (without naming explicit a certain reform step) to ensure distributional justice or to redistribute power.
LGgen	Legitimacy – general	Actors claim for institutional reform in the light of enlargement (without naming explicit a certain reform step) to ensure legitimacy of the EU and its decisions.

Reform of the Commission

EFFcom	Efficiency - Commission	Actors claim for a reform of the commission after enlargement and link it with the need to ensure efficiency/efficient decision making.
DPcom	Distribution of Power - COM	Actors claim for a reform of the commission after enlargement and link it with the need/wish to redistribute power
LGcom	Legitimacy- Commission	Actors claim for a reform of the commission after enlargement and link it with the need to ensure legitimacy by representation.

Composition of the European Parliament

EFFep	Efficiency – European Parliament	Actors claim for a new or a certain composition of the EP after enlargement and link it with the need to ensure efficiency/efficient decision making.
DPep	Distribution of power – Europ. Parliament	Actors claim for a new or a certain composition of the EP after enlargement and link it with the need/wish to redistribute power
LGep	Legitimacy - Europ. Parliament	Actors claim for a new or a certain composition of the EP after enlargement and link it with the need to ensure legitimacy by representation.

Weighting of Votes in the Council/Introduction of a Double Majority

EFFwv	Efficiency – Weighting of Votes in the Council	Actors claim for a new weighting of votes/ no new weighting of votes/ introduction of Double Majority after enlargement and link it with the need to ensure efficient decision making.
DPwv	Distribution of power – weighting of votes Council	Actors claim for a new weighting of votes/ no new weighting of votes/ introduction of Double Majority after enlargement and link it with the need to redistribute power.
LGwv	Legitimacy – Weighting of votes Council	Actors claim for a new weighting of votes/ no new weighting of votes/ introduction of Double Majority after enlargement and link it with the need to ensure legitimacy by representation.

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